In the Matter of the Interest Arbitration

between King County Corrections Guild ("Guild")

and

King County ("County") Department of Adult and Juvenile Detention ("DAJD").

Findings, Discussion and Award.

Case Numbers:	Washington Public Employee Relations Commission case 130837-I-18. Arbitrator's T81.
Representing the Guild:	David A. Snyder, Law Offices of David A. Snyder, P.O. Box 11314, Portland, OR 97211.
Representing the County and DAJD:	Rodney B. Younker and Summit Law Group, 315 Fifth Ave. S., Suite 1000, Seattle, WA 98104.
Arbitrator selected by the Guild:	Linda Holloway, JCRep3@gmail.com.
Arbitrator selected by the County / DAJD:	Robert S. Railton, Deputy Director, Department of Labor Relations, 500 Fourth Avenue, Room 450, Seattle, WA 98104. Bob.railton@kingcounty.gov.
Arbitrator mutually selected by the parties:	Howell L. Lankford, P.O. Box 22331, Milwaukie, OR 97269-0331.
Hearing held:	In the offices of the County in Seattle, Washington on January 28, 29, 30, 31 and February 1, 26 & 18, 2019.
Witnesses for the Guild:	David Richardson, Joseph Harvey, Shannon Phillips, Takisha Logwood, Anthony Bowers, Brandon Vernon, Nathan Kile, Joseph Fisher, Annitra Eaton, Tara Corner, LaVance Davis, John Hazelwood, Lois James, PhD., Matt Owens, and Sundee Berg.
Witnesses for the County / DAJD:	Brenda Bauer, Dwight Dively, Matthew McCoy, Megan Petersen, Jennifer Albright, Gordon Karlsson, and Todd Clark.
Post-hearing Briefs:	Received from both parties on May 9, 2019.
Date of this award:	Monday, June 10, 2019.

This is an interest arbitration under the authority of RCW 41.56.450 et seq. The parties agree that the preliminary requirements of the statutory scheme have been satisfied and that all the issues presented in this case were properly certified to arbitration.[1] The hearing was orderly.[2] Each party had the opportunity to present evidence, to call and to cross examine witnesses, and to argue the case. Testimony was taken down by a court reporter, and the advocates had the benefit of a transcript in preparing their post-hearing briefs. Those briefs were timely received and have been carefully considered.

Statutory authority. The primary controlling statute in this case is RCW 41.56..430 and RCW 41.56.465(1) and (2):

RCW 41.56.430:

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.

RCW RCW 41.56.465

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

(a) The constitutional and statutory authority of the employer;
(b) Stipulations of the parties;
(c) The average consumer prices for goods and services, commonly known as the cost of living;
(d) Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings; and
(e) Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. ***

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

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1. Despite this preliminary stipulation, I find that one proposal in a post-hearing brief exceeded PERC's certification. See pages 37-38, below.

2. The parties agree that the official record of the hearing in this case, including the transcript of testimony, is in the possession of the County. The County agreed to become the guardian of that record and to hold the arbitrator harmless in that regard.

(Apparently the statutory reference to "RCW 41.56.030(7) (a) through (d)" was not updated to reflect subsequent legislative additions to RCW 41.56.30, and the correct reference includes RCW 41.36.030(13):

> (b) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(9), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates.)

The parties. The Guild represents the Corrections Officers (COs) and Corrections Sergeants of King County's Department of Adult and Juvenile Detention (Department).[3] King County is by far the largest county in Washington and is thirteenth in the country by population and ninth by payroll. The County operates two adult detention facilities, the Corrections Facility (KCCF), taking up several stories in the Courthouse downtown, and the Maleng Regional Justice Center (RJC) in Kent. Together they process about 50,000 bookings per year. The average daily population (ADP) of the two facilities combined, in 2018, was just over 2,100, consisting of inmates who have been arrested but not yet tried for felonies or misdemeanors or who are have been sentenced to less than a year of confinement. (KCCF, by contract, also houses some inmates from the Washington Department of Corrections.). The ADP for 2018 was in the middle of the recent range of 2,065 in 2017, 1896 in 2016, and 2,181 in 2018. Prisoners are divided into minimum, medium, close, maximum, and ultra security; and there are so many dual-diagnosis prisoners, who are both substance addicted and suffering from a mental illness, that the Department is the largest psychiatric correctional facility in the State. Most bargaining unit members work inside the two facilities, but a substantial number of COs are required to accompany prisoners to court or to the hospital. About 70% of KCCF's inmates pass in and out within 72 hours. The Department's managerial personnel include about 15 Facility Commanders, Majors and Captains.

Background.[4] Before 1974, the County staffed its corrections facilities with Deputies on rotation. That year the County took over housing prisoners of the City of Seattle and created a separate classification of Corrections Officers. Corrections Officers were initially represented by SEIU, which entered into a series of "me-too" contracts with

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3. Because the COs vastly outnumber the Sergeants, I will refer to bargaining unit members as COs except where rank makes a difference.

4. The first paragraph below, addressing formation of the Guild and of the bargaining unit, is taken verbatim (without footnotes) from my 2009 Award. This part of the history has not changed.

the County copying the Deputy Sheriffs' agreements (except for retirement benefits) until about 1979 or 1980 when Corrections Officers first got a smaller increase than Deputies. Ever since then the Corrections Officers have sought some form of "parity" with the Deputies. The Guild took over representation in 1996.

The exact bargaining unit size varies from week to week if not from day to day due to losses, mostly due to retirement, and to irregular addition of new Officers. In March, 2009, at the time of the first interest arbitration hearing, the bargaining unit consisted of "about 539 Corrections Officers and 40 Sergeants." It topped 600 combined in 2009-2010 and then declined. On January 13, 2019 it consisted of about 538 COs *and* Sergeants. There were sixteen vacant positions at the beginning of this hearing.

The parties' most recent CBA expired at the end of calendar 2016. Bargaining for a successor began that May; and the negotiators reached a tentative agreement twice, only to have those TAs twice rejected by the Guild membership. The contract at issue in this Interest Arbitration will expire at the end of calendar 2019.[5]

MANDATORY OVERTIME

Mandatory overtime (MOT) is at the heart of this dispute. Although that term does not appear in any proposal, virtually every issue in this case is either driven or colored by the continuing plague of MOT.

The staffing pattern. Staffing in the KCCS is largely determined by the 1998 Settlement Agreement in *Hammer, et. al. V. King County, et. al.* which began in 1990-1991. That Agreement details the minimum staffing, floor by floor, post by post, and function by function. Some of the minimums depend on the day's inmate population. The Department does not have the option of going beneath the *Hammer* minimums regardless of any shortage in CO staff.

COs operate in three shifts of eight hours and ten minutes each, beginning at 06:20, 14:20, and 22:20. Sergeants begin 30 minutes earlier, overlapping the end of the prior shift. The additional ten minutes in each shift allows face-to-face turnover. A fourth, Court starts a bit after the First shift to operate during regular courtroom hours First shift is by far the largest of the four and roughly overlaps the Court shift; and Third shift is the smallest.

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5. The parties specifically agreed *not* to submit to the neutral arbitrator the terms of the two rejected TAs. They also specifically agreed not to extend the three year period at issue in this proceeding.

A single CO may be responsible for supervision of an entire living unit. At the other extreme, Court guards are generally assigned in pairs to each inmate in court, and a single inmate in the hospital requires a CO all to himself or herself.[6] An emergency hospital run almost never lasts less than four hours; and an inmate *admitted* to the hospital requires a CO on each shift plus an additional CO periodically to cover the break and meal times. To further focus the overtime consequences of Court and hospital duty, COs assigned to those functions must be firearms trained, which eliminates roughly half of the bargaining unit.

Overtime and MOT history. Here is a year by year summary of total overtime MOT as a percentage of total overtime hours worked, since 2009 (County Ex. D1.):

	KCCF		MRJC	
	Total OT	% MOT	Total OT	% MOT
2009	78,089	13.56%	21,444	7.43%
2010*	89,835	8.05%	19,818	3.55%
2011	75,188	5.82%	34,930	4.81%
2012	51,328	4.16%	34,553	2.33%
2013	53,498	7.62%	39,838	4.24%
2014	83,918	**15.31%**	51,173	**8.56%**
2015**	62,316	**17.43%**	39,067	**12.29%**
2016	77,361	**21.34%**	42,598	**13.65%**
2017	84,594	***28.16%***	58,725	***30.94%***
2018	95,241	***29.22%***	39,365	***13.05%***

* It is not clear whether the drop from 2009 to 2010 was a product of a changing employment picture or of the interest arbitration award of double time for mandatory overtime within ten days of previously working mandatory overtime, or both.
** The interest arbitration award for 2012-2015 took effect in July, 2015, making sick leave count as time worked for triggering overtime eligibility. At that point, for reasons not detailed in the record, mandatory overtime jumped at KCCF from an average of 4.10% of all overtime for the first seven months to an average of 28.3% for the final five. Voluntary overtime signups fell sharply.

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6. The term "hospital guards" is used broadly and covers both COs who accompany inmates to regular medical and dental appointments as well as those on emergency hospital assignment.

MOT is spread over the bargaining unit quite unevenly. In 2018, based on a bargaining unit of 560, 26 COs worked more than 200 hours of MOT; another 100 worked between 100 and 200; and 82 worked none at all. (Guild Ex. 105.)

Part of the systemic problem is that the smallest of the shifts—the Third—must provide the staff to fill unexpected vacancies and unplanned staffing requirements in the largest shift, which is the First, including the Court shift and hospital guards. Sometimes that is simply not possible: On January 7, 2019, the *entire* third shift was held over on mandatory overtime, and there were still 13 unfilled positions; On January 18 that happened again; and on February 1, and on February 26. COs on the Third shift are sometimes mandatoried two or three days in a row. At the close of the hearing on February 27, there had been some MOT in the Department every single day in 2019.

Part of the problem is, as the County points out, contractual or a consequence of the shift selection process. In 2008, the 75% of the bargaining unit with eight or more years of seniority experienced less than half the MOT of the 25% of COs with less than eight years. (County Ex. D19.)

The County's attempts to deal with overtime and MOT. A series of County budget ordinances have required the Department to report on the causes of excessive overtime and MOT. In reply, the Department has repeatedly explained—more or less delicately—that excessive overtime and MOT are caused by funding limitations. For example, in a September 2016 response to a budget Proviso, the Department explained the ABCs of staffing (County Ex. 10b, which is also Guild Ex. 93, at p. 12-13; italics and the footnote are mine; "OFM" is the Operating Forecast—i.e. staffing—Model):

> Historically, *the inputs for the OFM model were developed to meet budget requirements*. As OFM [staffing model] is used to determine the most fiscally balanced combination of FTEs and overtime, it is not surprising that the analysis of average posts per day and average number of officers available to work the posts consistently creates a difference that directly correlates to the percent of hours worked on overtime.[7] However, *the desire to demonstrate a lower number of FTE and lower levels of overtime has led to a reluctance to ensure that the model inputs correctly identify the anticipated level of activities*. Training is an excellent example. As DAJD increased the number of hours of training per CO, the additional hours of planned activity were not added to OFM.

