

**INTEREST ARBITRATION OPINION AND AWARD**

**By**

**Richard L. Ahearn  
Interest Arbitrator**

**Clark County v. Clark County Deputy Sheriff's Guild**

**PERC No. 132650-I-20**

**Clark County,**

Employer or County

and

**Clark County Deputy Sheriff's Guild**

Union or Guild.

**Appearances:**

For the Employer:

Emily A. Sheldrick

Chief Civil Deputy Prosecuting Attorney

Vancouver, WA 98666

For the Guild:

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## **OPINION**

### **I. Background**

The County is located in southwest Washington State and is bordered by the Columbia River to its south. The County has 12 bargaining groups that represent employees in various branches and offices. Of those groups, three (3), including the Deputy Sheriff's Guild (Guild), are eligible for interest arbitration. Employees represented by the Guild are engaged in general police duties, including patrolling, investigating crimes, serving arrest warrants, transporting prisoners and other emergency and routine activities. The Guild represents approximately 19 Sergeants and 113 Deputies. The Parties' current collective bargaining agreement expired by its terms on December 31, 2019.

Pursuant to the statutory authority of RCW 41.56.450 and in accord with the procedures set forth in WAC 391-55-200 through -255, on October 15 and November 13, 2020, I conducted an interest arbitration hearing involving all regular full-time and regular part-time deputies and sergeants represented by the Guild. Prior to the hearing, the Parties jointly selected me as the sole arbitrator for this matter in lieu of a 3-person panel. At the hearing the Parties had full opportunity to call witnesses, to make arguments and to enter documents into the record. Witnesses were sworn under oath and subject to cross-examination by the opposing Party. With the filing of the Parties' comprehensive post-hearing briefs on November 20, 2020, the matter closed.

### **II. Relevant Statutory Authority**

I recognize that I must exercise my analysis in support of the public policy expressed below.

#### **RCW 41.56.430- Uniformed personnel – Legislative declaration**

The state of Washington has adopted a public policy against strikes by uniformed personnel as a means of settling their labor disputes. The policy recognizes that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of its

citizens. Thus, in order to promote such critical services, interest arbitration exists as an effective and adequate alternative means of settling disputes. In light of the foregoing, arbitrators are directed to apply the criteria set forth below in RCW 41.56.465.

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

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

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

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

I appreciate that interest arbitration is widely understood as an extension of the collective bargaining process that seeks to resolve the outstanding issues with an outcome that would approximate what the parties would have reached as a result of good faith negotiations.<sup>1</sup> In carrying out my task I will apply the various criteria arbitrators must consider in light of the foregoing statutory factors. I also recognize that the statute provides no guidance as to the weight to be attached to any of the specific factors. Further, a party that proposes language differing from existing contractual language bears the burden of demonstrating that a change is appropriate.

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<sup>1</sup> *Thurston County v. Thurston County Deputy Sheriff's Association*, PERC No.130001-I-18 (Krebs, 2018).

On March 19, 2020, the State of Washington Public Employment Relations Commission (PERC), by its Executive Director Michael Sellers, upon concluding the Parties were at impasse, certified fourteen (14) issues for certification. Prior to the commencement of the hearing, the Parties withdrew half of the certified issues from interest arbitration. The remaining seven (7) issues that I am required to resolve include:

**Joint issues Certified for Interest Arbitration:**

**Article 9.7** Family and Medical Paid Leave.

**Article 11** Salary Schedule.

Families First Coronavirus Response Act

**Guild's Issues Certified for Interest Arbitration:**

**Article 11.6.** Longevity program.

**Article 12.1.1** Field Training Officer Premium Rate Increase

**Article 12.2, 12.2.1, 12. 2.2, 12. 2.3.** Special Assignment.

**New Article:** Career development.

My analysis and conclusions regarding the above issues follow below.

**III. Analysis**

I first turn to consideration of the relevant statutory factors. In that regard I recognize that the statute provides no guidance regarding either the weight of any of the factors or how they should be measured.

**A. The Statutory Criteria**

**Constitutional and Statutory Authority of the Employer**

The Sheriff, an elected official, is the appointing authority for the Deputies and Sergeants represented by the Guild. The County has financial responsibility for their operations.

### **Stipulations of the Parties**

The Parties agreed to the issues pending before me, that the new collective bargaining agreement will be effective January 1, 2020 through December 31, 2022, and that any salary increase will be retroactive to January 1, 2020.

### **Comparable Jurisdictions**

Pursuant to the statutory criteria I am obligated to consider the Parties' positions in light of the "like employers" to Clark County. Although generally in agreement with the group of comparator employers previously relied on by these same Parties, the Guild asserts that Multnomah County, that borders Clark County, should be substituted for Spokane County, that is distant from Clark County and in fact borders Idaho. The County disagrees. For its part the County urges that Marion County, Oregon should be deleted in favor of Lane County, Oregon.

The issue of whether Multnomah County should be included as a comparator to Clark County has been addressed in prior interest arbitration proceedings involving these same Parties. For instance, in 2012, Arbitrator Howell Lankford, based primarily on an analysis of population and assessed values, concluded that Kitsap, Spokane, and Thurston counties in Washington State, as well as Clackamas, Washington and Marion counties in Oregon constituted the most appropriate counties as comparators to Clark County.<sup>2</sup> In reaching his conclusions Arbitrator Langford rejected Multnomah County, based on a 50%+/- analysis of population and assessed values. More recently, Arbitrator Luella Nelson engaged in an extensive analysis of Multnomah County as a potential comparator and likewise concluded that it was not appropriate as a comparator to Clark County.<sup>3</sup> A careful reading of the Opinions of both Arbitrator Lankford and Arbitrator Nelson persuade me that they were well reasoned and consistent with the statutory criteria. Moreover, there is no evidence and no assertion that the factors on which they relied have changed in any material sense. In light of the foregoing, I am compelled to conclude that Multnomah County is not an appropriate comparator to Clark.

