

IN THE MATTER OF THE INTEREST ) ARBITRATOR'S  
 )  
ARBITRATION BETWEEN ) OPINION  
 )  
COWLITZ COUNTY, WASHINGTON ) AND  
 )  
"THE COUNTY" or "THE EMPLOYER" ) AWARD  
 )  
AND )  
 )  
COWLITZ COUNTY DEPUTIES GUILD )  
 )  
"THE GUILD" OR "THE UNION" )

HEARING: July 12, 2007 and July 13, 2007  
Kelso, Washington

BRIEFS: Employer's received: September 17, 2007  
Union's received: September 17, 2007

HEARING CLOSED: September 17, 2007

ARBITRATOR: Timothy D.W. Williams  
2700 Fourth Ave., Suite 305  
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REPRESENTING THE EMPLOYER:  
Howard Rubin, Attorney  
Jim Zdilar, Personnel Director  
Duane Engler, Undersheriff CC Sheriff's  
Department

REPRESENTING THE UNION:  
Daryl Garrettson, Labor Consultant  
Kelly Lincoln, Deputy - Guild President  
Brad Thurman, Guild 2<sup>nd</sup> Vice President  
Pat Schallert, Deputy - Negotiation Committee  
Dana Bennett, Senior Research Analyst  
Darren C. Ullmann, Deputy - Guild 1<sup>st</sup> Vice  
President, Negotiation Committee  
Dan Sheridan - Deputy Sheriff

APPEARING AS WITNESSES FOR THE EMPLOYER:

Jim Zdilar, Personnel Director  
Mark Nelson, Captain CC Sherif  
Reagan Smith, HR Grants County  
Duane Engler, Undersheriff CC Sheriff's  
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APPEARING AS WITNESSES FOR THE UNION:

Dan Sheridan, Dep. Sheriff - Guild  
Dana Bennett, Senior Research Analyst  
Pat Schallert, Deputy - Negotiation  
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Brad Thurman, Sgt. Cowlitz County  
Darren ullman, Guild 1<sup>st</sup> Vice President  
Graig Shelton, Deputy  
Troy Brightbill, Deputy  
Dave Smith, Sgt. CC Sheriff  
Kelly Lincoln, Deputy

**EXHIBITS**

**Union**

1. Guild Labor Agreement 2003-2005
2. Guild's Proposed Changes 3/23/2007
3. Employer's Proposed Changes 3/23/0007
4. Arbitrator Beck's Decision 4/7/1987
5. [withdrawn]
6. Comparable Jurisdictions in 1987
7. Population Tax Comparison
8. Washington County Map
9. 37.5 to 40 Hour Comparison
10. Market Summary - percentage behind in compensation
11. CPI - W US Cities, June 2007
12. Guild CPI Analysis
13. Newspapers on the Local Economy
14. Guild Total Leave Comparison
15. Fatigue on Police Work

16. NTSB Fatigue - Fatigue and **Alcohol**
17. Physical Fitness Ability Test
18. Pay Comparison for AA Degree
19. Police Association for College Education
20. Projected Market Summary
21. Projected Market Summary County's Comparables
22. Projected Market Summary County's Comparables
23. Duty Weapon Provision - Comparables
24. Written Statement of Pat Schallert
25. 12/13/2006 Hire Three Deputies
26. 7/6/2007 Median Home Sold for \$199, 250
27. Public Defenders Pay Increase 7/11/2007
28. Memo to file by J. Goldberg

#### **Employer**

1. Letter from Marvin L. Schurke, Executive Director, Public Employment Relations Commission, to Jim Zdilar, Cowlitz County and Jaime B. Goldberg, Counsel for the Guild, dated August 1, 2006
2. Letter from Jaime B. Goldberg to Arbitrator Timothy D.W. Williams dated March 23, 2007
3. Letter from Howard Rubin to Arbitrator Timothy D.W. Williams dated March 23, 2007
4. Letter from Jaime B. Goldberg to Arbitrator Timothy D.W. Williams dated March 26, 2007
5. Letter of Understanding between Cowlitz County and Cowlitz County Deputies Guild dated March 8-9, 2007 (concerning County's contribution toward the cost of the monthly premium for medical, dental and life insurance)
6. Cowlitz County Sheriff's Agreement, 1/1/2003-12/31/2005
7. Employee list (with hire date, years of service, education, and position)
8. Map of State of Washington
9. Interest Arbitration Opinion and Award of Michael H. Beck In the Matter of Cowlitz County and Teamsters Local 58, dated April 7, 1987
10. Population of Selected Counties
11. Assessed Valuations of Selected Counties
12. Assessed Valuations Per Capita of Selected Counties
13. CPI - Urban Wage Earners and Clerical Workers - US City Average 9June 2005, June 2006)
14. Benton County Contracts

15. Clallam County Contracts
16. Grays Harbor County Contracts
17. Lewis County Contract
18. Skagit County Contract
19. Cowlitz County Profile, January 2007
20. Grays Harbor County Profile, May 2007
21. Clallam County Profile, December 2001
22. Adams and Grant County Profile, December 2002
23. Island County Profile, April 2000
24. Per Capital Income - 2005
25. Median Household Income - 2005
26. Unemployment Rate - 2006
27. Housing Market Snapshot - Median Price - First Quarter 2007
28. Comparisons Regarding Cowlitz County Proposals
29. Comparisons Regarding Cowlitz County Deputies Guild Proposals
30. Lehleitner Award 2/15/1996
31. Employee Insurance Options - 2006
32. Employee Insurance Options - 2007
33. Employer Contribution/Employee Contribution - 2006
34. Employer Contribution/Employee Contribution - 2007
35. Blue Notebook Deputies Comparables
36. Green Notebook Sgts. Comparables
37. Washington City and City Employee Salary Survey
38. Grievance List 6/3/2003 to 8/6/2006
39. Article on College Degrees and Police Work
40. Assessed Value of Taxable Property
41. Grant County Vacation E-Mail Memo
42. CC Sheriff Department Team Assignment
43. Patrol Calendar - 2007
44. Job Application Data
45. Summary of Separations from Service

## BACKGROUND

The Cowlitz County Deputies Guild represents a bargaining unit made up of 41 employees in the County Sheriff's Department, ranging in rank from deputy through sergeant. The Guild and Cowlitz County were bound by a Collective Bargaining Agreement which expired on January 31, 2005. Presently, the Parties have come to an impasse in negotiations over the language of the successor agreement. RCW 41.56.450 provides that uniform personnel interest arbitration is to be used to resolve an impasse. The issues to be submitted to the arbitrator for determination "shall be limited to the issues certified by the executive director". By letter dated August 1, 2007 Executive Director of the Public Employment Relations Commission (PERC), Marvin Schurke, certified the following issues at impasse and thus subject to interest arbitration:

Article 4, Sections 4.1, 4.2, 4.7, 4.9, and 4.10  
Article 5, Sections 5.2  
Article 6, Sections 6.4, 6.6, 6.7  
Article 8, Sections 8.8  
Article 11, Sections 11.3, 11.4, 11.7  
Article 14, Sections 14.1, 14.2  
Article 15, Sections 15.1, 15.2, 15.3, 15.5, 15.6  
Article 16  
Article 18, Sections 18.2, 18.3, 18.4, 18.5, 18.6  
Appendix A: Salary Schedule  
Appendix B: Uniform and Equipment List  
New Article: Payroll Dates

In accordance with WAC 391-55-205, each Party had the right to name one partisan Arbitrator to serve as a member of the arbitration panel. Part one (1) of the cited code provides that "The use of partisan arbitrators shall be deemed waived if

neither Party has notified the executive director of its appointee within fourteen days following the issuance of a certification of issues for interest arbitration, and the Parties' principal representatives shall then select the neutral chairperson". Both Parties waived the use of partisan arbitrators and Arbitrator Timothy Williams was selected as the neutral chairperson. For the purposes of this document, the terms "neutral chairperson" and "interest arbitrator" or "arbitrator" shall be interchangeable. The hearing was set beginning on February 27, 2007 and was subsequently rescheduled beginning April 9, 2007.