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7. The County Auditor found in 2016 that "on an hourly cost basis, the use of overtime to carry out jail operations is not more expensive than hiring additional full time staff..." (Guild Ex. 193 at ii.) The annual hours of work of one FTE—about 1,650—costs almost $115,000; but that many hours of overtime incurs no medical insurance cost and far less retirement costs and comes to a bit less than $110,000 despite the hourly rate being 1½ that of straight time. (Guild Ex. 171.)

Ten pages of he Guild's Post-hearing Brief (pp. 47-57) detail similar responses.

To put it less delicately: The budget is not wholly built on the real staffing requirements; the Department projects staffing requirements, in part, as predetermined by the budget. If staff increases, then overtime decreases; and if overtime increases, then staff can be decreased; but not both. If the Department knows that the budget will *require* it to do both—which is not really possible—that encourages the Department to omit known duties such as training and hospital guarding from its staffing plan. But those functions actually *must* be performed, so their omission inevitably drives up overtime and MOT. To repeat: staffing projections are driven partly by the budget rather than by the work that the Department *knows must* be done, and the excess of work over funding comes out as excessive overtime and MOT. The Department keeps saying so.

In addition to the lengthy conversation between the Department and the Council in the form of budget Provisos and responses, in 1997 the County administration set out to systematically explore the root causes of excessive overtime and MOT. The County has developed tools and expertise for such inquiries. The County takes great pains to run efficiently; and to that end it has permanent expert staff devoted to finding ways to do the same work for reduced costs. The task groups addressing such issues are called Lean teams. The Department convened a Lean team to attempt to identify the root causes of excessive MOT. That initial team reached three conclusions: "1. The Operating Forecast Model does not fully consider the current workload and is not designed to anticipate seasonal variation... 2. The hiring process can't keep pace with the levels of attrition... 3. The workload of emergency hospital transport and guarding has an uneven impact on jail operations and overtime." (County Ex. D.4, last page.) Each of those identified potential drivers of mandatory overtime was then addressed by a separate LEAN team.

There were two important limitations on those subsequent LEAN teams. First, because the whole point of the Lean process is to find ways to operate more efficiently—to do more with already available funds—they were discouraged from examining solutions that involved adding staff unless all other solutions had been carefully considered and rejected. Second, they were not authorized to impinge on the collective bargaining process, so possible solutions were not identified or addressed if those potential solutions would have to be addressed at the bargaining table.

The OFM Lean team seconded the Department's conclusion that the inputs were faulty in several identifiable areas: The training time input had used the same number over the last three years, despite the fact that that number had always been at least 50%

short of the actual hours required.[8] The low error was over 14,000 hours short, and the three year average training time was about 2 1/3 times the input number used to run the OFM. Similarly, the input for hospital guarding, on average, was almost 7,000 hours short, with the actual time being about 20% more than the average OFM input; and the input for court detail hours, like training hours, had used the same number for each of the last three years even though it was on average over 8,000 hours (almost 60%) short.

The hospital guarding Lean team carefully sought ways to eliminate or reduce hospital guarding time and concluded—to be very brief about a lengthy and careful analysis—that the Department's medical responsibilities to the inmates could not be satisfied any other way. That Lean team found itself forced to conclude that the only answer was adding staff and that the overtime and MOT required for hospital runs could be converted into straight time by staffing six additional *posts*, which would have required an additional 23 FTE Corrections Officers.[9] As far as this record shows, that analysis represents the Lean process at its best, addressing a part of the overtime problem and finding itself *driven* to a staffing response. But the hospital guarding LEAN team did not actually recommend the creation of the six new posts and the addition of that staff. Rather, it passed that issue along to the final, OFM Lean team. The Director eventually agreed to recommend the addition of the FTE to support *three*—not six—new hospital guard posts. That reduced recommendation was not included in the budget on the grounds that there were already so many unfilled vacancies that it made no sense to add so many more. While that was a reasonable conclusion, and inability to hire is an ultimate cause of excessive overtime and MOT, the staffing shortfall did not go away.

The Department's repeated explanation to the Council that excessive overtime and excessive MOT are products of short staffing invite an obvious next question: How short? Because the OFM is partly driven by available budget rather than work actually required,

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8. The Department's 2016 response to the Proviso is more convincing than the testimony that "we take [how many hours each CO is going to need to be in training in a year] into account every year that we run OFM." 4 Tr. 883:15-21. The Proviso response specifically pointed to its *failure* to reflect the actual training requirements in the OFM for the last three years. For some reason not in the record the Department's forecasting for 2016 used *2013* data to estimate probable leave usage and hospital and psychiatric coverage (Guild Ex. 169) as well as training hours. The problem is not with the OFM *program* itself but one of GIGO (garbage in, garbage out).

9. Guild Ex. 168. Guild participants and witnesses of the Hospital Lean team recalled it reaching a conclusion that three additional *posts*—32 FTE—were needed. County participants tended toward "...don't remember that there was a number..." (4 Tr. 877:15-16) but the retired Director did not contest the claim that he had halved the number of proposed additional FTE because 32 was politically unrealistic. (5 Tr. 1086: 11-24.)

the Department has no answer to that question. The Guild's attorney asked former Director Hayes (5 Tr. 1093:17-1094:4; see also Guild Ex. 193 from the County Auditor),

> Q. (by the Guild): Has the department ever, through the OFM or through (a LEAN analysis] taken a look at the work that actually gets done, including the hospital guarding, including the training that has to be accomplished each year, including the time off, vacation, holidays, sick, including the compt time off, and put together a model that says, all right, given these parameters, these realities, we need X corrections officers to fully staff the jail?
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> A. (by former Director Hayes): I don't think we've done that. *** I don't think we've ever had the staff to do that without some assistance.[10]

The OFM Lean team, too, stopped its inquiry short of the question How many Corrections Officers do we really need? In order to evaluate its staffing model, the County had hired a nationally recognized expert in the area, whose published methodology begins with analysis of the work to be done and of the actual time-on-task hours of each FTE. The Lean team completed that part of the analysis, which required substantial local expertise and time. But the next step of that published methodology is to determine how many FTE are required to do the work and then to determine the budget required for that workforce (Guild Ex. 176.); and the OFM Lean team stopped short of tackling those final parts of the analytical system (6 Tr. 1266:20-23) because, it explained, the budget had already been established. In fact, in 2018-2019 the Department did not run OFM at all because (according to the Lean team leader) "we knew what our budget number was" and thus "the budget number was going to determine staffing regardless of what the OFM model ...kicked out as a staffing number." (4 Tr. 884:5-17.)

The initial Lean team's third identified systemic cause of excessive overtime and MOT was that "The hiring process can't keep pace with the levels of attrition."[11] A separate, hiring Lean team attempted to shorten the Department's hiring process because (quoting the Director of the Office of Labor Relations) "our process took so long that we knew people were dropping out in the middle of it." (3 Tr. 21-21.) The hiring process at that time took four to six months, and the goal established by the Lean team was 45 days

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10. The OFM LEAN Team was originally authorized to investigate whether overtime increases were a product of several factors, including "insufficient full-time staff positions authorized in the budget to cover basic posts and positions (minimum staffing levels)."

11. "Levels of attrition," in this instance, referred primarily to retirement rates. A "significant portion of [DAJD] line staff will be eligible to retire within [the next 3-5 years]." (Quoting the County's current budget transmittal.)

(by January, 2018). Because of that examination, the Department began far broader and more focused advertising, "scrubbed" a few of its minimum requirements, and liberalized others (e.g. marijuana history in light of the legality of recreational marijuana use in Washington). It also revised the steps in the application process, eliminating some and streamlining others. The result was to reduce the overall time between receipt of application and offer-to-hire letter to under 81 days for the third quarter of 2018 (5 Tr. 1124:23). [12]

The County and the Guild also initiated a bonus program for 2019, payable both to new hires and to existing employees who refer candidates who are eventually hired. The December, 2018 Letter of Agreement gives a new lateral hire up to $10,000—spread out over his or her probationary period—and a new CO up to $5,000 over that same period. Existing employees may receive up to $2,500 for referring a successful applicant. The County budgeted about $840,000 for a one year trial run. That program is too young to have a reportable track record.

On the other hand, the initial recruitment process does not end with a new hire actually standing a post. Hiring is followed by a fairly extensive training period. In the December, 2017 recruitment, and in others following it, it took about ten months to produce a new CO actually on the line. (Guild Ex. 148 and 151.) There is no dispute that the hiring process is still not keeping pace with the staffing shortfall.[13] From about January, 2017 through about December, 2018, the vacancy rate never dropped below 13, and from December 2017 to September, 2018 it rose precipitously to almost 45. (County Ex. D11.) In January, 2019, it was in the neighborhood of 30. (Co Ex. D11 and 5 Tr. 1144:13ff).[14]

There is a second, socioeconomic dimension to the hiring problem that is largely outside the County's control. There are three primary drivers: the Puget Sound area is at

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12. In June, 2017, the Department asked for a supplemental budget request for additional HR staffing, noting that DAJD "has the highest staff to HR FTE ratio of all King County departments." (Guild Ex. 157.) That request eventually made it to the Council level, but the response was to designate one FTE in the County's general HR office as primarily focused on DAJD recruiting. An additional $755,000 allocated to HR from an unexpected increase in revenue was specifically earmarked "to assist the Sheriff's Office in recruiting." (County Ex. B2 at 25.)

13. The rate of attrition from retirement is approximately two COs per month. There is reason for concern that the rate of retirements could increase in the near future.

14. Up until about two years ago (the hiring of the current DAJD HRM) the Department apparently did not track vacancy rates in any organized fashion (5 Tr. 1144:21ff).

or very near full employment; police and corrections work has suffered serious reputational damage in recent years (the era of *Dragnet* and *Highway Patrol*, and even of *Cops*, has come to a close, replaced by mobile phone video postings of officers in unflattering situations); and housing within practical commuting distance of the work sites continues to take a problematic percentage of starting CO income. In the face of those uncontested characteristics of the hiring market for new Cos, it is difficult to discount the final testimony of the Chief (7 Tr. 1542:25-1546:9):

> We continue to look at the actual hiring process itself to try and reduce the time or reduce the things that screen people out, but I think that's going to be around the edges. Even if we speed up hiring, I don't know that it gets us that many more people per year. There's just – it's just a very difficult hiring environment in this profession.

Consequences of excessive MOT. The parties first went to interest arbitration, primarily over MOT, in 2009 (before the current neutral arbitrator). In 2009 the total MOT came to over 12,000 hours, equivalent to over 1,500 full shifts. By 2018, MOT had *almost tripled*, growing to over 33,000 hours, equivalent to over 4,000 full shifts.