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<sup>2</sup> *Clark County Deputy Sheriff's Guild v. Clark County*, PERC No. 23615-I -10- 0559 (2012).

<sup>3</sup> *Clark County and Clark County Deputy Sheriff's Guild*, PERC No. 129560-I-17 (2018).

Based at least in part on an emphasis that its members are far behind average when applying an "apples to apples" comparison, the Guild appears to accept the County's position regarding the appropriateness of including Lane County as a comparator. In this regard I recognize that Lane County's population, assessed real market property value and number of full-time County employees are all closer to the same factors for Clark than is Marion County. On that basis I accept the substitution of Lane for Marion and find that the following counties constitute the appropriate group of comparators: Kitsap, Spokane, Thurston, Clackamas (OR), Washington (OR), and Lane (OR).

### **Compensation Comparisons**

#### **The County**

The County contends that its wage proposal of 2.5% for 2020; 2.2% for 2021 and 2.2% for 2022 is fully supported by reference to the agreed-upon comparators and its reasonably anticipated financial circumstances. In support, the County notes that its wage proposal is more generous than what has been provided to other internal groups. It further contends that the wage proposal of the Guild lacks justification, either by the economic data or in relation to the County's lower cost of living.

With respect to internal groups, the County observes that the Sheriff's Administrators Association Guild received wage increases of 2.75% for 2020, and 2.5% for both 2021 and 2022. The Sheriff's Corrections Deputy Guild received 2.5% for 2020 and 2.75% for 2021.<sup>4</sup> All other groups with collective bargaining agreements received wage increases of 2.2% for both 2020 and 2021. The County's unrepresented employees received 1.5% increases for 2020.

Furthermore, the County asserts that Guild's proposals for enhanced compensation would propel the deputies to a level much higher than the average compensation of the comparators. Such result would be inconsistent with the Deputies' customary compensation somewhat below the

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<sup>4</sup> These are the County's other two interest arbitration eligible groups.

average of the comparators. Moreover, the Guild's proposals would create unacceptably challenging financial hardship for the County's limited resources. For instance, the County's longstanding need to exercise financial prudence is expected to face deeper and more sustained challenges than normal as a result of the pandemic-caused recession. Indeed, for 2021 alone, the total cost of the Guild's proposals, \$1,431,816, would constitute a substantial portion of the General Fund's projected available balance of \$2,159,768.<sup>5</sup> The financial projection for 2022 is even more dire, with an expected negative available fund balance of nearly \$1,600,000.

The County further contends that the Guild's data is flawed because it incorporated deferred compensation/VEBA, health insurance and PERS "pickup," thereby improperly inflating the compensation in other jurisdictions. For example, Oregon law specifically allows employers to agree to pay a portion of an employee's contribution to PERS. By contrast, in Washington state employers are obligated to pay both the employee and employer contribution rate and to then deduct the amount attributed to the employee from the individual's compensation.

The County also asserts that it is inappropriate to include for comparison purposes any compensation based on "intermediate certificate and/or Associates Degree," as any such incentives in Oregon rely on state law. With no similar statutory provision in the state of Washington, and with only Thurston County among the Washington jurisdictions providing education incentive pay, it would not be appropriate to incorporate any such provision in Clark County's pay rate through interest arbitration.

The County further argues that it properly included annual paid leave in its calculations, as all jurisdictions offer paid leave to its deputies. Particular noteworthy is that Clark County provides the most generous paid leave, at each level of seniority, in comparison to all the other comparators. In light of the foregoing, the County contends that paid leave should be considered in developing a wage award, but that the other add-ons urged by the Guild are inappropriate.

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<sup>5</sup> Rebuttal Exhibit 4, page 14

Finally, the Guild's comparisons were based on an assumption of 2,080 annual working hours. However, in contrast to the other jurisdictions, the Guild's members work 2,184 regular hours annually, thereby receiving regular income even higher than that set forth in the Guild's charts.

The County's calculations include a comparison of hourly base wages for the top step deputies. Based on the Guild's exhibit that sets forth base hourly wages at the top step for Deputies, the County, with a top step base hourly wage of \$36.63, ranks 6th among the seven (7) counties. However, when considering annual salary based on 2,184 hours per year, Clark County ranks 5th. Further, the difference between it and 4th place Clackamas is less than \$1,000.

In light of all the foregoing, the County asserts that its proposed increases are reasonable and fair and would allow the Guild to remain close to the average base salary compensation of the comparators.

#### The Guild

The Guild counters with a multi-pronged argument in support of its proposal for wage increases of 5%, 4.5% and 4.5%. As a threshold matter, the Guild argues that their 4/12 shift schedule results in an annual total of an additional 110 hours worked beyond that of the deputies in the other jurisdictions. Thus, a meaningful comparison demands compensating for that disparity. Moreover, total compensation rather than a simple wage base comparison is much more meaningful. In that regard the Guild observes that I reached a similar conclusion last year.<sup>6</sup>

According to the Guild, inclusion of the additional sources of compensation for the comparators highlights a severe disparity from which the Guild suffers. For instance, incorporation of the value of the certificate pay in the Oregon jurisdictions raises the average top salary from \$39.48 to \$40.20. Further, the Guild's calculations of the Deputies' hourly rates, adjusted for inclusion of the value of PERS contributions and deferred compensation, reveal an increase in the average hourly rate of the six comparators to \$40.97. Under this analysis the Guild's average rate of

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<sup>6</sup> *Clark County v. Clark County Corrections Deputy Guild*, p.8, PERC Nos. 131479-I-19 and 1341124-M-18 (2019).