WAC 391-55-220 provides that parties to an interest arbitration must provide the Arbitrator and each other with written proposals on all issues within fourteen (14) days of the hearing. Both Parties timely submitted their proposals on March 23, 2007.

The Arbitrator received two emendations to the Guild's proposal following the initial submission. By letter dated March 26, 2007, representative for the Guild, Jaime Goldberg, notified the Arbitrator that the Guild did not intend to seek the longevity component in Article 18.6, as had previously been indicated. By letter dated April 3, 2007, Mr. Goldberg further notified the Arbitrator that the Guild has decided to withdraw its proposal to increase the uniform and equipment allowance in Article 11.4.

Ultimately, the hearing was again rescheduled and it took place in Kelso, Washington on July 12 and July 13, 2007. The proceedings began with a pre-hearing conference, in accordance with WAC 391.55.225 (1) which provides that "The neutral chairperson may, upon his or her own motion or upon request of a party, convene a prehearing conference or conferences." At the pre-hearing conference, the Parties notified the Arbitrator that they were able to resolve the following issues:

Article 5, Section 5.2  
Article 11, Section 11.3, 11.4, 11.7  
Article 15, Section 15.1, 15.2, 15.3, 15.5, 15.6  
Article 16

The issues remaining before the Arbitrator at the commencement of the hearing proper were the following:

Article 4, Sections 4.1, 4.2, 4.7, 4.9, and 4.10  
Article 6, Sections 6.4, 6.6, 6.7  
Article 8, Sections 8.8  
Article 14, Sections 14.1, 14.2  
Article 18, Sections 18.2, 18.3, 18.4, 18.5, 18.6  
Appendix A: Salary Schedule  
Appendix B: Uniform and Equipment List  
New Article: Payroll Dates

While Article 4.10 was listed as an issue in dispute, neither Party presented a specific proposal, neither did either Party make an argument on this issue. Therefore, the Arbitrator determines that there is no remaining dispute over 4.10. Similarly, The Union's set of proposals (Union Exhibit #2) contains the existing language on Article 6.6, the Employer's proposals make no mention of this Article and neither Party presents argument with regard to this issue. Therefore, the

Arbitrator determines that there is no remaining dispute over 6.6.

At the hearing, both Parties had full opportunity to make opening statements, examine and cross-examine sworn witnesses, present documentary evidence, and make arguments in support of their positions.

RCW 41.56.450 provides that "a recording of the proceedings shall be taken." In compliance with the statute, an official transcript of the proceedings was taken, and a copy was provided to the Arbitrator. At the close of the hearing, the Parties were given the opportunity to file written briefs. The Parties accepted, and the due date of August 31, 2007 was set for their submission. By letter dated August 29, 2007, the Arbitrator granted the Employer's request to postpone the filing of post-hearing briefs until September 14, 2007. Both Parties timely submitted the documents and they were received by the Arbitrator on September 17, 2007. In accordance with WAC 391-55-240, the Arbitrator declared the hearing closed on September 17, 2007.

The Arbitrator's opinion and awards are submitted on an issue-by-issue basis. For each issue I will begin by presenting the Parties' respective positions, outline the Parties' arguments in support of their positions, provide the analysis for the Arbitrator's opinion and conclude with the award. In that the issue of wage has serious impact on the consideration of all other proposed language, I consider it to be the central issue of



the present negotiations. Accordingly, the opinion and award will begin with Appendix A (Wages) and proceed to address all other contract language in the order that it is presented in the Labor Agreement. The Arbitrator's interest award is based on a careful analysis of the evidence and argument presented during the hearing, as well as the arguments found in the written briefs, and with full consideration of the following factors, found in 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, it shall take into consideration the following factors:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c) (i) For employees listed in RCW [41.56.030](#)(7)(a) through (d), 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;

(ii) For employees listed in RCW [41.56.030](#)(7)(e) through (h), 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 public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered;

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

(e) Changes in any of the circumstances under (a) through (d) of this subsection during the pendency of the proceedings; and

(f) Such other factors, not confined to the factors under (a) through (e) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. For those employees listed in RCW [41.56.030](#)(7)(a) who are employed by the governing body of a city or town with a population of less than fifteen thousand, or a county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living

(2) Subsection (1)(c) of this section may not be construed to authorize the panel to require the employer to pay, directly or indirectly, the increased employee contributions resulting from chapter 502, Laws of 1993 or chapter 517, Laws of 1993 as required under chapter [41.26](#) RCW.

## **POSITIONS, ARGUMENTS, OPINION AND AWARD**

### **ISSUE I: APPENDIX A - WAGES**

Current Language: Effective January 1, 2003, all salaries listed in Appendix A have been increased by 80% of the percentage increase in the CPI-W, U.S. City Average measured from June 2001 to June 2002.

Effective January 1, 2004, all classifications listed in Appendix A will be increased by 80% of the percentage increase in the CPI-W, U.S. City Average measured from June 2002 to June 2003.

Effective January 1, 2005, all classifications listed in Appendix A will be increased by 80% of the percentage increase in the CPI-W, U.S. City Average measured from June 2003 to June 2004.

Guild's Proposal: Effective January 1, 2006, all salaries listed in Appendix A have been increased by six percent (6%).

Effective January 1, 2007, all classifications listed in Appendix A will be increased by six percent (6%).

Effective January 1, 2008, all classifications listed in Appendix A will be increased by the percentage increase in the CPI-W, U.S. City Average measured from June 2006 to June 2007 minimum 3%, maximum 6%.

County's Proposal: Effective January 1, 2006, all salaries listed in Appendix A will receive a 2.1% increase above the 2005 level.

Effective January 1, 2007, all classifications listed in Appendix A will receive a 2.1% increase above the 2007 level.

Effective January 1, 2008, all classifications listed in Appendix A will be increased by 80% of the percentage increase in the CPI-W, U.S. City Average measured from June 2006 to June 2007.

Guild's Position: The issue of determining equitable wages may be seen as a composite of two questions and the Parties address each of these separately in their briefs. The first is the question of which counties provide the most accurate comparables. The second question concerns the methodology utilized to compute wages in those counties deemed comparable.

The Guild proposes the following counties as comparables for Cowlitz: Benton, Grant, Island, Lewis and Skagit. The legislature sets forth that population and the type of employer are the only two factors which must be used in the selection of comparables. It is undisputed that a large disparity in population will result in a large disparity of base wage calculations. The Guild has chosen the five Washington counties which are closest in population to that of Cowlitz County. The two counties which are larger than Cowlitz, Benton and Skagit, are mutually agreed upon by the Parties. The issue in dispute is which smaller counties to use. The Union defends its choice of Island, Lewis and Skagit on the grounds that these are the closest in population to Cowlitz County. In support of this choice, the Union cites the arbitration decision of Michael Beck (1987). The rationale of Arbitrator Beck in selecting comparators was solely based on considerations of population. In the two decades since that decision, the population distribution of the area has changed such that the counties proposed by the Union are

the closest in population to Cowlitz and therefore the most appropriate. Additionally, all five of the Guild's recommendations are within an acceptable range of assessed valuation and of total taxes due, and therefore provide a balanced estimation of the local labor market.