In the case at hand, as in 2009, the Guild built an extensive record, largely unquestioned by the County, showing that current levels of MOT are a serious health hazard for the bargaining unit and cause familial and social damages that should not be acceptable to any responsible employer. I will only point to a few general themes of that record. First, working with inmates is extremely stressful by its very nature; but the inmate-related stress is magnified by organizational stress such as uncertain scheduling and excessive overtime; and that stress is further magnified by the *uncertainty* of mandatory overtime, even for some very senior COs: They leave for work every day with no sure idea of when they will be back home; and all personal plans must be tentative.

Second, overtime in general and mandatory overtime in particular magnifies the adverse health consequences of lack of sleep. In the County's own words:

> [If] enough sleep is not a regular part of your routine, you may be at an increased risk for obesity, diabetes, high blood pressure, coronary heart disease and stroke, poor mental health and even early death. Even one night of short sleep can affect you the next day. ... [Y]ou're more likely to be in a bad mood, be less productive at work, and to be involved in a motor vehicle crash. (Guild Ex. 300.)

Third, there is no dispute that the efficiency and effectiveness of COs on the job is *often* severely reduced by excessive mandatory overtime. A CO taser instructor testified that out a class of 15-16 COs, all on mandatory overtime, 13 were asleep for most of the class. And yet, training must be done, and if *something* has to be done with COs who are

only half awake, training may be preferable to interacting with inmates or standing a post. The Department did not contest the testimony that supervisors are aware of COs' inability to function fully under those circumstances and that the supervisors commonly assign duties and encourage coworkers to help in ways that essentially let COs get a little more rest on the clock. It is difficult to see how that entirely predictable result of excessive mandatory overtime is consistent with the interest of the public, particular since it is the COs' duty to deal with inmate fights and violence on behalf of the public.

Fourth, few COs can live anywhere near downtown Seattle, which means not only that substantial commuting time cuts into their potentially tiny sleeping time if they have been on mandatory overtime, but also that Seattle drivers are regularly presented with the hazard of COs falling asleep on the drives between home and work for the few hours of sleep their schedules allow. COs testified to hitting a car while asleep at the wheel on the drive home. Similarly, hospital guards and court guards—functions frequently covered on MOT—must carry firearms despite the potential lack of attention caused by MOT.[15]

Fifth, but far from least, frequent mandatory overtime severely interferes with COs' personal and family life. Family events are repeatedly missed. Child care pickups become problematic, and daycare dropoffs further reduce the time a CO might have to sleep between duty hours.

Finally, excessive MOT *directly* affects the public interest. In September, 2017, the Director issued a general memo (Guild Ex. 205) that increases in MOT might lead to reduced or cancelled prisoner visitation, elimination of volunteer programs for inmates, partial lockdowns, reduction of court detail, and interference with attorney visits to inmates. That was far from the only time such steps have been taken or contemplated.

In short, none of the adverse consequences of MOT have moderated since 2009. Both the Guild and the County were aware that the Guild was preaching to the choir in detailing those consequences. I cannot summarize that portion of the current record any better than I did in 2009 (at 19):

> [N]ot only is such dependence on mandatory overtime unsafe and inefficient, it is cruel. In addition to the increased employee stress level caused by the uncertainty of work schedules, and the continuing frustrations of attempts to schedule one's non-working life, frequent mandatory overtime deprives the employee's entire family of his or her

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15. A 2017 audit of King County Sheriff's Office (Guild Ex. 213, p.2) found that as "officers work more overtime, their chances of having negative incidents—such as complaints and vehicle accidents—increase exponentially."

> dependable presence. It represents missed soccer games and birthdays and band concerts. It represents, as the KCCF Commander put it, a potential for worrying about who will put the dog out just when an Officer should be paying attention to a task at hand. In a professional field already characterized by one of the highest divorce rates, such frequent mandatory overtime is, as the Guild says, inhumane.

The subsequent *increase* in MOT since 2009 has a great deal to do with the Guild's bringing this case to interest arbitration. The Guild's summary of its overall argument here (Post-hearing Brief at 3) is succinct:

> King County's Department of Adult and Juvenile Detention (DAJD) has long been understaffed.
>
> Both corrections work and shift work are hazardous to employee health. Corrections Officers and Sergeants represented by KCCG are at constant risk of injury from inmate violence. Long hours and short intervals between shifts increase the risk of on-the-job injury and commuting injury, impair work performance, and create significant long-term health risks.
>
> King County has long been aware of these hazards.
>
> King County can afford the cost of the Guild's wage and deferred compensation proposals. ***

The Guild continues to search every available avenue for a MOT cure. In November, 2018, it filed a complaint with WDOL alleging that "requiring corrections officers and sergeants to work excessive mandatory overtime...is detrimental to their health, safety, and welfare." (Guild Ex. 240.) WDOL has indicated it will open an investigation of that complaint. The Guild also continues to seek a Legislative limitation on MOT. The current attempt at Legislative remedy was set for an initial hearing in the week prior to the beginning of this interest arbitration hearing.

The County does not substantially contest the Guild's picture of the costs and hazards of excessive MOT, but it argues (Post-hearing Brief at 1) that since 2009 "staffing shortages have only grown worse, adversely impacting the County and corrections agencies nationwide. While these staffing shortages are not the County's fault, the resulting mandatory overtime is the County's problem." In particular, the County argues that *none* of the Guild's proposals are reasonably aimed at reducing mandatory overtime, and that several of its own proposals are.

THE PROPOSALS AND THEIR RESOLUTION

Article 4, Section 3—Guild Representatives. The County proposes to add a final sentence: "<u>No more than one (1) Guild representative shall attend grievance hearing, Loudermills, or arbitrations (where they are not a witness utilizing Guild leave time.</u>

The county argues that at one time the Guild interpreted the current language to allow multiple representatives at grievance proceedings, etc. But there is no dispute that the Guild's current leadership has already limited the number of Guild reps at *Loudermill* hearings to two,[16] and the recent administration of this provision in the recent past has not shown any unreasonable excess. We cannot award the proposed addition.

Article 6, Section 1B (Vacation Requests after Bid). County's proposed changes:

> *** All vacation requests after annual vacation bidding is completed shall be requested for approval from the Department at least seventy-two (72) hours ~~one (1) hour~~ prior to the time being requested in order to have consideration based upon available slots. Any requests within seventy-two (72) hours ~~one (1) hour~~ of the start of the shift or during the shift shall be reviewed for approval on a case-by-case basis ~~at the Captain's discretion~~, based on available leave slots per current practice and shall be approved unless the approval would result in mandatory overtime. All requests for vacation leave must be approved by a Supervisor authorized to approve leave requests.

The parties have already agreed to some proposals designed to give supervisors three-day notice of changes in staff availability. The parties have agreed to allow Captains to schedule overtime for shift vacancies up to 72 hours in advance—rather than a day or less in advance under the prior CBA. The County argues that its proposed increase in notice for taking available vacation slots (and thus requiring replacement) is simply a piece of that new 72 hour scheduling window and will allow the Captains to reduce MOT by to finding volunteers. The Guild argues that, given the Department's short staffing, *any* such request might result in MOT. But the County's explanation of its own proposal eliminates the "might" in that argument: "The proposal will allow a Captain to reject vacation, holiday, or comptime requests submitted less than 72 hours before the start of a shift when the Captain *knows* the request will generate mandatory overtime," i.e., "*would result* in mandatory overtime. (County Post-hearing Brief at 29; italics are mine.) Moreover, the proposed restriction will apply only to requests made within the 72-hour window. We award the County's proposed language.

Article 6, Section 1f (Vacation Cancellation). This is another part of the shift to a three-day advance scheduling system; and both parties propose this change:

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16. Many management attorneys try hard to teach supervisors never to go into such a hearing alone, so it is hard to find unions unreasonable for following that same policy.

Employees wishing to cancel vacation days that were obtained as a result of annual vacation bidding must notify the department of Cancellation at least seventy-two (72) hours prior. This requirement does not negate an employee's ability to cancel particular days only of annually bid vacation periods, and will support the Department's efforts to re-distribute available leave slots to employees on the stand-by list, or to post up for all eligible employees to request.

Exceptions to the seventy-two (72) hour rule will be granted if:

1. Cancelling scheduled vacation would reduce/eliminate overtime for the shift.
2. Cancelling scheduled vacation would allow another employee on the wait list (in order) to take leave, or another employee to take leave when no one is on the wait list, or
3. Cancelling scheduled vacation would prevent the employee from going into no-pay status.

We award the language proposed by both parties.

Article 8, Sections 1-3—Wage Rates. Proposals of the parties: *The Guild* proposes to add a new (3%) Step at the top of the salary schedule as of January 1, 2017 together with a 3% general increase on January 1 of 2017, 2018, and 2019. But, for 2019, it also proposes a "Me-too" provision giving bargaining unit members any additional wage increase received by the KCPOG. Finally, the Guild would have the County match a maximum of 3% employee contributions to their deferred compensation accounts.[17]

The County proposes increases of 2.25% on January 1 of 2017 and 2018 and 2.5% on January 1, 2009. The County would also convert two existing benefits into liquidated additions to hourly pay: The County would pay $0.25/hour for the current meals provided within DAJD facilities and would pay $0.21/hour in lieu of the current uniform maintenance allowance. (A third proposal, to pay $0.04/hour for employer provided coffee, was dropped at hearing.) The proposed change in uniform maintenance allowance accompanies a County proposal to shift from the current annual uniform voucher (for two shirts, two pairs of pants, etc.) to a quartermaster system of replacing uniform clothing turned in as worn or damaged. Finally, the County proposes to change the administration of the current longevity pay provision from the current semi-monthly system to the County's new biweekly system.

17. The Guild would extend its proposed increases to every bargaining unit employee who worked for the Department after the expiration of the prior contract, regardless of whether he or she is still a bargaining unit employee at the time of the award in this case.

Comparability. *History.* This is not an easy unit to determine comparables for.[18] The statutory language directs our attention to similarity of size, and both parties take that to mean primarily population. In the easiest interest case the arbitrator must choose among employers of similar population, all inside Washington and within a reasonable distance of the employer at issue. Washington (and Oregon) interest arbitrators overwhelmingly agree that geographic proximity is important if you can get it. But similarity of population and geographic proximity do not come together in this case. King County is one of the most populous counties on the west coast; and using the traditional selection criterion of ±50% yields a set of counties which are all in California. Washington interest arbitrators have traditionally rejected such proposals, and I agree that resolving an interest arbitration dispute on such a basis renders the process somewhat abstract and antithetical to traditional collective bargaining. But it is inescapable that size counts under this statutory language, and the only way to make size count in this case is to pay some substantial attention to at least some California counties.

The County points out, and I agree, that comparisons across state lines are always somewhat perilous. Comparisons with California jurisdictions are particularly problematic because, in part, California's property tax initiatives have rendered California assessed value (and assessed value per capita) data pretty much useless for the purpose of determining whether California counties are "like employers" in the sense of comparative wealth and ability to pay. More fundamentally, California counties are remote from King County. Of course the Legislature knew that basic geography when it extended the limit of possible comparables to "the west coast," and this case demonstrates the usefulness of that extension, because *there are no counties of similar population closer than California*. But that does not mean that interest arbitrators should completely ignore the geographical remoteness of the California portion of comparability data.