\$36.63 places Clark County last among the comparators. For Sergeants, the gap is even more severe. Moreover, with the comparators receiving scheduled future increases, the gap will continue to expand.

In brief I find that the reasoning behind my earlier Award is likewise applicable here and agree that benefits such as an employer's contributions to the employees' pension fund directly affect take-home pay and thus are appropriate subjects for comparison. Accordingly, I am persuaded that benchmarks that incorporate longevity pay, employees' insurance contribution, the value of total leave deferred and VEBA credit for certificates and PERS pickup are appropriate.

Nevertheless, I do not accept the Guild's further argument that I should evaluate compensation within the Portland labor market. Thus, any such calculation would include Multnomah County, that is not among the agreed-upon comparators. Considering the foregoing, I will not incorporate the Guild's calculations based on the "Portland Labor Market."<sup>7</sup>

Finally, I recognize the difficulty in reaching a precise calculation of the value of upcoming raises for most comparators because they generally operate on a July 1 rather than January 1 beginning date for their CBAs. Thus, a raise beginning in 2020 would apply to the second half of that year and the first half of 2021. In addition, both Washington County and Thurston County based their 2021 increase on the CPI, with a cap of 5.5% in Washington County and a cap of 2.5% in Thurston County. Nevertheless, it appears that the average of the raises for the comparator counties are in the range of what Clark County's two (2) other arbitration eligible groups have received.

### **Cost of Living**

The evidence here on the relative cost of living in Clark County reveals that for 2019 the cost of living among the comparator counties was 111.6. Clark County stood at 110.3, very slightly

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<sup>7</sup> I also find a practical reason to do so, as there is no evidence that members of the Guild have left Clark County for lateral positions in the Portland labor market.

below the average. Further, Clark County was fifth (5th) among the seven (7) counties. Finally, the range included Clackamas at the highest with 120.3, whereas Spokane was lowest at 97.2.

In addition, the average 2019 housing cost index for the seven (7) counties was 131.4. Although once again ranked fifth (5th) among the seven (7) counties, Clark's housing cost index of 135.0 exceeded the average of 131.4. As with the overall cost of living, Clackamas had the highest housing cost index at 161.8 and Spokane the lowest at 96.0.

With regard to the consumer price index (CPI), beginning in the year 2015 the Guild's average wage increase has slightly exceeded that of the average annual CPI (2.3 CPI to 2.44 wage increase). On the other hand, for the most recent three (3) years, the average wage increases for the Guild have fallen behind the average CPI (3.13 CPI to 2.4 wage increase).

### **Hiring and Retention**

I recognize that hiring and retention statistics are commonly considered in interest arbitration and constitute useful information regarding the relative adequacy or inadequacy of existing compensation levels. In this regard the number of applicants for positions within the Guild remained steady between 2016 and 2018 and nearly tripled in 2019, with 278 applicants.<sup>8</sup> Further, the number of voluntary separations remained relatively consistent with a low of five (5) in 2016 and 2017 and a high of nine (9) in 2019. Finally, the number of new hires fluctuated between eleven (11) and seventeen (17) in the years 2016 through 2019.

### **"Ability to Pay"**

An employer's ability to pay potential wage and benefit increases is a factor commonly considered by interest arbitrators, as it is "normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment."<sup>9</sup> Typically, analysis of this issue involves consideration of the overall budgetary outlook of the jurisdiction, including the

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<sup>8</sup> The dramatic increase in the number of applicants in 2019 is apparently due to increased marketing and recruitment efforts.

<sup>9</sup> RCW 41.56.465 (1) (e).

likely impact of the parties' proposals on its finances. In this regard I recognize the observation of a respected arbitrator:

"The projected cost of all of the worthwhile projects the State might wish to undertake for the public good is likely always to exceed forecasts of available revenues."<sup>10</sup> Thus, projected revenues and expenses for the County must be evaluated in recognition of the reality that the future trajectory of the economy and the political process eventually determine which projects or activities receive priority funding over others. Under these circumstances arbitrators often consider that a term such as "financially responsible" better captures the constraints on a public entity's budgetary concerns.

With respect to the County's "ability to pay" or "financial responsibility," the County emphasizes that the June 2020 Washington state economic and revenue forecast recognized that the state's economy entered a **severe recession** with unprecedented decline in employment. (emphasis supplied). Further, the report expressed that the "COVID-19 pandemic will mean large drops in state revenue collections that will persist for years." In response, in the early phases of the pandemic, Clark initiated a hiring freeze, eliminated non-essential spending, eliminated overtime when possible and placed some general fund projects on hold. In addition, the County received funds through the CARES Act, that was of substantial assistance in allowing the County to meet its expenses without drastic spending cuts.<sup>11</sup>

In particular Deputy County Manager Kathleen Otto (Otto) testified that Clark traditionally experiences a chronic "structural budget deficit," with expenses exceeding revenues. For example, as Clark borders on Oregon, that does not have a sales tax, the County consistently loses nearly 20% of the revenue it would otherwise receive from the Washington state sales tax program. With sales tax constituting the 2nd largest revenue source for the County, the recession is expected to have a substantial negative impact upon this volatile source. In light of the

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<sup>10</sup> *WSF and MM&P Interest Arbitration Award (Mates' 2015-2017 CBA)* at 8 (Cavanaugh, 2014).

<sup>11</sup> CARES Act refers to the Coronavirus Aid, Relief and Economic Security Act.

foregoing, Clark County's General Fund (Fund), that supports the Sheriff's Office among other activities, expects expenses will significantly outpace revenue.