The Union criticizes the County's argument that the specific jurisdictions chosen by Arbitrator Beck in 1987 should continue to be used today. Those comparables which have been historically used are now outdated and it would be a mistake to regard their selection as set in stone. As population changes, the rationale used by Arbitrator Beck recommends a different set of comparables. The Union also criticizes the County's reliance on Arbitrator Lehleitner's decision (1996), stating that "the question of what comparators would be appropriate was not part of Arbitrator Lehleitner decision" (p. 9, Union's brief).

Additionally, the Union anticipates that the County will make a case against the use of Island County by noting that its high assessed value makes it a poor comparator to Cowlitz. According to the Union, total taxes due are a better measure of a local jurisdiction's ability to pay increased wages. Because Island County has significantly lower total taxes due, it is not an unreasonable comparator, especially when one takes into account that its assessed value is still lower than that of the agreed-upon comparators, Benton and Skagit.

Lastly, the Union takes issue with the County's use of a blended set of comparables, which it believes should be disregarded entirely. Because this set is comprised of only two larger jurisdictions and five smaller ones, the resulting average is heavily distorted towards the smaller jurisdictions and, consequently, lower base wages.

The Union believes that its proposed comparators, selected on the basis of population, give the Arbitrator an accurate picture of the labor market within which the Guild member finds himself situated. On the contrary, the County's comparators have been chosen with an eye towards the smallest counties, "to justify their economic position. The County comparators have no basis in economic reality" (p. 10, U's brief).

Once the Arbitrator has settled the question of which counties are appropriate for comparison for the purpose of determining an equitable wage increase, the question remains of which Party carried out the more accurate comparison - that is the question of methodology. The primary methodological dispute in this case centers on the incorporation of insurance costs into the analysis of base wages. After presenting its case for figuring insurance

costs into the analysis, the Union proceeds to criticize the County's methods on three unrelated points. These are: how paid leave is accounted for, what benchmarks are appropriate, and whether comparison should be of hourly or of monthly wages. The Guild's arguments on these topics may be summarized as follows.

First, the Union takes issue with the County's method of excluding the costs of health insurance when analyzing the wage data of comparable jurisdiction. The Union holds that the analysis required by the RCW must of necessity take into account total compensation, which includes health insurance. The County's position that insurance is difficult to calculate should not prevent the Arbitrator from recognizing the weight of its importance, especially considering the rapid inflation of healthcare costs and insurance. The great weight of arbitral authority prefers total compensation to any form of piecemeal analysis. The County's reason for seeking to exclude insurance from the analysis is that Cowlitz pays substantially less than the comparator jurisdictions for it, while its employees pay substantially more. At the same time, the County seeks to justify its offer of only 80% of the CPI by citing rising insurance costs. It is simply unreasonable to use health insurance as a component in the determination of salary to be paid, but to exclude it from the analysis when comparing salaries across jurisdictions.

Second, the Union argues that there are a number of problems with the way in which the County accounts for paid leave. The first of these is a discrepancy between the County's selection of pay (the first full month of the start of the sixth, eleventh, and twentieth complete year of service, same as the Union) and the County's selection of vacation hours (at the start of the fifth, the tenth, and the twentieth year). This error causes the numbers generated by the County for the market average to be artificially low. Another problem with the way in which the County accounts for paid leave arises in their application of a net hourly system. In order to arrive at an hourly wage, the County subtracts vacation and holiday time from total hours worked and divides the remaining hours into the monthly wage. That position is invalid because not all of that leave is taken and both Cowlitz and its comparator counties have some form of buy-back for time not taken. Because employees can sell their unused paid time off, vacation and holiday benefits are clearly cash benefits and have a very real cash value. "The better methodology is to calculate the vacation and a total value for holiday time and add that to the net wage. This provides a more accurate picture not only of the cost of compensation to the employer, but also the value of the compensation received by the employee" (p. 15, U's brief).

Third, the Union takes issue with the County's reliance on the eleven year benchmark in presenting its case. The Union argues that no demographic benchmark, especially not one based on averages, makes any sense when we lack the demographic information of comparator jurisdictions. An apples-to-apples comparison is only possible with standardized benchmarks, used consistently throughout the industry. The use of the eleven year benchmark is simply convenient for the County, as it highlights its highest compensation position.

Lastly, the Union advocates a month to month comparison, over the hourly comparison generated by the County. The monthly wage is more appropriate because employees are paid by the month, in Cowlitz as well as comparator counties, and not by the hour. An hourly comparison is unreliable, as the number of hours worked in any given month varies tremendously due to the structure of the schedule. In order to account for the fact that Cowlitz employees do work fewer hours per month, the Union has created an adjusted forty hour schedule base wage.

Before proceeding to summarize its analysis, the Guild makes a correction to its data regarding paid leave for Grant County. Readjusting the numbers reduces the aggregate deficiency for all four benchmarks of Cowlitz Deputies to 8.5% behind for 2006 rather than 9.4% behind.

The Guild concludes that the appropriate comparable jurisdictions, when analyzed using the appropriate methodology, establish that the Deputies of Cowlitz County were substantially behind the market for all four benchmarks as of January 1, 2006. The disparity is between 6.3% (at five years) to 9.3% (at fifteen years), the average being 8.5%. The Guild's request for a 6% wage increase is entirely reasonable, given these numbers. For 2007, the Guild applied a cost of living escalator, revealing that Cowlitz Deputies would be on average 12.4% behind. The County failed to make any adjustment for 2007, thereby skewing their data downward. The use of a CPI escalator is the approach preferred by arbitrators, because making no adjustment amounts to accepting the very unlikely assumptions that comparator employers would not increase their wages at all for 2007. For 2008, the Guild argues for 100% of the US All Cities CPI with a 3% minimum and a 6% maximum. The justification for this is that a salary increase equal to the CPI merely maintains an employee's current purchasing power. A reduction in the wage increase results in a real loss of purchasing power for the employee, especially in Cowlitz County where housing costs are rising much more quickly than the national average reflected by the CPI. The County's justification for 80% of the CPI is that they would be potentially facing rising health insurance costs. This change is speculative and, if it does occur, would not result in the

employee saving any money. "There are simply no justification for reducing an increase below the cost of living" (U's brief, pg. 20.)

County's Position: The Employer proposes the following counties as comparables for Cowlitz: Benton, Clallam, Grays Harbor, Lewis and Skagit. The primary justification behind this choice is that it is a matter of past practice. Since the Beck decision in 1987, the County has used these comparables to negotiate wages with all of its bargaining and non-represented employees. In 1996, Arbitrator Lehleitner reaffirmed the use of these comparables, rejecting the Union's proposal to alter the set. All of these comparators fall within the acceptable range of population and assessed value, as well as assessed valuation per capita. The Guild has shown no need to change them, as it should have attempted to do in good faith negotiations. Plus, unlike the County, which has been consistent in its choice of comparators, the Union has twice changed its proposed comparators during negotiations.

Aside from the question of comparables, the County puts forth arguments in defense of its wage calculations on the basis of methodology. As noted above, the question of whether health insurance is to be figured into wage calculations is the major point of dispute here. The County argues against the inclusion of insurance in the comparison. The County also believes that a close look at the Guild's insurance numbers render their entire set of calculations inaccurate.