In 2009 I adopted the comparables *proposed by the Guild* (2009 Award at 6), "three large Washington Counties—Pierce, Snohomish, and Spokane—together with Multnomah County, the largest county in Oregon, and four California Counties, Riverside, Santa Clara, Sacramento, and San Bernardino..." I rejected Sacramento and San Bernardino because corrections work was an assignment for regular Deputy Sheriffs.

Arbitrator Cavanaugh's 2012 wage reopener interest arbitration Award adopted those same comparables used in my 2009 Award. Arbitrator Boedecker's 2015 Award, which established the terms of the most recent contract, continued the use of those comparables over the Guild's objection (at 8) that "comparable employers should be west

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18. Once again, the next two paragraphs are borrowed wholesale (but without footnotes) from my 2009 discussion.

coast counties that are in a band of population and assessed value that is 50% below or 50% above that of King County" even though the resulting list consisted of only two Counties, Riverside and Santa Clara, both in California. She reached that conclusion (at 10) because the list of Counties determined in the 2009 Award was "the list used historically by the parties," and because its continuation would contribute to stability in the parties' bargaining relationship.

The parties' proposed comparables. The County rests its comparability choice on the history set out above and proposes, once again, Pierce, Snohomish, and Spokane Counties in Washington, Multnomah County in Oregon, and Riverside and Santa Clara Counties in California. The proposed Washington comparables are the next three most populous Counties in Washington, but they still come to only about 40%, 37%, and 22% respectively of King County. Multnomah County is 37% of King County;[19] and the two proposed California Counties are the next larger and the next smaller than King County, Riverside being about 10% larger than King and Santa Clara being just barely smaller.

The Guild now returns to the argument which it first seriously pressed to Arbitrator Boedecker in 2014: I.e. the Washington and Oregon Counties in that list are vastly deficient in terms of their "size" as that statutory term has always been interpreted—i.e. between 50% and 150% in population—and that the *only* West Coast employers that fit the clear language of the statute as it has traditionally been understood are Riverside and Santa Clara Counties.[20] The Guild did not press that argument in the 2009 interest arbitration before me; but it does now.

In 2009 I wrote (at 5, footnotes omitted):

> King County is one of the most populous counties on the west coast; and, as the Guild points out, using the traditional selection criterion of 50% -150% yields a set of counties which are all in California. Washington interest arbitrators have traditionally rejected such proposals, and I agree that resolving an interest arbitration dispute on such a basis would render the process abstract and antithetical to traditional collective bargaining.

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19. "Roughly" because the only numbers in the record compare a 2017 Multnomah County estimate with a 2018 King County estimate.

20. According to the Guild's own data (Ex. 21), seven California Counties fall between 50% and 150% of King County's population: Orange, Riverside, San Bernardo, Santa Clara, Alameda, Sacramento, and Contra Costa. The Guild now proposes the next larger, Riverside, and the next (barely) smaller, Santa Clara. We know that two more—Sacramento and San Bernardino—do not have Corrections Officers separate from their Deputies. The record does not explain the Gild's rejection of Orange, Alameda and Contra Costa Counties.

That argument reflects the healthy policy of trying to harmonize the statutory interest arbitration standards with the practices of two-party collective bargaining. The only problem is that the argument also runs squarely contrary to the clear language of the statute: 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*." That statutory directive is pretty clear: Find some employers of similar size on the west coast and compare compensation with those employers. The protest that all the employers of similar size are beyond the borders of Washington—or of the Northwest—seems misplaced in light of the express language of that provision.[21] RCW 49.56.465 is liberal in the tools it provides for interest arbitrators, authorizing consideration of "other factors...that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment." Comparison with the other largest counties in the Pacific Northwest is such an "other factor" (as shown by the mediator's use of that list in getting the parties to agree to the 2004-2006 CBA). But where the statute *expressly* directs us to consider a clearly stated factor— compensation paid by employers of like size on the west coast—an interest arbitration panel must do so without bending that comparison out of shape by including employers that are not, by any reasonable test, "of similar size."[22]

Comparison with California jurisdictions *is* problematic; but that does not make the statutory language any less clear or excuse our ignoring it. Both Arbitrators Cavanaugh and Boedecker followed my lead in turning this discussion on proximity and on the inherent problems of comparisons across state lines. I could plead that I, in turn, was following the majority of Northwest labor arbitrators in both of those respects; but following the majority does not justify ignoring the clear language of the statute. When there are same size comparables within Washington, then proximity may be considered, and should be considered, in choosing among them. King County, however, has no same

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21. The universal rule for statutory interpretation and application is similar to the rule for contract interpretation and application, except that the statutory rule is more strictly enforced: if the language is clear and unambiguous on its face, do that. Neither courts nor, certainly, mere arbitrators are invited to engage in legislative speculation in the face of clear statutory language, but if the legislature had intended "including the nearest in size *within Washington and Oregon*" it could have said so. It did not.

22. Arbitrator William Dorsey used a list entirely of California counties—two larger and two smaller—in his 1985 wage reopener interest arbitration between these parties. The County-appointed arbitrator wrote a lengthy dissent in that Award, but his only objection to the choice of comparators was that "size" had been determined by total county population rather than by population *served*, i.e. unincorporated population.

size comparables within Washington or within the Pacific Northwest. But there are same size comparables "on the west coast of the United States," in California. In this peculiar situation, the statute on its face does not allow us to reject similarity in size—the characteristic the statute singles out—in favor of proximity, a characteristic the statute does not mention. In Justice Frankfurter's famous words, "Wisdom too often never comes, and so one ought not to reject it merely because it comes late."[23]

Looking at only the two California counties, the only offered comparables that meet the statutory criteria, the Guild offers a top step salary scale comparison that shows King County to be 8.12% behind the average, although adding in the County's longevity pay reduces that difference to about 3% at twenty years, and 4.7% at ten.[24] The Guild addresses the 'all things considered' requirement of the statute by showing that differences in paid vacation and holiday leave and in net hours worked do not account for the pay difference.[25]

The Department does not offer detailed compensation data with respect to the counties in California. Rather, it analyzes the traditional list of Washington, Oregon and California counties. This is the County's result, including its proposed 2.25% for 2017:

Years completed	5	10	15	20
Santa Clara	54.05	55.00	55.68	56.23
Multnomah	42.07	42.99	44.99	44.11
Pierce	39.43	40.12	40.65	41.02
Riverside	37.98	43.21	43.21	43.21
Snohomish	37.36	39.37	39.90	40.07
Spokane	30.62	34.27	34.72	35.19

23. Dissenting in *Henslee v. Union Planters Nat. Bank & Trust Co.*, 335 US 595, 600, 69 SCt 290,293 (1949).

24. In light of the large number of COs and the small number of Sergeants, Corrections Officer compensation is clearly the appropriate point of comparison in this case.

25. The County points out a variety of 'all things considered' factors which the Guild did not include, e.g.: Santa Clara has a paid-time-off system that includes some sick leaves; the Guild's numbers do not reflect certification, firearms, or education incentives, or night shift premiums or uniform allowances.

Average	40.25	42.49	43.19	43.30
King	**41.17**	**44.63**	**45.50**	**46.52**
King % of average	**+2.3**	**+5.0**	**+5.3**	**+7.4**

(Notes on the County's numbers: Oregon allows employers to pay the employees' PERS contribution; and the Multnomah numbers include PERS pickup. None of the numbers include sick leave benefit; and the Santa Clara numbers use an average of the other employers' time off numbers for Santa Clara's Paid Time Off system. The numbers do not reflect Santa Clara's shift differential, or uniform maintenance, or King's uniform maintenance or firearms fringes. Finally, the numbers are not adjusted for the different income tax rates in Oregon and California.)

On that same basis but without the California comparables, the County calculates itself to be ahead of the average by 10.2% at 5 years, 13.9% at 10, 13.6% at 15, and 14.2% at 20.

Using the County's numbers and looking at only the two comparables that meet the statutory restriction of similar size, i.e., Santa Clara and Riverside, the increases King County would need to reach the average are 11.8% at 5 years, 10% at 10, 8.6% at 15, and 6.9% at 20.[26]

Internal comparability or internal equity: Deputy Sheriffs. Perhaps no single motivation produces more disagreement in local government bargaining (and local government interest arbitration) than Corrections Officers' drive for the compensation received by Police Officers. The history of this unit illustrates the common source of that drive. COs and Deputies formed a single bargaining unit until 1974; and immediately after the separation, the COs bargained a series of "Me-too" agreements assuring the same compensation as the Deputies; and a "sense of the Council" resolution as recently as 1990 declared "that employees covered under the Correction Collective Bargaining Agreement should receive the same negotiated wage increases as that received by employees covered under the Commissioned Police Officers Collective Bargaining

26. These numbers are done the County's way, i.e., what percentage of King County is the average compensation? Looking at what percentage of the average is King County the numbers come out to 10.5%, 9.1%, 8% and 6.4%.

Agreement." (Guild Ex. 68; that policy was abandoned in 2013.) Some counties—including San Bernardino and Sacramento—still staff their jails with regular Deputy Sheriffs even though the two professions now have separate certification requirements.[27]

In King County, compensation for the two bargaining units began to diverge substantially in 2008 when the County agreed to a five year contract giving the Deputies a total 27% increase in pay (not counting longevity) along with health insurance benefits superior to that of County employees generally. The period of that CBA included the economic hard times of 2011, when many County employees agreed to forego bargained increases; but the Deputies did not. Since then, the pay gap has generally grown year by year (Guild Ex. 74.)[28] On the other hand, the County points out (County Ex. 4.14) that its COs are closer to their Deputy Sheriff counterparts than are COs in the average of the County's comparable counties (10.8% behind rather than 11.5%). The difference is even more acute if we average only the California comparables proposed by the Guild: 10.8% rather than 13.%.

	KCCG increase	KCPOG Increase	Wage Gap
2008	3%	5.00%	-8.74%
2009	5.15%	5.00%	-8.58%
2010	3%	5.00%	-10.69%
2011	0	5.00%	-16.22%
2012	3.5%	5.00%	-18.36%
2013	3.09%	0	-14.76%

27. The three "pillars" of the County's personnel strategy are pay that is "competitive, sustainable, and equitable." When it comes to compensation goals, "equitable" pay has a rich history, going back, at least, to the feminist battle cries, "equal pay for equal work" and "equal pay for equivalent work." As explained by the County's Director of the Office of Personnel, the County takes "equitable" in the former, more conservative sense of same rate for same task. 2 Tr. 466:13 - 467:11.