Of particular concern is that the County's Financial Policy contemplates an unrestricted fund balance equal to sixty (60) days of operating revenues. For 2020, the minimum fund balance was \$26,300,000, with a projected available balance of \$10,503,731.<sup>12</sup> In succeeding years the minimum required fund balance will increase in relation to expenses. However, even assuming revenues and expenses remained constant, Otto projects that the available fund balances will be on a downward spiral in future years. For instance, the 2022 forecast indicates a decrease in the projected available fund balance to \$7,236,875. For 2022, the forecast is that the available balance will drop to \$2,030,367. Beginning in 2023, the projected available balance is minus \$5,000,000, with increasing negative amounts in future years. Significantly, the Guild's wage proposal alone would cost an additional \$1,600,000 more than the County's proposal. Moreover, the financial projections anticipate that the County Council will adopt a 1% property tax increase.<sup>13</sup> Failure to do so would presumably increase the size of the deficit.

By contrast, the Guild argues vigorously that the County has much greater financial flexibility than it claims. For instance, despite an alleged hiring freeze, in 2020, eleven (11) road deputies were hired, including eight (8) following the onset of the COVID-19 pandemic. Further, although the County faced a structural deficit even before COVID, its ability to "balance" its budget every year undermines the reliability of the County's predictions. For example, approximately one year ago the County projected a fund balance of \$21,200,000 for 2021. The current forecast anticipates a substantially higher fund balance of \$28,326, 875.

Finally, a couple weeks after the first day of this hearing, an email from Otto to all personnel of Clark County expressed that the sales tax "is coming in better than anticipated " and that the County was projecting savings of approximately \$8,000,000. Otto further expressed cautious

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<sup>12</sup> Rebuttal 4, supra.

<sup>13</sup> Such action requires a super majority of the Council.

optimism that the County would be within budget for 2020 and that there would be no reduction recommendations for 2021. Thus, the Guild asserts that the County's projections are unreliable and subject to significant changes. Such unsupported forecasts should not provide support for denying the Guild the level of wage increases necessary to begin closing the large gap between it and its comparators.

### **Internal Comparisons**

I recognize that arbitrators also traditionally consider comparisons to other bargaining groups of an employer in determining an appropriate compensation package. Indeed, an employer is likely to seek equity with its other groups of employees. For its part, a union is understandably interested in obtaining at least what its counterparts achieved. On the other hand, I also appreciate that such comparisons are generally considered less meaningful than those concerning comparators, especially among groups that lack the opportunity for interest arbitration.

Here for example, the County's two (2) other interest arbitration eligible groups received the following:

- Sheriff's Administrators Association Guild: 2.5% in 2019, 2.75% in 2020 and 2.5% in 2021.
- Sheriff's Corrections Deputy Guild: 2.5% in 2019, 2.5% in 2020 and 2.75% in 2021.

All other represented groups with settled contracts received a 2.2% wage increase for 2019, 2020 and 2021. Finally, the non- represented County employees received wage increases of 1.5% in 2019 and 2020.

In consideration of the factors and arguments described above I will now turn to each of the specific issues before me.

## **ISSUE #1      Article 9.7 Paid Family Medical Leave**

In 2017 the State of Washington enacted its Paid Family and Medical Leave (PFML) program.<sup>14</sup> Recognizing the public interest in balancing the demands of the workplace with the desirability of promoting family stability and economic security, the program is intended to provide reasonable paid family leave for:

- The birth or placement of a child with the employee
- The care of a family member who is experiencing a serious health condition
- A qualifying exigency under the Federal Family and Medical Leave Act
- Reasonable paid medical leave for an employee's own serious health condition
- Reasonable assistance to businesses in implementing and maintaining a program to support their employees and family.<sup>15</sup>

With few exceptions not applicable here, all Washington employers must participate in the program, even if its employees already are enrolled in a private short-term disability plan. Although the initial phase of the program began on January 1, 2019, parties to CBAs such as here were not covered by the law “unless and until the existing agreement is reopened or renegotiated by the parties or expires.”<sup>16</sup> Accordingly, the County and the Guild must now implement the provisions of the Act.

Employers subject to the Act are currently required to remit a premium of 0.4% of an employee's wages. Of that amount, the Act contemplates a default ratio in which the employer will pay 37% of the amount, with the employee contributing the other 63% from his or her compensation. Alternatively, the Act permits the employer to assume responsibility for the entire 4/10 of 1%. Beginning in calendar year 2021, the total premium rates will be adjusted and could range from 0.1% to 0.6% of an employee's wages.

The County proposes the Act's default proportionate share of premiums, with the County contributing 37% and the Guild deputies 63%. The County contends that such split is consistent

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<sup>14</sup> RCW 50A.001.005.

<sup>15</sup> RCW 50A.05.005

<sup>16</sup> WAC 192-520-010

with the comparable Washington counties and with its internal groups that are not subject to interest bargaining.<sup>17</sup>

The Guild contends that the County should be responsible for the entire premium, asserting that the Guild's large wage gap from its comparators makes the benefit of a slight increase in the County's responsibility of little consequence.

In balancing the competing considerations, I initially recognize that this is a matter of first impression for the Parties' CBA. I also appreciate that the legislature intended that employers and employees would share responsibility for the premium. Further, the total amount of the premium beginning in calendar year 2021 will be subject to an annual adjustment. As that ratio could result in a premium from 0.1% to 0.6%, the total potential future premium is uncertain and can vary significantly.

Additionally, I appreciate the well-accepted principle that bargaining units that are not eligible for interest arbitration provide minimal guidance for units such as the Guild. Thus, I place little or no weight on those internal examples.