The Employer devotes a considerable portion of its arguments to the issue of health insurance costs and contributions. The County begins by outlining the Parties' Letter of Understanding of March 2007 regarding contributions to health and life insurance and the numerous insurance plan options available to employees. Although there are plans that require monthly employee contributions, the County focuses on the observation that "[t]he average actual contribution per bargaining unit employee is extremely low... the County paid over 98% of the bargaining unit's total health, dental, and life insurance costs in 2006, and over 95% of those costs in 2007" (E's brief, pg.4-5).

The Employer also takes issue with the Union's computations of employee insurance contributions, specifically with the Guild's "take away" item of \$407.97 per person per month. This hypothetical number renders the Union's analysis entirely inaccurate, argues the County, because guild members actually pay much less for their insurance than the projection indicates. Such a "take away" is not a standard item on wage proposals and, generally, health insurance contributions are not included in

salary proposals between the County and its represented employees. "The Guild's use of an inflated, non-representative value for individual insurance contributions skews every one of the Guild's salary computations and calls their overall value into question" (p. 11). Another source of inaccuracy in the Guild's numbers is the fact that Cowlitz County uses a combined, rather than a tiered, system to compute insurance costs, and this is not the practice in the comparator counties.

The Arbitrator should disregard the Union's computations of comparable salaries because these figures include employee contribution amounts which are greatly at odds with reality. "The Guild did not submit any evidence that its numbers for employee and employer insurance contributions in the comparator counties is actually an apples-to-apples comparison "(E's brief, pg. 12). Instead, the Arbitrator should accept the County's computations of comparable salaries, which exclude health insurance from wage calculations.

The County argues that in order for the present analysis of comparable wages to be accurate, health insurance must be excluded from the calculation. This is because the Parties have already settled the matter of health insurance payments in a manner which provides for substantial increases in the County's insurance benefits contribution. Additionally, health insurance costs and benefits are notoriously difficult to calculate and the numbers provided by the Guild are based on woefully insufficient data. Many arbitrators, including Arbitrator Beck in his 1987 decision, decline to factor health insurance into wage comparison precisely due to the difficulty of establishing a valid comparison on the grounds of health insurance design, costs, and coverage. In the present case, the Union hasn't even attempted an apples-to-apples comparison, instead positing an impossible "take away" number in order to artificially lower the Cowlitz Deputies' wage calculations. "[T]he Guild's unrealistic inflation of the deputies' health insurance contributions make its calculations unreliable if not meaningless" (E's brief, pg. 29).

Additionally, the Employer takes issue with the Guild's wage comparison charts and computations due to an erroneous vacation figure for Grant County. The Guild posits 231.96 hours per year for Grant County Deputies, but their yearly maximum is actually 176 hours, undercutting the validity of all of the Guild's calculations.

The Employer concludes that "[t]he County's wage proposal should be adopted because it is reasonable, fair, well supported, and puts the County at or above the average compensation for the comparators (including the two new comparator counties proposed



by the Guild)" (E's brief, pg. 25) while "[t]he Guild's proposal not only far exceeds all the averages, it also exceeds the hourly compensation for each an everyone of the seven proposed comparator counties" (E's brief, pg. 10). With few exceptions, all permutations of years of service and education level, the County's offer is above average. The offer of 80% rather than 100% of the CPI is both fair and reasonable as it results in above-average wages while, at the same time, accounting for the significant contributions the County makes to employee's health insurance costs. The factor of 80% is consistent with the negotiated 2003-2005 labor contract. Additionally, arbitrators have previously held that less than the full CPI increase is reasonable where employer contributions protect the employee from fluctuations in the CPI, as is the present case with rising healthcare costs.

Analysis and Award:

**ISSUE II: ARTICLE 4 - HOURS OF WORK AND OVERTIME**

**Article 4.1**

Current Language: Hours of work - Patrol - Patrol employees shall work ten (10) hour shifts. The work shifts shall be 6:00 a.m. to 4:00 p.m. for day shift patrol. The work shifts for night shift patrol shall be 5:00 p.m. to 3:00 a.m. or 8:00 p.m. to 6:00 a.m. Sergeants shall work either 7:00 a.m. to 5:00 p.m. for day shift or 4:30 p.m. to 2:30 a.m. for night shift. The workweek is defined as Sunday through Saturday. Patrol shall work;

four (4) days on then three (3) days off;  
four (4) days on then three (3) days off;  
four (4) days on then four (4) days off;  
six (6) days on then four (4) days off;  
four (4) days on then three (3) days off;  
four (4) days on then three (3) days off;  
Four (4) days on then six (6) days off

After two (2) complete cycles, a day shift to night shift & night shift to dayshift rotation will occur at the end of the six days off.

County's Proposal: Hours of Work - Patrol - Patrol employees shall work ten (10) hour shifts. The work shifts may be 6:00 a.m. to 4:00 p.m., 8:00 a.m. to 6:00 p.m., 10:00 a.m. to 8:00 p.m.

for day shift patrol. The work shifts for night shift patrol may be 5 p.m. to 3:00 a.m. or 8:00 p.m. to 6:00 a.m. sergeants may work either 7:00 a.m. to 5:00 p.m. for day shift or 4:30 p.m. to 2:30 a.m. for night shift. The workweek is defined as Sunday through Saturday. Patrol may work:

four (4) days on then three (3) days off  
four (4) days on then three (3) days off  
four (4) days on then four (4) days off  
six (6) days on then four (4) days off  
four (4) days on then three (3) days off  
four (4) days on then three (3) days off  
four(4) days on then six (6) days off

The 2001 calendar is attached to this Agreement as Appendix C

After two (2) complete cycles, a day shift to night shift & night shift to dayshift rotation, will occur at the end of the six days off.

Guild's Proposal: No change.

County's Position: The County proposes language which would give the Sheriff additional flexibility in making schedule changes. Capitan Nelson's undisputed testimony is that the present situation is problematic. Existing restrictions on schedule changes create staffing shortages at peak times and at special projects. Unnecessary overtime is created when the County calls people in early or holds them late to deal with emergency staffing needs. Sergeants on the front lines are made to handle the additional burden of calling in employees. The County's proposal alleviates all of these problems.

Guild's Position: Adopting the County's language would have a severe impact on the lives of the employees through complete destabilization to their schedules. By changing the word "shall" to "may", the Sheriff could create shifts with irregular start times, require split shifts, or alter the work week, which is currently defined in Article 4.1. "It would basically eliminate any scheduling protection whatsoever. As such, the County bears the burden of proof" (U's brief, pg. 26). The Guild believes that the County fails to meet its burden due to lack of compelling evidence. The County has not shown that calls have gone unanswered or that moving Deputies would solve any serious problems. At the same time, moving one employee to cover a hole in the schedule creates a hole elsewhere. The County failed to

show that the significant change to the employees' conditions of employment would have a positive result on law enforcement. As such, the change is not warranted.