28. Nothing has changed since I pointed out in 2009 (at 14) that "there is a limit to the usefulness of comparing *increases* in compensation, as distinguished from *rates* of compensation. Those two sorts of comparisons cannot be mixed without running into serious arithmetic problems. Even though increases in compensation is an appropriate "other factor" to be considered under the Washington Statute, that Statute directs an arbitrator's attention to rates of compensation."

2014	2.67%	0	-11.78%
2015	2%	2.00%	-11.78%
2016	2.5%	2.00%	-11/23%

Neither the Guild nor the KCPOG has a settled agreement beyond 2016. At the time of hearing, the County considered POG negotiations to be near to certification for interest arbitration. One major economic dispute with the POG is the County's proposal to expand the authority of the Office of Law Enforcement Oversight. The County bought the current degree of civilian oversight in the prior agreement that included five years of 5% wage increases; and there is good reason to believe that bargaining an expansion of OLEO's authority will not be similarly expensive. Since 2007, Guild compensation has increased 27%, more than that of any other County bargaining unit except the POG (at 32%). At the end of the day, however, there is no dispute that the Deputies are now paid substantially more than the COs who do closely related work and serve the same public interests. That leads to the question: How much weight should an interest arbitrator give the POG numbers?

Arbitrator Cavanaugh said it very well in his 2012 Award (at p. 15):

> I believe it is proper to consider the current size of the disparity between KCPOG and Corrections—not, as the County suggests, as a matter of revisiting perceived slights of the past[FN] —but rather as a matter of determining whether this unit, in light of its similarity of KCPOG should *continue* to be at such a steep (and growing) comparative wage disadvantage.

Arbitrator Cavanaugh's footnote to that discussion is particularly significant:

> That is not necessarily to say that the Guild's perception of its treatment vis-a-vis KCPOG is entirely irrelevant to my decision here. The foremost standard I must apply in reaching my decision is the statutory purpose of the interest arbitration statute, i.e. preserving "the uninterrupted and dedicated service" of uniformed personnel because such service is "vital to the welfare and public safety of the state of Washington." RCW 41.56.465(1). I note that the other standards I am considering are expressly labeled "additional considerations" in the statute. In any event, employees who feel slighted, it seems to me, are less likely to render "dedicated service," and if some justification exists for these employees to feel less than fully respected by the County in their wages, the statute seems to empower me to take that into account in fashioning an appropriate award.

In short, the extreme disparity of wages between KCPOG and KCCOG counts.

Internal comparability: Corrections Program Specialists. The Guild also finds inequity in the pay for the Corrections Program Specialists who work with COs in the jails. The work done by these employees was CO bargaining unit work at one time; but the Department has separated these functions into a separate classification which it considers an upward career move for COs. (The recently retired Director of the Department testified that he was the last CO to do this work, something like 25 years ago.) Here is the list of CPS duties:

- Screen inmates to determine placement in the facility by evaluating safety to staff and other residents; assess risk to the community if inmate is placed into community program.
- Identify inmates with special needs for medical or psychiatric assistance.
- Review and determine appropriateness of inmate transfers by non-classification staff within the time limits set by federal court.
- Review all inmates for life-safety issues.
- Continuously review inmate population for medical and psychiatric problems…
- Identify problematic inmate behavior and develop behavior management plans.
- Respond to need for intervention in inmate crisis situations.
- Conduct, adjudicate and complete disciplinary hearings, ensuring due process.
- Conduct Administrative Segregation Hearings to determine whether inmate needs to be isolated in a manner that complies with federal and Washington State institutional standards.

Since the separation of these employees from the Guild bargaining unit they have been represented by AFSCME. The *Hammer* consent decree did not strictly mandate the separation of this function from the Corrections Officers, but it is quite easy to draw the conclusion that the parties to that case would have preferred assigning those quasi-judicial functions to civilian decision makers.

The Department argues that extensive experience as a CO is a great advantage for these employees; but their duties include constant review of CO judgments in disciplinary and administrative matters. On the limited record before me, and based on the appellate function Program Specialists exercise over COs' initial determinations, it made sense to create a separate classification for this set of duties and to treat that class as a promotion from CO. It is inappropriate to compare CO compensation to the compensation of the Corrections Program Specialists.

The County Coalition. Finally, the parties address the internal comparability between the increases proposed for the Guild and those bargained with the County Coalition.

The County workforce is represented in over 78 separate bargaining units. That complexity argues strongly for bargaining at least some topics with groups of unions rather than with each of the 78 separately. Since at least 1990, for example, the County and an expanding part of its labor community have been bargaining medical insurance together. The Joint Labor Management Insurance Committee now bargains for all of the County's unions except the Police Officers Guild and the ATU. That led the County and its Unions to work toward broader bargaining on a multi-union group basis; and the first Master Labor Agreement was struck with the Coalition of Unions in 2018, covering 2018, 2019, and 2020. (An earlier agreement with the Coalition covered wages alone.)

Bargaining with the Coalition is divided into a general table addressing total compensation and issues common to the many members of the Coalition, and other tables focusing on issues not widely applicable. The Total Compensation table reached agreement at the end of August, 2018; and that deal included a 4% increase in 2019, 1.5% in January and another 1.5% in June of 2020, and a $500 signing bonus paid in 2020. A 2018 agreement with the Coalition had produced 1.5% retroactive to January and another 1.5% in June plus two additional personal holidays. (Guild Ex. 78 & 79.)

Negotiations with the Coalition produced general wage increases for 2.25% for 2017, 3.25% for 2018, and 4% for 2019. The 2017 increase is the same as the County's proposal to the Guild for 2017, but the 2018 and 2019 increases—3.25% and 4.0%—are substantially more than the 2.25% the County proposes for increases for the Guild for each of those years.

The County offers reasonable explanations for those increases, partly in terms of exchanges it got for them and partly as motivations to join the Coalition. For 2017, the 2.25% is broken down in the resulting MOA into 1.75% "general wage increase" and 0.5% "total compensation coalition premium" which was designed to "incentivize coalition participation...because it's more efficient for the county to bargain without...63 different contracts at one time." (Director of the Office of Labor Relations, 2 Tr. 481:13-16.) The Coalition MOA included other changes for 2017, which the Guild agreed to (outside the Coalition); and the County therefore now offers the Guild the same, 2.25% total increase it agreed to with the Coalition.

For 2018, the County explains that its foundational offer was the same 1.75% as for 2017, with an additional 1% as an incentive for the unions bargaining as a coalition and reaching a tentative agreement by January 1, 2018, which the Guild did not do; and the County eventually added another 0.5% for the coalition members' enthusiastic support of that new form of bargaining. That brought the 2018 Coalition increase up to 3.25%.

For 2019, the County explains the 4% increase for the Coalition as a consequence of a major concession purchased from ATU, the County's largest bargaining unit. For many years, the County had proposed to eliminate the requirement that it hire full time operators exclusively from the ranks of the part-timers (traditionally, the "Extra Board") and that part-time operators be allowed to work on nights or weekends. The County paid ATU 4% for that concession, and, since ATU was a member of the Coalition, the County agreed to extend that increase to the rest of the Coalition.[29]

The Guild particularly objects to the County's attempt to put COs into the same bargaining bag with County employees in general. In addition to the overweening difference that COs have available interest arbitration while most County employees do not (police and transit being the major exceptions), Corrections must run 24/7/365 regardless of weather, and COs, alone, must deal with inmates, including those with serious psychological and chemical dependance problems, and COs alone, as a matter of course, must deal with their own psychologically challenging on-the-job experiences, such as inmate violence and death.

Recruitment and retention. Recruitment and retention are traditionally considered in interest arbitration. As discussed above, there is a critical problem of recruitment in this unit. On the retention side, the Guild argues that its proposed additional top step is required because 75% of COs are now frozen at the top step and COs are retiring as soon as possible; but the record does not provide much support for the second part of that claim. The most detailed evidence of retention history is in Guild Ex. 155: Of 512 COs working for the Department as of January 1, 2013, 367 were still employed January 1, 2019, for a net loss of 145 over those 6 years. Of those, 14 of the 2013 new hires were terminated in their first year; 74 have retired; 5 passed away; 10 were medically separated; 16 were terminated or resigned in lieu of termination; 16 were promoted to Sergeant; and 7 were promoted to Classification Program Specialist or Work Release Case Worker. That adds up to 142 of the 145 no longer with the Department. Although the numbers do not quite add up, the Guild claims that ten of the 2013 COs left for employment as COs or police officers elsewhere. That would come to less than a third of one percent annual voluntary turnover.[30] Overall, the record does not show a significant problem with retention in the recent past. But the Department continues to have very serious difficulties with recruitment.

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29. Coalition members also agreed to assume the employees' deduction for Washington's new paid family leave program, which is less than 0.03%.

30. Even with the 20 that the Guild also characterizes as leaving for reasons unknown, the annual voluntary turnover rate would be less than one percent.

The Department points out that Corrections recruitment problems are not limited to King County. Seattle Police Department continues to have similar problems despite its higher pay scale and despite programs such as its Explorer program and Police Activities League. (See County Ex. D3a at p. 3.) The record includes articles, studies, and grand jury reports focusing on recruitment problems in Pierce, Spokane, Multnomah, Santa Clara, and Riverside Counties, all potential comparators of King County. (County Ex. D3d to D3h.) I took notice, without objection, that recruitment of law enforcement employees is a chronic problem throughout the United States and Western Europe.

Financial responsibility issues.[31] The parties have different analytic approaches to estimating the costs of their proposals. The County includes estimated costs of overtime and comp time at the proposed increased rates, along with the traditional compensation rullups, and concludes that each 1% for 2017 increase would cost about $643,000; and the Guild leaves out overtime and comp time estimates and comes up with about $531,000. (Guild Ex. 15.)

Corrections is a General Fund function for Washington counties; and the General Fund (quoting the executive Summary of the 2019-2020 Budget (County Ex. B.2, at 17):

> has faced chronic imbalances between revenue and expenditure growth for nearly 20 years due to revenue limitations under State Law. At the start of the 2019-2020 budget process, the General Fund faced a gap of about $18 million... However, the strong economy and rising interest rates led to significant increases in property taxes, sales taxes, and interest earnings.

About 40% of the General Fund revenue comes from property tax; 16% from sales tax; and 5% from charges for services. But those services—mostly police services and jail residences—are generally self supporting; and without them in the mix the GF depends on property tax for about 60% of its income and on sales tax for about 24%. Property tax increases for existing construction are limited by statute to 1%, so the rapid increases in King County property values do not translate into additional GF income. On the other hand, *new* construction is taxed at its current value, so the County's recent building boon has led to at least modest GF increases. The 1% growth cap creates a systematic shortfall in GF income, making it impossible for this part of the County's income sources to keep up with population growth or with inflation. Somewhat similarly, Washington County's sales tax income depends on the location of the sale, with sales in the unincorporated parts of a County yielding the entire 1% local sales tax for the County and sales in

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31. The caption is Arbitrator Cavanaugh's (Decision and Award at 17) and admirably captures the traditional factor "ability to pay," or reasonably to afford, a proposed increase.

incorporated parts producing only 0.15%. Only about 3.3% of King County sales occur in unincorporated parts of the County.