Consequently, with no meaningful guidance from comparators, I am confronted with determining a fair and just resolution in consideration of other statutory factors and guidelines. I initially reject the Guild's apparent desire to shift the entire cost to the County as the Act contemplates a shared burden as the default. On the other hand, the County's position assumes no movement from the default percentage, an unlikely result following good-faith negotiations. In that regard I note that the Act contemplates that an employer may elect "to pay all or any portion" of the employee's share...."<sup>18</sup>

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<sup>17</sup> As Oregon does not have similar legislation, there can be no comparison with those jurisdictions.

<sup>18</sup> RCW 50A. 10. 030 (3)(d).

In a prior Award involving the County and the Corrections Deputy Guild I recognized that in the give-and-take of good faith collective bargaining, the Parties might reach a reasonable compromise that reflects the interests of all stakeholders. In that Opinion I awarded a 50/50 split in responsibility for the premiums.<sup>19</sup> Significantly, I am unaware of any meaningful distinctions that would differentiate the circumstances here.<sup>20</sup>

In light of the foregoing, and consistent with my prior Award, in balancing the County's budgetary concerns with the public interest in maintaining terms and conditions for the employees that would not harm their relative standing among their peers, I anticipate that good-faith negotiations would result in an agreement that the Parties make an equal financial contribution for their shared obligation. Accordingly, I have determined that a 50/50 split in responsibility for the premiums represents a reasonable and equitable resolution.

CONCLUSION:

**I will award the Guild the relief it sought, as modified to reflect a 50/50 split in the contribution to the premium for the Act in ARTICLE 9, OTHER LEAVES, as set forth below.**

**Article 9, Section 9.7 Family and Medical Paid Leave**

**The County will offer Paid Family and Medical Leave in compliance with the Washington Paid Family and Medical Leave Program. The County will contribute to the Paid Family and Medical Leave Program based upon 50% of the premiums as provided in Chapter 50A.10.030 (3) (d) RCW. The County shall deduct from the employee's wages 50% percent of the required premiums for the Family and Medical Leave Program as permitted by RCW 50A.04.115 beginning on January 1, 2020. Employees will be required to participate in the Family and Medical Paid Leave Program per RCW 50A.04.**

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<sup>19</sup> *Clark County V. Clark County Corrections Deputy Guild*, PERC Nos. 131479-I-19 and 1311`24-M-18 (2019).

<sup>20</sup> I also note that subsequent to my Award, the County reached agreement with the Sheriff's Administrative Association for a 50/50 split.



## **ISSUE #2      Article 11-Salary Schedule**

According to the Guild, only a significant wage increase will allow it to even approach the average of its comparators. In particular, the Guild contends that the County's comparison is flawed because it fails to rely on hourly wages as the correct measure for purposes of comparison and fails to properly incorporate other forms of compensation. In sum, the increases sought by the Guild are necessary to avoid having the Deputies and Sergeants falling even further behind their comparators. Further, the County's pleas of inability to pay are not supported by the evidence.

In contrast, the County argues that the Guild's wage proposals are not justified by an examination of the comparators and are unrealistic in the context of the County's finances.<sup>21</sup> In particular, the Guild's proposed wage increase would put the Guild above average in compensation among the comparators. In addition, the Guild's proposals fail to account for the lower cost of living in Clark County and exceed the projected cost of living. Moreover, the Guild's proposals would create substantial budgetary demands that would negatively impact a wide range of County services and all its employees.

As demonstrated below, many of the differences between the Parties are partially attributable to their respective manners of measuring wages and income.

Asserting that an hourly wages comparison reveals that the Guild's hourly wage is 18.2% below the average of its comparators, the Guild urges that only a significant increase can begin to alleviate the substantial disparity.<sup>22</sup> By contrast, the County contends that the Guild's computations are faulty as they fail to account for its proposed 2.5% wage increase and fail to consider actual annual salary. Accordingly, based on annual salary and the County's proposed wage increase, the County asserts that the Guild is fifth among the seven (7) counties, with an annual salary approximately \$2,000 below the average.

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<sup>21</sup> The total cost of the County's wage proposals over the life of the CBA were projected at \$1,578,772, whereas the Guild's proposed increases total \$3,187,513.

<sup>22</sup> Although the Guild's comparison included Marion County rather than Lane, I do not find a significant difference for these purposes.

Beyond their dispute over hourly wage versus annual salary, the Parties also sharply differ over what additional compensation if any should be included for purposes of comparison. Thus, the Guild contends that all Oregon comparator counties provide additional compensation for obtaining Certificates through the Department of Police Safety Standards and Training (DPSST). Each Oregon comparator pays for the three levels of certification, that then result in additional compensation. By including the additional certificate pay for the deputies in Oregon, the Guild concludes that the top hourly average rate exceeds Clark County by an additional 1.8%.

By contrast, the County contends that certificate pay, limited to Oregon law enforcement officers, should not factor into my analysis as those financial incentives are based on Oregon State law. As there is no similar provision in the state of Washington, the County argues that I should disregard the effect of certificate pay.

Further, the Parties disagree about the implications of the "PERS pickup" in the Oregon counties.<sup>23</sup> Initially, the Guild argues that the value of this additional benefit to the Oregon comparators is significant and should be considered in the analysis. For its part the County observes that Oregon law permits its counties to agree to pay the employees' portion of the contribution to PERS. By contrast, unlike the practice in Oregon, counties in Washington State are obligated to deduct the employee's share of the contribution from the individual's pay. Accordingly, the County argues that the differences in the respective state laws make a comparison of this issue inapposite.