#### **Article 4.2**

Current Language: Except by mutual consent, employees assigned to non patrol positions shall work 7:00 a.m. to 5:00 p.m. Monday through Thursday or Tuesday through Friday. Provided mountain patrol will work Thursday through Sunday except by mutual agreement. The task force deputy will work Monday through Friday 2:00 p.m. through 10:00 p.m. except by mutual consent. In order to equalize hours of work with patrol an average calculation of the annual hours of work will occur. This number of hours will be calculated by averaging the number of hours of scheduled for patrol teams AC and BD, then adjusting the hours of non patrol personnel to match that average. Non patrol personnel by January 1<sup>st</sup> will submit a schedule of desired days off to their sergeant for approval. Once approved the schedules will be submitted to the Sheriff's administration. Such days off must be used within the quarter scheduled (January - March, April -June, July-September, October-December). The adjusted days off may be used at anytime within the quarter earned. However, if an assignment change occurs any extra days used and not yet earned will be deducted from the employee's vacation account, compensatory account, or result in loss of pay if no time off balances are present. These extra days off may be mobbed within the calendar quarter by mutual consent. Such movement shall not create any overtime nor cause the employee any loss of pay or benefit. If unused days off exist during the last two weeks of the quarter, the employee must use them or lose them. Such loss will not generate compensatory time or overtime. An extension of extra days into the next quarter may be granted with administrative approval. The DARE deputy shall be allowed to place his/her extra days off at mutually agreed dates throughout the entire year.

County's Proposal: Except by mutual consent, of the employee and administration, employees assigned to non patrol or special patrol assignment (e.g: E Team) may work 7:00 a.m. to 5:00 p.m. Monday through Thursday or Tuesday through Friday. The task force deputy will work Monday through Friday 2:00 p.m. through 10:00 p.m. except by mutual consent. In order to equalize hours of work with patrol an average calculation of the annual hours of work will occur. This number of hours will be calculated by averaging the number of hours of scheduled for patrol teams AC and BD, then adjusting the hours of non patrol personnel to match that average. Non patrol personnel by January 1<sup>st</sup> will submit a schedule of desired days off to their sergeant for approval. Once approved the schedules will be submitted to the Sheriff's administration. Such days off must be used within the quarter scheduled (January - March, April -June, July-September, October-December). The adjusted days off may be used at anytime within the quarter earned. However, if an assignment change occurs any extra days used and not yet earned will be deducted from the employee's vacation account, compensatory account, or result in loss of pay if no time off balances are present. These extra days off may be moved within the calendar quarter by mutual consent. Such movement shall not create any overtime nor cause the employee any loss of pay or benefit. If unused days off exist during the last two weeks of the quarter, the employee must use them or lose them. Such loss will not generate compensatory time or overtime. An extension of extra days into the next quarter may be granted with administrative approval. The DARE deputy shall be allowed to place his/her extra days off at mutually agreed dates throughout the entire year. The Sheriff shall establish work schedules and hours of work for deputies, who are paid fully or in part, through an agreement with any government agency, governmental department, or private entity in order to fulfill contractual obligations.

Guild's Proposal: No Change

County's Position: See County's Position for Article 4.1.

Guild's Position: The County's proposed changed from "shall" to "may" is a drastic change in the present practice which is not justified by the evidence presented. What has been shown is that whenever the need arose to adjust an employee's schedule for a specific purpose, that individual has been agreeable. Likewise, whenever the County has reached agreements for privately or governmentally funded positions, the Guild has been agreeable to entering into the appropriate MOU for scheduling. "In fact it appears that all of the Counties Article 4 provisions are intended to punish the Guild for going to Arbitration over wages. That is the County has presented no evidence of an operational necessity for such a radical change in the accepted practice" (p. 29, U's brief).

#### **Article 4.7**

Current Language: Training Days. Every effort will be made to schedule training at least (14) fourteen or more days in advance of occurring. Training which is posted (14) fourteen or more days before it occurs shall be considered the employee's assigned shift for that day. If such scheduled training is cancelled within (14) fourteen days of occurring and no other training is substituted, the employee has the option, with approval of affected supervisors, of either working the scheduled training hours for that day (usually 077-1700) or move back to their regular shift hours.

County's Proposal: Notification of training shall be made at least by the end of the employees regularly scheduled workweek, prior to training. Training in which posting or other notification was made by the end of the employees regularly scheduled work week shall be considered the employee's assigned shift for that day. The Sheriff shall determine the days and hours of such training. If the scheduled training is cancelled after the end of the employees last regularly scheduled workweek, and no other training is substituted, the employee shall work their regular shift hours.

Guild's Proposal: No Change.

County's Position: **couldn't find it in the brief**

Guild's Position: The schedule set forth in Article 4.1 provides for overlap days, Thursdays, which are typically used for training. The County's proposed language would eliminate the option for employees to stay on their scheduled shift when occasionally training does not take place. The County's concern, that everyone would elect to stay, is baseless. Once again, the County is proposing a change without any evidence to support the need to change the status quo.

#### **Article 4.9**

Current Language: None

Guild's Proposal: Green-time. Employees shall be allowed a rest period of eight (8) hours from the time they are released from any type of work related assignment to the start of their shift without loss of any paid time.

County's Proposal: No change

Guild's Position: The purpose for providing Deputies with eight hours of free time between work activities is clear: to provide adequate rest. The dangers and demands of law enforcement are made more strenuous by sleep deprivation and on-the-job exhaustion. Common sense as well as scientific studies tell us that our, as well as our deputies', judgment is significantly impaired by lack of rest. At the present time the only option available to a Deputy who is too tired to work is to use vacation time or sick leave. The County does not believe that mere fatigue warrants the use of sick leave. The question then becomes should a Deputy Sheriff have to burn their vacation or compensatory time in order to insure that they get adequate rest, when the reason that they are tired, is that they were performing work for the employer" (U's brief, pg. 25).

County's Position: The novel "green time" proposal would mean that the County would pay employees for time that they do not work. The justification for this proposal is that it would increase safety and performance. However, the Guild has presented no evidence to the effect that fatigue is a salient problem for Cowlitz County Deputies recently. None of the comparator counties have such a provision. "The Guild has not

met its burden of persuading the Arbitrator that there is an actual problem to be remedied, or that a novel green time allowance would be a reasonable and appropriate remedy" (p. 34 E's brief).

### ISSUE III: ARTICLE 6 - VACATIONS

#### Article 6.4

Current Language: Vacation leave shall accumulate to a total of two hundred forty-eight (248) hours, after which time, if no leave is taken, no additional leave shall be credited. That is, an employee at no time shall have more than two hundred forty-eight (248) hours of accumulated vacation leave due, unless extended by the Employer.

Guild's Proposal: Vacation leave shall accumulate to a total of three hundred (300) hours, after which time, if no leave is taken, no additional leave shall be credited. That is, an employee at no time shall have more than three hundred (300) hours of accumulated vacation leave due, unless extended by the Employer.

County's Proposal: No change.

Guild's Position: "The Guilds proposal for increase in the vacation accumulation is supported by an analysis of the comparable jurisdictions. As Exhibit G-14 obtained reflects, Cowlitz County is 57.2% behind the comparable jurisdictions in vacation and holiday hours" (U's brief, pg. 30).

County's Position: The Guild proposed on average a 19.7% increase in vacation hours per month without any economic or performance rationale for support. The County does not propose any change to the vacation schedule because it is already meeting its goal of being "in the middle of the pack" with regard to comparator counties. "The Guild has not shown that its members' vacation is inadequate or below average for any of the comparators, whether proposed by the Guild or by the County. Taking into account the actual scheduled hours of work per month, monthly vacation hours, and monthly holiday hours, the

benchmark County deputy [works less]" (E's brief, pg. 34).

**6.7**

Current Language: The provisions of this Article are not applicable to persons regularly working less than twenty-one (21) hours per week, or to persons in temporary, intermittent, or occasional employment status.

**BONUS LEAVE**

Section 1

Bonus vacation days shall be granted to the employees and credited to their account on the anniversary date of employment and in accordance with the vacation schedule shown below.