On the expenditure side, DAJD accounts for over 21% of the net GF appropriations (even with its income from Seattle and other renters of jail beds). By comparison, the Sheriff's Office accounts for just over 13% due, in part, to the percentage of the Deputies paid by the many jurisdictions that contract for County police services.

The County by policy maintains a healthy undesignated fund balance in the General Fund and a separate Rainy Day fund. The 2019-2020 UFB will be at the top of the County's 6% to 8% general policy range; and the Rainy Day fund (which can be tapped only by a super-majority vote of the Council) is over $25 million. That foundation has long allowed the County to maintain a AAA bond rating.

Nonetheless, the County commonly projects funding gaps, which it usually manages to avoid or ameliorate.[32] In adopting the 2015-2016 budget, for example, the County estimated a 2017-2018 gap of over $46 million; and by March of 2016 that gap looked like about $50 million. After a series of new efficiencies and accounting changes, the County was left with reducing the Prosecuting Attorney's staff, closing the DAJD work release facility and home detention programs, eliminating the booking facility from the RJC, eliminating four helicopters used for law enforcement and search and rescue, closing the Sheriff's Marine unit, and closing one entrance to the Courthouse. At least the Corrections portions of those reductions were eventually added back in subsequent budget adjustments. For the 2019-2020 budget an original funding gap of about $29 million was eventually offset by efficiencies, revenue increases over projections, additional income from charges for services, and larger than projected interest income. In fact, those developments on the revenue side allowed the County to add "about $23 million of services in critical areas."

In summary, despite the systematic shortfalls in GF income and the projected future decline in the GF UFB, the current biennial budget is (quoting the County's Director of Performance Strategy and Budget, at II Tr 259:6ff;) "the best budget we've had in a long time, and it really is the combination of not having huge increases in demand for general fund services and having this very, very strong economy that's generating the interest earnings and the sales tax revenue. So this is the best it gets for our King County."

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32. Construction activity itself produces income for the County, in addition to the higher value of the properties after construction. But the County forecasts an end to the current construction, and to that income source, after 2020.

Cost of living. The parties agree (2 Tr. 329:15-24) that they have typically used the BLS all-Cities CPI-W index September to September.[33] Adding the three annual indices for the period since the expiration of the prior CBA—1.2%, 2.3%, and 2.3%—the Guild points out that COs have lost 5.9% overall in real purchasing power. (Guild Ex. 83.) The County proposes to take a longer view and points out that from 2007 through 2016—i.e., before the beginning of the contract period at issue in this case—the Guild's increases totaled almost 28% (not compounding) as compared to only an 18% total increase in the All Cities CPI-W. (County EX. 4.11.) I have rejected that long-view historical use of CPI data before, and Arbitrator Cavanaugh eloquently explained (at 14) that there is no good reason for depriving the Guild of the benefits it has won in the past.

The Guild also points to Seattle housing costs as an immediate factor in increasing costs of living. Since 2012, Seattle outstripped every major city in the country in rate of increase. It is now the sixth most expensive city in the United States. On the income side, Seattle's average family income topped $80.000 in 2015 and topped $120,000 in 2018. For married couples with children, the 2018 average topped $160,000 per year. In 2017 HUD found that a family of four making $72,000 in King or Snohomish counties qualified as "low income," below the limit of 80% or local median income. The County points out that these are two-income numbers and that two COs—even at entry level—would be quite substantially above that "low income" line.

Conclusion. The Guild offers three drivers for its compensation proposal. First, the factor expressly set out in the statute, i.e., comparison with the compensation received by COs of similarly sized counties on the west coast. Second, internal comparability, equity, or parity, i.e. comparison with the Deputy Sheriffs. And third, the mandatory overtime suffered by bargaining unit members.

Mandatory overtime, whether it be called a "curse" or a "plague," has proven to be an intractable problem for the parties. Some of the changes addressed below are aimed at reducing that problem. But the County points out that mandatory overtime is a problem for corrections facilities generally in the current economy; and it is specifically a problem for the comparables offered by both parties in this case. In light of that fact, I cannot make it fit the statute as a factor "normally or traditionally taken into consideration in the determination of wages."

Turning first to things that apparently do not push the award one way or the other, there is not much to be learned from the current cost of living data: over the life of this

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33. The Guild also notes in passing that the most recent index at time of hearing, the December All Cities CPI-W was 1.8%. Guild Ex. 81.

contract the increases are 1.2%, 2.3% and 2.3%. Those numbers do not justify an award beyond the County's proposal. On the other hand, Seattle's astronomical housing costs, and the resulting commuting time for most COs, are real concerns.

Similarly, there is no dispute at all that recruitment is a critical problem for the County; and there is no serious dispute that retention is not. Neither party proposes increases targeted to the base of the schedule, but the Guild argues that lifting the schedule across-the-board will necessarily increase the hiring base. On the other hand, proposals that would spend money on the upper parts of the schedule, where there seems to be no problem, are not well supported.

Finally, neither proposal exceeds the County's ability to responsibly fund an increase for this bargaining unit in the face of a budget that is "the best it gets."

That leaves us with comparability in one form or another, and with recruitment. For 2017, on the basis of the only two proposed comparables that meet the limitations set out in the statute —i.e. Santa Clara and Riverside—the County is somewhere between 3% and 4.7% behind the average at the top of the schedule on the Guild's numbers and somewhere between 6.9% and 11.8% throughout the schedule on the County's. (P. 28, above.) On the basis of six comparables used in past cases (and appropriate for this case but for the clear language of the governing statute) the County's proposed 2.25% increase would put COs from 2.3% to 7.4% ahead with the numbers growing with time of service. (P. 28, above.) But it is important to note that not only do the County's Washington and Oregon comparables fall short of the usual ±50%, they fall dramatically short: the best of them barely touches 40%, and two are not much over 1/3, and the other—Spokane—falls short of even 1/4 of King County's population. Were it not for bargaining history and regionality, that is not a compelling collection of comparables. Next, the COs continue to quite substantially lag behind the Deputies; and there is no reason to think that difference will decline with the respective 2019 contracts. Finally, although the County has reasonable explanations for each of the three increases bargained with the Coalition, the fact remains that the COs would appear to be distinctly at the bottom of the curve of the County's economic priorities.

Finally, one root cause of the MOT problem is the County's problem of recruitment. The Guild's 3% per year proposal would prospectively raise starting salaries by about 9.25% over three years; and the County's 2.25%, 2.25%, 2.5% would raise them by about 7.2%. Based on the consideration of the California counties which the statute requires of us, and on the difference between COG and POG compensation, and on the Department's serious problem of recruitment, we take a middle approach and award the County's 2.25% for 2017 (the most expensive year) and the Guild's 3% for each of 2018

and 2019. That brings the three-year increase for prospective recruitment purposes to about 8.5%. We award these changes:

> **Section 1. 2017 Wage Rates for Corrections Officers and Sergeants.** Effective January 1, 2017, the base wage rates of bargaining unit members in effect December 31, 2016, shall be increased by 2.25%. This wage increase is reflected in the wage rates listed in Addendum A.
>
> **Section 2. 2018 Wage Rates For Corrections Officers and Sergeants.** Effective January 1, 2018, the base wage rates of bargaining unit members in effect December 31, 2017, shall be increased by 3.00%. This wage increase is reflected in the wage rates listed in Addendum A.
>
> **Section 3. 2019 Wage Rates For Corrections Officers and Sergeants.** Effective January 1, 2019, the base wage rates of bargaining unit members in effect December 31, 2018, shall be increased by 3.00%. This wage increase is reflected in the wage rates listed in Addendum A.

Article 8, Section 1 (New Top Step.) The Guild proposes to add "a new [3%] Step at 84 months." About 75% of the bargaining unit is at the current top step (2 Tr. 451:23 and County Ex. B6.), and the County calculates the first year cost of an added step at about $4,170,000. The Guild offers the new step as a protection against early retirements; but the record simply does not show that COs are retiring before the trigger dates for their PERS retirement benefits. Once again, the overwhelming pay issue here is with recruitment, at the other end of the schedule. There does not appear to be a retention problem in this unit, and we cannot award the proposed additional step.

Article 8, Sections 1-3, 'Me-too.' The Guild also proposes to add this final word to each year's recitation of wage rates:

> <u>...provided that if any members of the King County Police Officers Guild receive a wage increase greater than 3% in 2019, all members of the Guild will receive an equal increase. This increase shall be reflected in the wage rates listed in Addendum A.</u>

The County agreed to what might be called "Me-too's littlest cousin," a limited *impact* reopener, in the new Coalition Master Agreement (County Ex. 4.17 at 22.):

> 28.1 Should any non-Coalition bargaining unit within King County reach a more favorable combined general wage increase and benefit funding rate, the Coalition reserves the right to reopen this Agreement to bargain the impacts of that decision.
> 28.2 This provision will not apply to the Sheriff's deputies, Captains or Majors, Marshals, Paramedics, interest arbitration decisions, or job classifications that receive market based increases.
> 28.3 If the County can demonstrate that bargaining units outside of the Coalition made economic offsets in negotiations to increase wages or benefits, the reopener will not apply.

There is a vast difference between that limited and conditional language and the Me-too the Guild proposes. The Guild would have any additional increase for the POG automatically trigger the same increase for the Guild: No bargaining required. Under the Coalition Master Agreement, on the other hand, an outside increase 1) triggers an *option* 2) for the Coalition to *reopen* the Agreement 3) to bargain over the *"impacts"* of the outside CBA, and 4) the trigger must not have been in any of the units most likely to gain such an increase, and 5) the trigger cannot be financial benefit-for-rate trades. Me-too's littlest cousin indeed.

The situations in which an interest arbitration panel should award genuine Me-too language are extremely rare (if there are any at all). Such an award substantially burdens the triggering bargaining unit, which is not a party to the interest arbitration proceeding and cannot defend itself there. Yet the employer will certainly come to that table arguing that the cost of an increase must include the cost of extending the increase to the unit benefitting from the Me-too.

Moreover, if there is ever a situation calling for Me-too language, this certainly is not it. There is no dispute that the recent three 5% increases for the POG were the price of substantial civilian oversight. More to the point, there is no dispute that the County may be under external pressure to increase the degree of oversight in the next CBA, and that may be expensive. We cannot award such a provision in this case.

Article 8, Section 4 (Benefit conversion). The County proposes to discontinue providing free lunches to the COs and to pay for that discontinuation with an across-the-board rate increase:

> Benefits Conversion. The following fringe benefits shall be converted to pay and rolled into base wages:
>
> Employer Provided Meals Within DAJD Facilities – $.25 / hr
> Uniform Maintenance Allowance – $.21 / hr
>
> Effective the first of the month following the parties' implementation of this agreement, the above fringe benefits will be eliminated, and the employees will receive a total of $.46 / hr. added to base wages.