Another component of compensation that the Guild urges as properly included is deferred compensation provided by Clackamas and Kitsap counties. According to the Guild, including the PERS and deferred compensation amounts would increase the average top hourly rate for deputies among the comparator counties from \$39.48 to \$40.97. The County would not include deferred compensation in the comparison.

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<sup>23</sup> PERS is the abbreviation for Public Employees Retirement Fund.

### Conclusion Regarding Salary

As a threshold matter, I recognize that the Guild remains near the bottom of its comparators in total compensation. I also appreciate that the County faces unprecedented financial challenges and uncertainty as a result of the severe pandemic-induced recession. Consequently, Clark must proceed with unusual caution in order to exercise the level of financial responsibility it owes to all stakeholders.

In balancing the respective interests of the Parties in the context of the statutory criteria, I initially give great weight to the Guild's position below the average total compensation of its comparators, as demonstrated by compensation in many forms. I further appreciate that absent appropriate increases, already scheduled for future years by the comparators, the Guild will fall further behind. On the other hand, I recognize that the Guild's relative position among the comparators has not changed substantially for many years. Further, the low turnover rate and increasingly high numbers of applicants suggest that the Guild's compensation package is considered reasonable by current and prospective Deputies and Sergeants.

In addition, the other two (2) interest arbitration eligible units received an average of 2.625% increases in 2020 and 2021. By contrast, the 1.5% increases to non-bargaining unit personnel reflect a genuine concern about the impact of the looming recession on the County's finances.

Regarding cost-of-living factors, I find no significant change from prior years and thus only marginal impact on my conclusions. I do note, however, that in the most recent three (3) years, the Guild's wage increases have fallen behind the CPI.

Moreover, the "Ability to Pay" consideration (otherwise referred to as fiscal responsibility) presents perhaps the most difficult factor about which to make conclusions with any sense of confidence. Thus, although financial projections are always difficult, the highly unique circumstances of this deep and apparently worsening recession make predictions even more

uncertain than customary. Nevertheless, I find that the County's projections are based on reasonable guidelines and are entitled to substantial deference. Accordingly, I am persuaded that fiscal caution is more critical in this time of high unemployment and ever-increasing health and safety risks than would normally be necessary.

In consideration of the foregoing, I am compelled to conclude that the Guild's proposals exceed what would reasonably be obtained at the bargaining table. Instead, I am persuaded that base wage increases of 2.75% in 2020, 2.50% in 2021 and 2.50% in 2022 will allow the Guild to remain in its customary position relative to its comparators, without placing undo strain upon the County's increasingly fragile and uncertain fiscal circumstances. I further recognize that these increases are in line with those currently scheduled for the County's other two (2) arbitration eligible bargaining units. Finally, in my determination about the appropriate base wage increases I took into consideration the employee's share of the premium for the new Family and Medical Paid Leave, as well as my refinement of the Longevity Program set forth below.

**CONCLUSION:**

**I award the following increases of 2.75%, 2.50% and 2.50% in Article 11 as set forth below.**

**ARTICLE 11**

**RATES OF PAY**

**11.1 Salary Schedule Increases. Wage increases are fully retroactive for current Guild members and former Guild members who left County employment due to retirement or resignation and to former Guild members who are currently County employees.**

**11.1.1 Effective and retroactive to January 1, 2020, the salary schedule shall be adjusted by two and three-quarters percent (2.75%).**

**11.1.2 Effective January 1, 2021, the salary schedule shall be adjusted by two and one-half percent (2.50%).**

**11.1.3 Effective January 1, 2022, the salary schedule shall be adjusted by two and one-half percent (2.50%).**

**Issue # 3      Article 11.6.1 Longevity Program**

Longevity increases constitute a longstanding strategy recognizing the value of experienced and loyal employees. Only Clark County among the comparator counties fails to provide some form of longevity incentive at 20 years.<sup>24</sup> Hence the Guild urges that Article 11.6 be amended to include longevity pay of 5% at 20 years.

The County opposes the inclusion of an additional longevity step. Initially, the County notes a lack of consistency among the comparator counties regarding the nature and value of each longevity step. It also contends that amount sought by the Guild far exceeds the longevity steps for Clark County's Corrections Deputy Guild or Sheriff's Administrative Association employees. Moreover, the longevity step sought by the Guild would increase the County's cost over the term of the CBA by nearly \$500,000.

As a threshold matter, I appreciate the important value of recognizing and rewarding the contributions of senior employees. Additionally, I recognize that the statutory factor of consistency with the comparator counties strongly favors inclusion of a twenty (20) year longevity incentive. Further, two (2) Clark County bargaining units currently receive longevity pay at twenty (20) years. Moreover, Clark County provides no other dedicated benefit to the Guild's Deputies and Sergeants at 20 years. Consequently, I am persuaded that there is a strong argument supporting a longevity incentive at 20 years.

Nevertheless, I also appreciate that the County faces a highly challenging and deeply uncertain financial future in 2021-2022. Further the Guild bears a heavy burden in seeking to add a new benefit. However, in balancing the competing considerations advanced by the Parties, I find the stark difference between the comparators and Clark County most compelling. I thus find that the Guild has met its burden of demonstrating the appropriateness of adding a 20-year incentive.

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<sup>24</sup> Although some comparators provide additional longevity compensation at 25 and 30 years, the Guild is not seeking compensation at those levels.

On the other hand, as the amounts offered in the comparator counties as well as internal bargaining units vary widely, and in appreciation of the County's unpromising financial prospects, I find that 2% constitutes a reasonable percentage increase for the new step in Article 11.6. 1. In my judgment this amendment will provide the Guild's senior employees with recognition consistent with the comparator counties and arbitration eligible internal groups without placing an undue burden on the limited resources of the County.