VACATION SCHEDULE

| Number of Years of Employment Completed | Vacation Hrs Earned | Bonus Hours | Total Hours of Vacation Earned Per Year |
|---|---------------------|-------------|---|
| 1                                       | 96                  | 8           | 104                                     |
| 2                                       | 96                  | 16          | 112                                     |
| 3                                       | 96                  | 32          | 128                                     |
| 4                                       | 96                  | 32          | 128                                     |
| 5                                       | 96                  | 40          | 136                                     |
| 6                                       | 96                  | 40          | 136                                     |
| 7                                       | 96                  | 40          | 136                                     |
| 8                                       | 96                  | 40          | 136                                     |
| 9                                       | 96                  | 40          | 136                                     |
| 10                                      | 96                  | 48          | 144                                     |
| 11                                      | 96                  | 56          | 152                                     |
| 12                                      | 96                  | 64          | 160                                     |
| 13                                      | 96                  | 64          | 160                                     |
| 14                                      | 96                  | 72          | 168                                     |
| 15                                      | 96                  | 72          | 168                                     |
| 16                                      | 96                  | 80          | 176                                     |
| 17                                      | 96                  | 80          | 176                                     |
| 18 & over                               | 96                  | 88          | 184                                     |
|   |                     |             |   |

It is understood that a vacation day is eight (8) hours pay or leave, whichever is applicable. In one year the minimum accrual is 104 hours per year, maximum accrual is 184 hours.



Guild's Proposal: The provisions of this Article are not applicable to persons regularly working less than twenty-one (21) hours per week, or to persons in temporary, intermittent, or occasional employment status.

**BONUS LEAVE**

Section 1

Bonus vacation days shall be granted to the employees and credited to their account on the anniversary date of employment and in accordance with the vacation schedule shown below.

VACATION SCHEDULE

| Number of Years of Employment Completed | Vacation Hrs Earned | Bonus Hours | Total Hours of Vacation Earned Per Year |
|---|---------------------|-------------|---|
| 1                                       | 126                 | 8           | 134                                     |
| 2                                       | 126                 | 16          | 142                                     |
| 3                                       | 126                 | 32          | 158                                     |
| 4                                       | 126                 | 32          | 166                                     |
| 5                                       | 126                 | 40          | 166                                     |
| 6                                       | 126                 | 40          | 166                                     |
| 7                                       | 126                 | 40          | 166                                     |
| 8                                       | 126                 | 40          | 166                                     |
| 9                                       | 126                 | 40          | 166                                     |
| 10                                      | 126                 | 48          | 174                                     |
| 11                                      | 126                 | 56          | 182                                     |
| 12                                      | 126                 | 64          | 190                                     |
| 13                                      | 126                 | 64          | 190                                     |
| 14                                      | 126                 | 72          | 198                                     |
| 15                                      | 126                 | 72          | 198                                     |
| 16                                      | 126                 | 80          | 206                                     |
| 17                                      | 126                 | 80          | 206                                     |
| 18 & over                               | 126                 | 88          | 214                                     |
|   |                     |             |   |

It is understood that a vacation day is eight (8) hours pay or leave, whichever is applicable. In one year the minimum accrual is 104 hours per year, maximum accrual is 184 hours.

County's Proposal: No change.

Guild's Position: See Guild's Position for Article 6.4.

County's Position: See County's Position for Article 6.4.

## ISSUE IV: ARTICLE 8 - SICK LEAVE

### Article 8.8

Current Language: An employee separated from County service due to death, retirement, or termination short of retirement age shall be compensated for accrued and unused sick leave at the following rate: twenty percent (20%) up through ten (10) years; forty percent (40%) eleven (11) years through nineteen (19) years; sixty percent (60%) twenty (20) years and over.

County's Proposal: An employee separated from County service due to death, retirement, or termination short of retirement age shall be compensated for accrued and unused sick leave at the following rate: Fifty (50%) percent of his/her accumulated sick leave to a maximum of three hundred and sixty (360) hours.

Guild's Proposal: No change.

County's Position: The County's reason for changing the sick leave cash out policy is to promote internal parity. Most of the County's other employees can cash out 50% of their sick leave up to 360 hours, while the Deputies are currently able to cash out on a sliding scale. Depending on the situation of an employee, the effects of the County's proposal may be negligible or even positive.

Guild's Position: The County is proposing a significant change in a negotiated benefit, and this without any economic justification. Sick leave cash out is a crucial part of some employees' retirement strategy. Those with the greatest longevity stand to lose the most. For example, Deputy Dave Smith, would lose the equivalent of approximately six thousand dollars. "The County bears the burden of proof, it is incumbent upon the County to present some form of justification before an economic hardship of this nature is placed upon Deputy Smith. The County has failed to meet that burden" (p. 31, U's brief).

## ISSUE V: ARTICLE 14 - GRIEVANCE PROCEDURE

### **Article 14.1**

Current Language: Any dispute that might arise over the application or interpretation of any article of this agreement shall be handled as follows.

County's Proposal: Any dispute that might arise over the application or interpretation of any article of this agreement shall be handled as follows. Any grievable action or potentially grievable action shall be preceded by a good faith effort of the part of the Guild and the Sheriff to establish the basic facts of the event, and the Parties shall meet within fourteen (14) calendar days after knowledge of the event giving rise to the grievable action or potentially grievable action to attempt a settlement prior to the formal filing of a grievance.

Guild's Proposal: No change

Guild's Position: See Guild's Position for Article 14.2.

County's Position: See County's Position for Article 14.2.

### **Article 14.2**

Current Language: All disputes must be stated in writing and shall include the following information:

1. Statement of grievance and relevant facts.
2. Specific provisions of this contract alleged to have been violated.
3. Remedy sought.

STEP 1 The dispute in the above form then shall be taken up between the designated representative of the Sheriff, the employee and the Guild representative within seven (7) calendar days after knowledge of occurrence of grievance. The Parties then have seven days, from the date the grievance was received by the Administration, in which to attempt settlement of the dispute. If no agreement is reached the employee and Guild representative may proceed to step 2. The employee and Guild representative have seven (7) calendar days, from the date of the step 1 impasse, to present written

notice with the Sheriff or designated representative of their intent to proceed to step 2.

STEP 2 The Sheriff and the Guild representative have fourteen (14) calendar days, from the date step 2 written notice was received, to attempt settlement of this dispute. If no agreement is reached the employee and Guild representative may proceed to step 3. The employee and the guild representative have seven (7) calendar days, from the date of the step 2 impasse, to present written notice to the Cowlitz County Commissioners and the Director of Personnel of their intent to proceed to step 3, along with all the material described in 14.2

STEP 3 The county Commissioners have fourteen (14) calendar days, from the date step 3 written notice was received, to attempt settlement of this dispute. If no agreement is reached the employee and the Guild representative may proceed to step 4. The employee and the Guild representative have seven calendar days, from the date of the step 3 impasse, to present written notice to the Cowlitz County Civil Service Commission or FMCS for arbitration. Step 3 may be waived if the dispute has no budgetary/monetary impact.

STEP 4 The employee and Guild representative will submit the dispute to either the Cowlitz County Civil Service Commission or an Arbitrator selected from FMCS at the preference of the employee.

Any or all time lines may be waived by mutual consent of the parties.

County's Proposal: All disputes must be stated in writing and shall include the following information:

1. Statement of grievance and relevant facts.
2. Specific provisions of this contract alleged to have been violated.
3. Remedy sought.