To accompany that change, the Department would change Article 10, Section 4 (Rest and Meal Periods) by this addition: "Employees shall be provided with meals when on duty and assigned to work outside of Department facilities ~~at the KCCG or RJC~~, ..." (It would also delete that sections' reference to meetings to discuss the food program.)

COs' meals come out of the same budget as inmate meals. But the Department estimates that it spends from $250,000 to $300,000 *feeding employees other than COs.* (The Nurses' CBA includes a Me-too for the existing KCCG language.)

The retired Department Director agreed that COs can easily be identified—they are required to wear uniforms while on duty—and distinguished from non-bargaining unit employees in the lunchroom. The Department has discussed excluding non COs but has never taken steps to do so. Moreover, the greatest weight of this proposed change would fall on COs who brought one lunch to work but find themselves on MOT and need two.

As in 2009 (Discussion and Award at 21), "One of the first rules of thumb for interest arbitrators in dealing with language —i.e. non financial—proposals is the time-honored 'If it ain't broke, don't fix it.' A corollary to that rule is that interest arbitrators should generally be unwilling to change existing language in order to help a party that has not taken reasonable steps to help itself under that language." The proposal will not be awarded.

Article 8, Section 10 (Longevity Pay). The County proposes this addition:

> Effective as soon as administratively practicable after full adoption of this Agreement by the parties, the longevity pay benefit shall be paid based on bi-weekly base wages, rather than a semi-monthly calculation.

The County has long been in the process of shifting its payroll system from twice-a-month to every two weeks ("Fortnightly"). The longevity pay under the prior contract is one of the few remaining holdouts and requires hand calculation. The record shows no substantial reason to oppose this change, and we award it substituting "after the date of the interest arbitration award" for "after full adoption of this Agreement by the parties."

Article 8, Section 13. Deferred compensation match. The Guild proposes to add this section:

> The County shall match employees' deferred contributions to their 457 deferred compensation plan accounts to a maximum of three per cent (3%) of the employee's earnings.

None of the comparables proposed by either party offers such a benefit, nor do any of the County's bargaining units or unrepresented employees. The County costs the Guild's proposal on the assumption of 100% participation, and in this case that fiscally conservative assumption may be close to the mark: by saving 3%, a CO could increase his

or her overall compensation by an additional 3%. But that means that such a proposal really should be included in the calculation of total wages and benefits. Without any substantial evidence of a retention problem, the record does not justify such a proposal, and we do not award it.

Article 9, Section 4 (Overtime Authorization). Both parties propose changes. The Guild proposes these:

> *** If the employee's ovetime shift is worked at a location other than the King County Correctional Facility ~~downtown jail~~ or Regional Justice Center, the employee must submit a completed overtime ~~time~~ sheet to his or her supervisor within 72 hours after the close of the shift on which the overtime was worked. ~~To complete the form the employee must indicate the hours of overtime pay and/or he number of hours of compensatory time, provide employee data as requested, sign and date the form~~.

The County joins the Guild in proposing those modernizations and would add this sentence to the prior contract's language:

> Overtime for all Acting Assignments shall be paid in cash only; no compensatory time accrual will be allowed for these overtime shifts.

Apparently the current practice is that when acting assignments produce an overtime cash-or-time choice the Comp Time alternative is not adjusted by the increased rate for the acting assignment. A CO on overtime acting as a Sergeant, e.g., can choose cash for time-and-a-half at the Sergeant rate or Comp Time at time-and-a-half of that CO's usual rate, which does not reflect that he or she was working at a higher rate.

We award that practice rather than eliminating the rate difference for cash as well as for Comp Time. Thus the new version of the Section will be:

> If the employee's ovetime shift is worked at a location other than the King County Correctional Facility or Regional Justice Center, the employee must submit a completed overtime sheet to his or her supervisor within 72 hours after the close of the shift on which the overtime was worked. Employees who choose Comp Time for overtime in an Acting Assignment shall receive time-and-a-half at their usual (not Acting) rate.

Article 9, Section 6 (Court Detail Overtime). The existing language was added to the parties' most recent contract. The County proposes these changes (14:20 begins the Second shift):

> Any court detail assignment that will extend past the normal 17:00 end of shift work will be assigned, whenever possible, to second shift ~~and that shift will be responsible for filling the assignment with current staff or overtime consistent with this agreement~~. Any hospital or clinic assignments scheduled to extend beyond 14:20 will be filled by second shift, when possible. Court detail officers will generally not be subject to mandatary overtime past 17:00 hours, when first or second shift employees are available and more junior.

The language of the most recent CBA was designed to address MOT of Court detail employees assigned to hospital duty when an inmate is in the hospital or clinic at or near the end of the Court shift. When there is a First shift overtime volunteer who will hold over onto Second, the existing language has the effect of forcing the Department to use that volunteer to cover the overtime that will begin at the end of the Court shift. The First shift overtime volunteer replaces the court shift CO on hospital duty who then returns to work out the last hour or so of his or her regular shift without going on overtime. (As far as this record shows, there is necessary work for court shift COs to do at the end of the court shift.) The record does not show that the existing language has been a problem in the recent past (although it was when first added to the CBA[34]); and the Department has not shown that it needs to be fixed.

On the other hand, the record also shows (6 Tr. 1415:1-16) that the final sentence of the proposal—"Court detail officers will generally not be subject to mandatory overtime past 17:00 hours, when first or second shift employees are available and more junior"—apparently describes current practice, and we award that part of the proposed change.

Article 9, Section 13 (Compensatory Time Plan). After pay rates—and perhaps even *before* pay rates—this is the most divisive issue in this case. COs choose whether to take overtime in cash at time-and-a-half or in compensatory time (Comp time) at that same rate. Because the County's budget for the Department forces it to operate with massive amounts of overtime, COs can earn very substantial amounts of comp time. The County argues that the way Comp Time has been handled in the past is an important part of the MOT problem. In an attempt to deal with the massive amount of Comp Time, the Department proposes this change to subsection A: "A maximum of eighty-two (82) non-replinishable compensator time hours may be accrued per calendar year ~~at any given time~~, by individual bargaining unit members." 82 hours is approximately equivalent to two weeks.

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34. The Guild grieved the Captains' failure to follow the new language; the Department told the Captains to do so; and the problem was solved.

The significance of the language—existing or proposed—is not compellingly clear on its face. The parties' shared understanding of the existing language is this: A CO may earn—and use—an unlimited number of hours of Comp Time during a year, as long as his or her Comp Time account does not go over 82 hours at any time. If that account is at 82 hours, any overtime worked by the CO must be taken in cash until the account is brought under 82 hours (usually by taking some of the accumulated Comp Time). The "82" is now a cap on each CO's rolling *account*. The Department's proposed change from "replenishable" to "non-replenishable" effectively makes the "82" a cap on the number of hours a CO may *earn* in a year; and after earning 82 hours, a CO would have to take all of his or her overtime compensation—whether time-and-a-half or double-time—in cash for the rest of that year.

The County's reason for the proposal is set out in County Ex. 9.2:

> Each of the past three years, more than 100 employees have used more than the equivalent of four weeks of comp time (164 hours), in addition to their other forms of paid leave. Several employees each year used the equivalent of more than 16 weeks of comp time (672 hours), in addition to their other forms of paid leave. While working within the system permitted in the contract, these employees are using comp time, which can be easily and freely earned due to available overtime in the Department, to effectively override the work schedule to which they are assigned. This situation is a major contributor to the problematic levels of mandatory overtime that the Department is experiencing.
>
> The County's proposal would reduce total comp time used per employee per year to a maximum of eighty-two hours, or two full workweeks.[35] Had this limit been in place during the last three years, it would have reduced comp time use by 30,057 hours in 2016; 30,968 hours in 2017; and 29,213 hours in 2018. Those excess comp time hours represent the equivalent expected hours contribution of approximately 19 FTE. Put differently, the County would gain the equivalent of 19 FTE by limiting comp time in a rational way.

The County offers two additional arguments. First, there is a mathematical problem with the current Comp Time arrangement. If Comp Time is used in a fashion that requires overtime coverage, the Comp Time compounds: if one hour of overtime

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35. On the face of the proposed language it does not limit "total comp time *used* by employee per year" to 82 hours. Rather, it limits the comp time an employee may *earn* during a year to 82 hours. If an employee begins the year with 40 hours of Comp Time to his/her credit and accrues the proposed maximum of 82 hours during the year, then he or she could *use* 122 hours of Comp Time that year under the County's proposed language. The cost numbers based on the misreading of the proposal (as limiting use to 82 hours) are probably still roughly correct, and any error would be eliminated over a multi-year base since average use could not exceed maximum annual earnings.

produces 1½ hours of Comp Time and that Comp Time is used in a way that has to be covered in overtime, then 1½ x 1½ equals not two but 2.25 hours of Comp time; and if that is eventually covered at overtime as well, it requires a total of not three but 3.375 hours of Comp time, etc. Second, the Department argues that the current system of essentially unlimited Comp Time accumulation keeps junior COs from attractive vacation and holiday slots. As soon as vacations and holiday slots are bid, an employee may substitute his or her accumulated Comp Time for that slot and hold onto his or her vacation time to bid year to year, which leaves no desirable vacation or holiday slots for junior COs.

The Guild points out that comp time is earned at the rate of 1½ hours per hour of overtime, so the 82 hour cap is reached after less than seven full shifts of overtime.[36] After that, a CO required to work MOT would never get that *personal time* back. Moreover, the additional time off earned is a substantial motivator for working voluntary overtime, and we should expect a further decline in voluntary overtime signup if Comp Time is so sharply capped. The retired Director of the Department agreed that voluntary overtime could decrease, and the net change only "could" be a reduction in MOT. (4 Tr. 1103:12-25.) Moreover, some of the usage of Comp Time is for covering FMLA leave after an employee's other leaves are exhausted; and part of it is for junior employees to get some time off after bearing a particularly hard burden of MOT.

The average Comp time use by all bargaining unit members was about 96 hours in 2016, 98 hours in 2017, and 94 hours in 2018. (Guild Ex. 318.) But usage was far from evenly divided. About a quarter of Guild members took no Comp Time at all in each of those years. Only 36% of COs exceeded 82 hours in 2016, 38% in 2017, and 37% in 2018. The record does not identify the instances in which comp time was used to cover FMLA /WAFLA leaves; but the Guild pointed out that three of the County's examples of comp time run amok (County Ex. 9.8) were employees on extended FMLA leaves.

This is not a new dispute between the parties. The 1993-1995 CBA capped accrual at 240 hours. The 1997-1999 CBA set an accrual cap of 120 hours and provided a cash-out of hours over that cap at the end of 1998. That lasted for several contracts, although the 2004-2006 CBA added a clarification that 120 was the cap on a particular year's *accrual* and not on the number of Comp Time hours a CO could use in that year if he or she had hours from the prior year as well. In negotiations in 2006, 2007, and 2008 the Guild continued to push for a return to a 240 hours cap and for hours used to be replenishable. The County pushed in the opposite direction; but just before the 2009

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36. Most MOT is not in full shifts, but voluntary overtime commonly is and may produce Comp time.

interest arbitration the parties agreed to the County's proposal of the current cap of 82 *replinishable* hours.