CONCLUSION:

**I award a Step 20-year incentive pay of 2% and corresponding steps in Article 11.6.1. as set forth below.**

### **11.6 Longevity Program**

#### **11.6.1**

**A. Four Steps for Deputy (step 7, step 8, step 9 and step 10) and Sergeants (step 5, step 6, step 7 and step 8) are steps in Deputy and Sergeant range. Deputy step 7 and Sergeant Step 5 shall be designated for employees with eight (8) years of service. Deputy step 8 and Sergeant step 6 shall be designated for employees with ten (10) years of service. Deputy step 9 and Sergeant step 7 shall be designated for employees with fifteen (15) years of service and be increased by 5% over Deputy step 8 and Sergeant step 6. Deputy step 10 and Sergeant step 8 shall be designated for employees with 20 years of service and be increased by 2% over deputy step 9 and Sergeant step 7. Employees will be placed at their requisite step on the first day of the month following their anniversary date.**

### **Issue # 4 Article 12.1.1 Field Training Officer Premium Rate Increase**

The Guild seeks to increase the premium pay or field training officers (FTOs) by:

- increasing the incentive from 5% to 10%, and
- applying the incentive to FTOs at all times as opposed to the current limitation of only during hours worked as an FTO.

The Guild's proposal relies in particular on the additional stress of performing as an FTO during the pandemic. For example, during their active assignments FTOs are in the passenger seat of a

vehicle being driven by someone lacking prior training in police driving. Recently, the mask requirement during the pandemic hinders communication and provides additional stress.

By contrast, the County argues that nothing warrants the change sought by the Guild. For instance, only Clackamas County among the comparators provides a 10% premium for FTOs. The incentives in the other counties range from a low of 3% in Spokane and Thurston counties to a high of 7% or 9% in Kitsap County. Furthermore, Lane County provides the same incentive as in current Article 12.1.1. Moreover, the current method of limiting premium pay to hours performing FTO responsibilities is logical, as breaks of approximately one month frequently occur between active assignments as FTOs. Finally, service as an FTO has the added benefit of enhancing a deputy's opportunity for promotion.

Regarding this proposal, I am unable to find support among the statutory factors. I also recognize that the total cost to the County would be substantial. In light of the foregoing, I must conclude that the Guild failed to provide convincing evidence and argument that would support any change in Article 12.1.1.

CONCLUSION:

**I do not award the Guild's proposed change in Article 12.1.1.**

#### **ISSUE # 5      ARTICLE 12.2 SPECIAL ASSIGNMENT PAY**

Unique to Clark County, Article 12.2 provides a 1.5% pay lifetime increase to employees assigned to a special assignment, assuming they serve in the special assignment for at least one (1) year. Approximately 75 to 80% of the employees represented by the Guild receive this pay.

in this regard the Guild proposes a significant change in the County's approach to special assignment pay, in part to arguably bring the County closer to the approach of its comparators. For example, Article 12.2 currently provides a 1.5% increase for twenty-two (22) separate assignments ranging from background, case management, and explosive devices to the SWAT

team. However, contrary to the practice of comparator jurisdictions, the County fails to provide greater compensation for work in the most demanding and significant specialties. For example:

- Kitsap deputies in its drug task force receive 3.5% and Washington and Lane Counties' deputies receive 5%.
- K-9 Deputies in the other counties receive 3% to 8%.
- Detectives in the comparator counties all receive higher incentive pay.
- SWAT team deputies receive between 3 to 8%.

Accordingly, in order to more closely mirror the approach of the comparator counties and to recognize the significant contributions of the most critical assignments, the Guild seeks:

- 5% pay for serving in one of five (5) special assignments: drug task force, K-9, Major Crimes, SWAT and Traffic homicide detectives,
- All employees currently receiving 1.5% special assignment pay will continue to receive that throughout their employment, except
- Members currently receiving 1.5% who are selected to a special assignment will have the option of continuing to receive 1.5% throughout their employment or elect to forfeit that future benefit and receive 5% during the special assignment only.

For its part, the County asserts that its current unique practice, that began approximately 20 years ago, was instituted in order to recognize that the skills and knowledge acquired during special assignments would benefit the County. Significantly, this lifetime benefit is not available to the employees of any comparator. The Guild's proposal would not only overturn a longstanding practice but would likely double the County's current cost associated with special assignment pay. The proposal would also erode the longstanding benefit the County received, that allows management unilateral flexibility to remove a deputy from a specialized assignment for operational needs, as removal does not now entail any financial harm.

I recognize that there is merit to much of the reasoning in the Guild's proposal. Thus, I appreciate that there undoubtedly are significant differences in the demands and skills required by the numerous specialties covered by Article 12.2. For example, I find it unlikely that Backgrounds



and Outreach present the same level of stress as would the Drug Task Force or the SWAT team. Additionally, the proposal more closely mirrors the practices of the competitors. In this regard, I am persuaded that the Guild's proposal addresses some valid concerns.

At the same time, I recognize that the proposal represents a dramatic departure from the Parties' practice extending back about 20 years. Significantly, the proposal is complicated by the unique lifetime 1.5% benefit currently enjoyed by every Guild member who has been engaged in a specialty for over one year, a practice that would extend unless a member chose to discontinue. Under such circumstances, budgeting and calculation of the cost of the proposal becomes very challenging and uncertain, in part because much of the cost would be outside the control of the County.

I further appreciate that the County presumably received consideration when it agreed to the 1.5% lifetime benefit. For example, the County apparently obtained the operational flexibility to assign new recruits to an FTO without delay. Considering the foregoing, I am reluctant to agree to the Guild's proposal that would nullify the County's managerial flexibility apparently obtained as part of the initial bargain.