STEP 1 The dispute in the above form then shall be taken up between the Sheriff or a designated representative of the Sheriff, the employee and the Guild representative within fourteen (14) calendar days after knowledge of occurrence of grievance. The Parties then have seven days, from the date the grievance was received by the Administration, in which to attempt settlement of the dispute. If no agreement is reached the employee and Guild representative may proceed to step 2. The

employee and Guild representative have seven 97) calendar days, from the date of the step 1 impasse, to present written notice to the Cowlitz County Commissioners and the Director of Personnel of their intent to proceed to step 2.

STEP 2 If the grievance is not resolved at Step 1, and unless the County and the Guild agree otherwise, the Guild shall schedule a meeting to discuss the grievance with the Board of County commissioners at a mutually agreed upon date and time and the Board shall respond in writing within fourteen 914) calendar days from the date of the meeting. The guild has seven calendar days, from the date of the step 2 written response, to present written notice to the Cowlitz County civil Service Commission or FMCS for arbitration.

STEP 3 The employee and Guild representative will submit the dispute to either the Cowlitz County Civil Service Commission or an Arbitrator selected from FMCS at the preference of the employee.

Any or all time lines and steps may be waived by mutual consent of the parties.

Guild's Proposal: No change.

County's Position: The County's proposal for Article 14 adds an initial step to encourage settlement of the issue before the filing of a grievance takes place. This step consists of a meeting between the Guild and the Sheriff, to take place within fourteen days of knowledge of the grievable event, and with the aim of establishing basic facts. It is in no way the intent of the County that this step should preclude the filing of grievances. The Parties' grievance and arbitration history, in which few grievances have been filed and only three proceeded to arbitration since 2003, supports the conclusion that pre-grievance resolution is an important avenue and needs to be encouraged.

If a grievance is not resolved at Step 1, the Guild could schedule a meeting with the County Commissioners, who would issue a response within 14 days of the meeting. The Guild wishes to impose a strict deadline on the Commissioners of holding the meeting within 14 days. The County believes it is important to grant the Commissioners more flexibility in that regard because, in the words of witness Mr. Zdilar, the Commissioners are "the ones who have to pay the bills" (Tr. 187).

The County summarizes its argument as follows: "[the County's proposals] will help foster collaborative investigation and resolution of differences before they arise to the level of formal grievances. The County's proposal also helps to preserve the important step of review by the County Commissioners by making that part of the grievance timeline more flexible" (E's brief, pg. 30).

Guild's Position: The Guild's opposes the County's proposals for Article 14. "The effect of the County's proposal is to create an unworkable situation in which one, its next to impossible to file a Step 1 grievance, and even if the grievance is filed the County then can sit on it at Step 2 until basically it's the end of the world" (U's brief, pg. 32)

The pre-grievance step proposed by the County would effectively preclude the filing of grievances due to conflicting contract language. The County wishes to add language requiring the Parties to meet within fourteen days of the knowledge of the grievable event, while retaining language according to which the grievance itself must be filed within seven days of the event. Those seven days run out while the Parties are establishing the facts. If the County intends for the seven days to file to run after the expiration of the fact-establishing fourteen days, that would amount to a twenty-one deadline for the filing of grievances. This is precisely what the Union proposes, but in a much more straightforward manner, without creating conflicting language.

The Guild supports the County's move to require a meeting with the Commissioners at Step 2 of the grievance procedure. However, the Guild also feels that, in order to prevent the grievances from dragging on indefinitely, it is important to specify a time frame within which the meeting is to take place. Under the Guild's proposal, the Sheriff would have fourteen days to respond to the filing of a grievance, after which time the Guild would have seven days to move the matter to the Commissioners and they would have fourteen days to respond. The Guild indicates that it would also be agreeable to a compromise "For instance setting a meeting date within fourteen days, the meeting to be held within twenty-eight days, and the Board of Commissioners to respond within fourteen days after the meeting. While this compromise would add some length to the grievance process, it has the advantage of meeting the County's desires while at the same time providing a relatively expeditious process" (U's brief, pg. 33).

## **ISSUE VI: ARTICLE 18 - SALARIES**

### **Article 18.2**

Current Language: Entry and Lateral Employees.

New deputies, who are not lateral entry deputies, shall start at step one, on the deputy pay scale, and shall advance to the next higher step on the first day of the month closest to their anniversary date.

Lateral Entry Deputies: Qualified lateral entry applicants may be hired providing; (1) their office seniority starts with their first day of employment; (2) lateral entry deputies shall receive credit for placement in the pay scale on a year to year basis for each year of consecutive full time service as a law enforcement officer.

Lateral Entry Employees shall advance to the next higher step on the first day of the month closest to their anniversary date.

County's Proposal: Entry and Lateral Employees.

New deputies, who are not lateral entry deputies, shall start at step one, on the deputy pay scale, and shall advance to the next higher step on the first day of the month closest to their anniversary date.

Lateral Entry Deputies: Qualified lateral entry applicants may be hired providing; (1) their office seniority starts with their first day of employment; (2) lateral entry deputies shall receive credit for placement in the pay scale on a year to year basis for each year of consecutive full time service as a law enforcement officer.

Lateral Entry Employees shall advance to the next higher step on the first day of the month closest to their anniversary date. For lateral entry employees advancement to step 10, step 11 and step 12 are discretionary steps with the Sheriff's approval based on the number of years of fulltime law enforcement employment (excludes reserve and volunteer time) verified by the Sheriff.

Guild's Proposal: No change.

County's Position: **where is it?**

Guild's Position: The Guild has no objection to this proposal.

### **Article 18.3**

Current Language: Out-of-Class Pay. In the event any employee is temporarily assigned to a sergeant's position, they shall be compensated for the sergeant's rate of pay.

County's Proposal: Out-of-Class Pay. In the event any employee is temporarily assigned to a sergeant's position and supervises 2 or more FTEs, they shall be compensated for the sergeant's rate of pay.

Guild's Proposal: No change.

County's Position: **where is it?**

Guild's Position: Every day, between 3:00a.m. and 7a.m. there are only two Deputies on Duty with no Sergeant. Currently, one of those Deputies necessarily becomes acting Sergeant and receives out of class pay. The County's proposal to limit out of class pay to those supervising two or more FTE's simply takes away the acting Sergeant's pay, while still leaving him responsible for making the decisions. In effect, the County's proposal "would take away a significant benefit without the County providing any justification" (U's brief, pg. 33).

### **Article 18.4**

Current Language: When an employee is assigned by their supervisor and work as a Field Training Officer (FTO) for one day (minimum of eight hours in one duty) or more that employee will receive an additional 6% to base salary for each day they are assigned and work as a FTO.

County's Proposal: When an employee is assigned by the Administration and work as a Field Training Officer (FTO) for one day (minimum of eight hours in one duty) or more that employee will receive an additional 6% to base salary for each day they are assigned and work as a FTO.



Guild's Proposal: No change.

County's Position: **where is it?.**

Guild's Position: The County has no justification for making this change, supposedly meant to prevent Sergeants from assigning people as FTO's. The County could only point to one example of this happening and, as was made clear at the hearing, the individual assigned as an FTO was actually assigned by the Undersheriff, a member of the Administration.

"While this change is not substantial, it is part of the County's continuing effort to find a solution in search of a problem. There is simply no problem" (U's brief, pg. 34).

### **Article 18.5**

Current Language: None.

Guild's Proposal: Employees will receive a premium of 4% of base pay for their regular work shift if they are pass the WSCJTC Basic Academy physical fitness test on an annual basis.

County's Proposal: No change.