The Comp Time Section (Article 9, Section 13) includes two provisions which ought to provide the Department with tools to avoid any excessive accumulation of Comp Time; but the Department has never used those provisions. Section 13 itself says that "Under normal conditions the following conditions will apply to the use of compensatory time." There are three subsections. The first of those—Section A—is the cap language at issue here. But the second and third provide

> B. Employees will not be allowed to use compensatory time if their unit is below minimum manpower and their absence must be covered by calling another employee on overtime.
> C. Accrued compensatory time may be paid off at the discretion of management.

If Comp time cannot be used where it would have to be covered by overtime, and if the Department has the "discretion" to pay off accrued comp time, then why is there a problem? The answer is that the Department has never enforced those provisions or exercised its bargained discretion even though the language has a lengthy history.

At hearing I suggested that the Department could send out a "clean slate" memo—'we have not enforced this language in the past but intend to do so from now on'—and then use those provisions and let a grievance arbitrator decide any resulting grievance. The County now proposes that this panel resolve the dispute that *might* have arisen in such a grievance arbitration. For two reasons, I must respectfully decline.

First, our authority is limited to the issues that PERC certified to interest arbitration; and the certification in question was "Article 8, Section 13A – Compensatory Time Plan (non-replinishable bank)." Sections B and C were not certified to interest arbitration and are not within our statutory authority. Washington interest arbitrators have traditionally been allowed considerable latitude in fashioning language for the issues that are properly before them. But "issues properly before them" is limited to PERC's certification, and that certification is designed to reflect what the parties have actually bargained about through the mediation step. WAC 391-55-200(2)(c) and 202(1)(a) exclude from certification by the mediator and by the Executive Director, respectively, "any issues that have not been mediated." There is no sign, in the record before me, that these parties bargained about whether the County could resurrect Subsections B and C; and the very fact of their dispute about revising Subsection A suggests that they did not.

Second, the record here is quite different from the record the parties would have made in a contract interpretation grievance arbitration: it lacks a history of the language

itself; it lacks a detailed history of prior administration (or not) of the disputed language; and it lacks careful argument about the parties' understanding of this contract language.[37] I must respectfully decline the invitation to address the issues of those subsections in this interest arbitration.

That leads us back to the County's argument for its proposed change to Subsection A. Creating the equivalent of 19 FTE COs by reducing Comp Time usage would be a very significant achievement. But the retired Director of the Department was far less certain of that consequence than the County seems to be. The troubling question is this: If all Comp Time earnings are limited to 82 hours per year, will that limitation discourage COs from volunteering for overtime? Ultimately, as the Guild points out, no change in the administration of Comp Time will change the number of work hours that are not covered by FTE staffing and therefore *must* be covered by overtime. Excessive overtime of *any* sort may damage an employee's physical and social health; but it is *mandatory* overtime that both the Guild and the County most want to reign in. If the overtime hours cannot be filled on *voluntary* overtime, they will have to be filled on MOT, regardless of how Comp Time is administered. And if the 82 hour annual cap on earned Comp Time causes a decline in voluntary overtime signup—as the Guild argues and as the retired Director feared—then reducing total overtime at the cost of increasing MOT would be a very poor bargain, particularly when the parties have just agreed on contract changes making it easier for schedulers to fill vacancies with volunteers. We therefore award the following language in an attempt to reduce that possibility:

> Each bargaining unit employee may accrue (earn) a maximum of 82 hours of Compensatory Time each year from any mix of voluntary or mandatory overtime. After that 82 hour maximum has been reached, each bargaining unit employee may continue to accrue Compensatory Time in that year, but only for voluntary overtime, up to a maximum of 122 hours. Compensatory Time carries over from year to year, but an employee with 122 hours in his or her Compensatory Time account at any time, regardless of when that time was earned, must take overtime compensation in cash, rather than in Compensatory Time, until that account comes down below 122 hours.

Article 12, Section 2 (Uniforms). The current language provides for "an annual voucher" for two shirts and two pairs of pants per year and one pair of shoes, and one belt, tie, tie clip and patches; and it provides for a separate check for $450 per year for uniform maintenance. The County proposes to delete that entire paragraph. Instead, the

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37. The Guild points out (Post-hearing brief at 117) that it could argue that the existing Section 13C cannot be read to "nullify" 13A. But there is no sign of the argument one would expect about whether a labor arbitrator properly has authority to reform rather than to enforce the language of the CBA upon which his or her jurisdiction rests.

County proposes to provide each new hire *four* shirts and pairs of pants along with the rest of the uniform parts previously set out. After that, rather than two shirts and pairs of pants per year the County would create what it refers to as a "quartermaster system:" the CO would present the item to the Captain, who would approve the replacement, and the Department —i.e. a second office—would issue a voucher to the store that has the uniform contract with the Department. (There would be a single step appeal process if the CO and Captain disagreed.)

The retired Director of the Department testified that he ended up with a closet full of uniforms at the end of his career. But it had been many years since the Director walked the halls of the jails or had to deal with inmates on a daily basis. The generals' uniforms just do not get as nasty as those of the troops on the line. The County does not offer data about how many uniform pieces actually have to be replaced *now*, so it really cannot accurately estimate savings from the proposed change. Moreover, the record does not know how often a CO may have to change uniforms—at least a shirt or pants—because jails are not always very clean places or because dealing with inmates sometimes results in tears and smears of body fluids. The Department may not know the answer to that question, because under the current language those changes are dealt with by the CO without supervisory involvement. Moreover, the County's proposal would require the CO to bring the worn or damaged item to the Captain, take the Captain's approval to another office, and (on off duty time) take the voucher to the uniform store.

In short, it is not really clear that the current language leads to waste, and the County proposed an alternative that seems to create administrative "cost" for the employees. We cannot award the proposed change.

AWARD

By stipulation of the parties, we award their prior tentative agreements.

Article 4, Section 3—Gild Representatives. We do not award any change in the existing language.

Article 6, Section 1B (Vacation Requests after Bid). We award the County's proposed language:

> *** All vacation requests after annual vacation bidding is completed shall be requested for approval from the Department at least seventy-two (72) hours prior to the time being requested in order to have consideration based upon available slots. Any requests within seventy-two (72) hours of the start of the shift or during the shift shall be reviewed for approval on a case-by-case basis based on available leave slots per current practice and shall be approved unless the approval would result in mandatory overtime. All requests for vacation leave must be approved by a Supervisor authorized to approve leave requests.

Article 6, Section 1f (Vacation Cancellation). We award the additional language proposed by both parties:

> Employees wishing to cancel vacation days that were obtained as a result of annual vacation bidding must notify the department of Cancellation at least seventy-two (72) hours prior. This requirement does not negate an employee's ability to cancel particular days only of annually bid vacation periods, and will support the Department's efforts to re-distribute available leave slots to employees on the stand-by list, or to post up for all eligible employees to request.
>
> Exceptions to the seventy-two (72) hour rule will be granted if:
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> 1. Cancelling scheduled vacation would reduce/eliminate overtime for the shift.
> 2. Cancelling scheduled vacation would allow another employee on the wait list (in order) to take leave, or another employee to take leave when no one is on the wait list, or
> 3. Cancelling scheduled vacation would prevent the employee from going into no-pay status.

Article 8, Sections 1-3—Wage Rates. We award these changes in wage rates:

Section 1. 2017 Wage Rates for Corrections Officers and Sergeants. Effective January 1, 2017, the base wage rates of bargaining unit members in effect December 31, 2016, shall be increased by 2.25%. This wage increase is reflected in the wage rates listed in Addendum A.

Section 2. 2018 Wage Rates For Corrections Officers and Sergeants. Effective January 1, 2018, the base wage rates of bargaining unit members in effect December 31, 2017, shall be increased by 3.00%. This wage increase is reflected in the wage rates listed in Addendum A.

Section 3. 2019 Wage Rates For Corrections Officers and Sergeants. Effective January 1, 2019, the base wage rates of bargaining unit members in effect December 31, 2018, shall be increased by 3.00%. This wage increase is reflected in the wage rates listed in Addendum A.

Article 8, Section 1 (New Top Step.) We do not award a new top step.

Article 8, Sections 1-3, 'Me-too.' We do not award any of the Guild's proposed Me-too language.

Article 8, Section 4 (Benefit conversion). We do not award the County's proposed benefit conversion language.

Article 8, Section 10 (Longevity Pay). We award the County's proposed language:

Effective as soon as administratively practicable after the date of the interest arbitration award, the longevity pay benefit shall be paid based on bi-weekly base wages, rather than a semi-monthly calculation.

Article 8, Section 13. Deferred compensation match. We do not award the Guild's proposed deferred compensation match.

Article 9, Section 4 (Overtime Authorization). We award some of the changes proposed by each party. The resulting language is:

***If the employee's ovetime shift is worked at a location other than the King County Correctional Facility or Regional Justice Center, the employee must submit a completed overtime sheet to his or her supervisor within 72 hours after the close of the shift on which the overtime was worked. Employees who choose Comp Time for overtime in an Acting Assignment shall receive time-and-a-half at their usual (not Acting) rate.

Article 9, Section 6 (Court Detail Overtime). We award some but not all of the County's proposed changes:

> Any court detail assignment that will extend past the normal 17:00 end of shift work will be assigned to second shift and that shift will be responsible for filling the assignment with current staff or overtime consistent with this agreement. Any hospital or clinic assignments scheduled to extend beyond 14:20 will be filled by second shift. Court detail officers will generally not be subject to mandatary overtime past 17:00 hours, when first or second shift employees are available and more junior.

Article 9, Section 13 (Compensatory Time Plan). We award the replacement of the prior Article 9, Subsection A with this:

> Each bargaining unit employee may accrue (earn) a maximum of 82 hours of Compensatory Time each year from any mix of voluntary or mandatory overtime. After that 82 hour maximum has been reached, each bargaining unit employee may continue to accrue Compensatory Time in that year, but only for voluntary overtime, up to a maximum of 122 hours. Compensatory Time carries over from year to year, but an employee with 122 hours in his or her Compensatory Time account at any time, regardless of when that time was earned, must take overtime compensation in cash, rather than in Compensatory Time, until that account comes down below 122 hours.

Article 12, Section 2 (Uniforms). We do not award any changes to this Section.

Note that the signatures of the party-appointed arbitrators signify their acceptance of the award and not necessarily their agreement with the discussion, which was written entirely by the neutral arbitrator.

Respectfully submitted,

Howell L. Lankford, NAA
Neutral arbitrator.

Linda Holloway
KCCG Vice President
Arbitrator appointed by the Guild

Robert S. Railton, Deputy Director,
Department of Labor Relations
Arbitrator appointed by the County