In sum, I am compelled to conclude that budgetary uncertainties and the likely impact upon a longstanding practice outweigh the Guild's arguments. Thus, I am unable to propose a change in the status quo for Article 12.2.

CONCLUSION:

**I do not award the Guild's request for a change in Article 12.2.**

#### **ISSUE # 6      New Article-Career Development**

In 1986 the Sheriff of Clark County established a program that was designed to provide opportunities for Detectives to have equal access to training and development opportunities and to experience personal growth. The current manifestation of that program was most recently

revised on January 1, 2015 as General Order 01.25.120. The Order provides a comprehensive statement concerning counseling, career and skill development training and related matters.

Based on the reality that the program does not apply to Sergeants, the Guild seeks a new article in the CBA that would include sergeants as well as deputies and that would require both classifications to spend one year on patrol between specialized assignments, unless waived by the Sheriff in the event of extenuating circumstances. The Guild supports its position by contending that the new article would promote fair opportunities for Sergeants and improve honest, direct and productive communication. Moreover, the extenuating circumstances exception would allow the Sheriff sufficient flexibility.

To the contrary, the County asserts that the Guild failed to meet its heavy burden of demonstrating compelling reasons to incorporate new language that would limit management rights that are established in Article 5.1.1 of the CBA. For instance, the Guild's proposal would infringe on the Sheriff's flexibility to move sergeants where their skills are most necessary in specialty assignments. Further, the General Order has not been in the CBA; thus, it can be modified unilaterally. By contrast, a CBA article on this subject would dramatically change the department's longstanding autonomy.

Based on the above, I find no evidence of mishandling of the Sheriff's contractual rights to determine the method and means of carrying out the department's operations. I also recognize that the proposal would encroach on longstanding department prerogatives. Accordingly, I am persuaded that the Guild has failed to establish a compelling need for the new article.<sup>25</sup>

CONCLUSION:

**I do not award the Guild's request for a new Article on Career development.**

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<sup>25</sup> See, *City of Bellevue v. IAFF*, PERC No. 6811-I-87 (Gaunt, 1988).

## **ISSUE # 7      Families First Coronavirus Response Act (the Act)**

According to the Guild, the pandemic presents unique challenges for its members, who are often required to act contrary to their self-interests and the health of their families. Hence the Guild seeks a special supplement of five (5) % additional compensation.

As a threshold matter, I appreciate that the COVID-19 pandemic has been and continues to be devastating. Specifically, unlike many County employees who can telecommute in the safety of their homes, the Guild's members remain on the front lines, interacting with all members of the public. Further, their encounters may include close physical contact with uncooperative and hostile individuals. As a result, wearing a mask is not always an option. Another example of a particularly dangerous circumstance involves administering breathalyzer tests to suspected intoxicated drivers. In one specific event, a Deputy was required to Intervene in a domestic violence incident involving many individuals, making social distancing impossible. In sum, the Guild asserts that the foregoing demonstrate that the Deputies should receive tangible recognition in the form of five percent (5%), retroactive to April 1, 2020, for their service that is undertaken at great risk to them and their families.

In contrast, the County explained that the Act as passed by Congress provided the following benefits for many employees, including in the public sector:

- Expansion of FMLA to twelve (12) weeks of paid family and medical leave if the school or place of care of an employee's child is closed due to the pandemic and the employee is unable to telework.
- Ten (10) days emergency paid sick leave for certain coronavirus-related reasons.

In addition, exercising its right to exclude emergency responders from coverage under the Act, the County provided employees, through the end of 2020, the option to take up to three weeks of paid administrative leave for Covid-related illness or isolation.<sup>26</sup> This benefit is independent of any other paid leave or sick leave benefits.

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<sup>26</sup> The Guild's members were one (1) of nine (9) categories of County employees so impacted.

The County further asserts that its emergency calls service screens questions so that Deputies receive advance notice of potential exposure. In addition, the County has informed the Deputies of proper use of personal protective equipment and provided necessary supplies for their safety. Thus, the County argues that the Deputies' work is not significantly more dangerous than prior to the pandemic. For these reasons the County asserts that the Guild failed to demonstrate how their work was so much more hazardous to justify a 5% increase in compensation for an indefinite period.

Additionally, only Thurston County provides hazard pay to its deputies.<sup>27</sup> Other counties have a similar approach to Clark by offering modified leave benefits due to the pandemic. Accordingly, consistency with the comparator counties provides additional support for denying the Guild's request on this issue.

In sum, I am sympathetic to the increased difficulties and additional risks the Deputies (and all first responders and front-line workers) face daily during the pandemic. Nevertheless, I also recognize that the County has taken measures to address these unanticipated and unfortunate circumstances. Further, the Guild is seeking a benefit that no other comparator county currently provides. Nor does the Act itself incorporate or contemplate additional compensation. Finally, determining when any such benefit would commence and end is fraught with difficulty and uncertainty. In light of the forgoing, I am not persuaded that the Guild has demonstrated a compelling need to incorporate additional compensation under the guise of the Act.

**CONCLUSION:**

**I do not award the Guild's request for additional compensation in compliance with the Act.**

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<sup>27</sup>It further appears that Thurston County's 5% premium expired on August 31, 2020, with personal protective equipment and safety issues addressed.

In reaching my conclusions I have considered all the exhibits and testimony, as well as the comprehensive positions advanced by the Parties, even if not specifically discussed in this Opinion.

Respectfully submitted,

A handwritten signature in black ink that reads "Richard L. Ahearn". The signature is written in a cursive style with a large initial 'R' and a long, sweeping underline.

Richard L. Ahearn

Interest Arbitrator

Seattle, WA

December 24, 2020