Guild's Position: The Guild believes that it has been well established that physical fitness is a fundamental component of effective Law Enforcement. Guild witnesses have testified that a fitness bonus would help motivate them to stay in good shape, necessary for the physically demanding aspects of police work.

The Employer's objection that the test is difficult to administer is belied by the fact that the same test has been administered for years and the administrative apparatus is already in place. The Employer also makes the argument that the comparables do not provide for such an incentive. The Guild believes that better law enforcement would result from the Guild's proposal and therefore Cowlitz County should be the first to offer it.

County's Position: The County believes that the Guild has failed to demonstrate a need for the physical fitness bonus, which proposal is flawed in other ways. "[T]he Guild has not offered persuasive evidence that the physical fitness of its members is inadequate, or that offering a physical fitness bonus would remedy this hypothetical deficit" (E's brief, pg. 32).

Additionally, the proposal is "unworkably vague" in the details of how the test would be administered or how allowances for

injuries etc. are to be made. None of the comparator counties pay a physical fitness premium.

**Article 18.6**

Current Language: None.

Guild's Proposal: The following premiums will be paid to those who have achieved the following:

2% of base wage to those who have a AA degree or 90 college credits;

4% of base wage to those who have a Bachelors degree;

6% of base wage to those who have a masters degree

County's Proposal: No change.

Guild's Position: "Both the research and the experience is overwhelming in support of college education in Law Enforcement" (U's brief, pg. 21). The Guild cites Exhibits 19 and 39 as providing a demonstration of the link between a higher education and more effective Law Enforcement, including effects such as reduction in citizen complaint rates, reduction in corruption, superior performance, reduction in injuries, and reduction in number of work days missed.

All of the comparables selected by the Parties provide an education incentive except for Island and Clallam Counties.

County's Position: The County is not willing to agree to the education incentive because it finds that its compensation is already above average.

The County opposes the Guild's proposal on the grounds that the education incentive is redundant and on the grounds that the Guild has not been able to show that an education incentive would significantly impact the Deputy's performance.

There is already language in the contract which provides for step increases for members based on years of service. The effect of the Guild's proposal would be to award the average deputy (who already holds an AA) a bonus on top of the existing longevity pay, without requiring him to take any additional coursework. If a deputy did chose to pursue a higher education, under the Guild's proposal he would be compensated even if his courses were entirely irrelevant to law enforcement. The County believes that the link between higher education and improved performance has

not been established by the evidence on the record. And, in the County's experience, no adverse effects have resulted from the sheriff's Department's elimination of a requirement that employees have an AA a few years ago.

"The existing longevity provision in the contract already has much the same effect as the Guild's proposed education bonus. Nor has the Guild demonstrated any actual deficit in member's performance, recruitment, or retention that might be remedied by an education bonus" (E's brief, pg. 32)

**ISSUE VII: APPENDIX B - UNIFORM AND EQUIPMENT LIST (INITIAL LIST)**

Current Language: 3 pair of uniform pants (wash and wear)  
3 long sleeve shirts (wash and wear)  
3 short sleeve shirts (wash and wear)  
1 DI hat and rain cover  
1 Ackerman's style Jumpsuit - summer wear  
1 OC spray holder  
1 key holder (basketweave)\*  
1 uniform holster (basketweave)\*  
1 concealable holster or fanny pack  
1 baton ring or ASP Carrier (basketweave)  
1 bullet proof vest - with two covers  
1 shirt badge  
1 I.D. case  
4 belt Keepers (basketweave)\*  
1 buck knife and case (basketweave)  
1 clipboard  
1 raincoat or jacket - lined or unlined  
2 single or 1 double handcuff case\*  
2 magazines and double magazine case\*  
1 tie tack  
1 wooly pully v-neck sweater  
1 uniform coat - gortex  
3 ties  
1 black watch cap with Sheriff on it  
2 baseball caps/gortex, wool, or cotton with Sheriff on it  
22 shoulder patches  
4 cloth badges  
1 hat badge  
2 name plates  
1 pair black shoes or boots  
1 dress belt (basketweave)  
1 flashlight ring\*  
1 baton or ASP\*  
2 pair handcuffs  
1 gun belt (basketweave)  
1 pair black uniform gloves

1 traffic template  
1 radio holster \*\*\*  
4 cloth name tapes  
1 "stinger" flashlight (small rechargeable)  
with holder\*  
2 citation book holders

\*Deputies may choose nylon in lieu of basketweave where basketweave is designated but they must not mix basketweave and nylon items.

\*\*Newly assigned K-9 handlers and Mountain Patrol will receive (3) three good quality jumpsuits approved by the Sheriff. These shall include shoulder patches, cloth name tag, and cloth patch sewn on with no cost to deputy.

\*\*\*If new hire elects leather, he/she shall use the issued holster. If nylon is selected, the county will furnish a nylon holster.

Guild's Proposal: 3 pair of uniform pants (wash and wear)  
3 long sleeve shirts (wash and wear)  
3 short sleeve shirts (wash and wear)  
1 DI hat and rain cover  
1 Ackerman's style Jumpsuit - summer wear  
1 OC spray holder  
1 key holder (basketweave)\*  
1 uniform holster (basketweave)\*  
1 concealable holster or fanny pack  
1 baton ring or ASP Carrier (basketweave)  
1 bullet proof vest - with two covers  
1 shirt badge  
1 I.D. case/badge  
4 belt Keepers (basketweave)\*  
1 buck knife and case (basketweave)  
1 clipboard  
1 raincoat or jacket - lined or unlined  
2 single or 1 double handcuff case\*  
2 magazines and double magazine case\*  
1 tie tack  
1 wooly pully v-neck sweater  
1 uniform coat - gortex  
3 ties  
1 black watch cap with Sheriff on it  
2 baseball caps/gortex, wool, or cotton with Sheriff on it  
22 shoulder patches  
4 cloth badges  
1 hat badge

2 name plates  
1 pair black shoes or boots  
1 dress belt (basketweave)  
1 flashlight ring\*  
1 baton or ASP\*  
2 pair handcuffs  
1 gun belt (basketweave)  
1 pair black uniform gloves  
1 traffic template  
1 radio holster \*\*\*  
4 cloth name tapes  
1 "stinger" flashlight (small rechargeable)  
with holder\*  
2 citation book holders

\*Deputies may choose nylon in lieu of basketweave where basketweave is designated but they must not mix basketweave and nylon items.

\*\*Newly assigned K-9 handlers and Mountain Patrol will receive (3) three good quality jumpsuits approved by the Sheriff. These shall include shoulder patches, cloth name tag, and cloth patch sewn on with no cost to deputy.

\*\*\*If new hire elects leather, he/she shall use the issued holster. If nylon is selected, the county will furnish a nylon holster.

Each new hire will receive \$900 to purchase:  
(a) a duty handgun from an approved list (\$600), and (b) a back-up handgun (\$300).  
Deputies and Sergeants hired prior to the approval of this agreement will receive \$900 to cover the cost of personally owned handguns used in the line of duty that heretofore the County has required them to purchase at their own expense.

County's Proposal: No change.

Guild's Position: Weapons are very expensive and absolutely necessary. New hires and existing Deputies should not have to incur this expense, as the Employer is generally required to provide for necessary personal protective equipment. "This is a proposal that the Guild should not even have to make... It boggles the mind to think that the County would not be willing to provide that necessary piece of equipment" (U's brief, pg. 34)

County's Position: The Guild has not met its burden of demonstrating that a cash allowance for the purchase of guns is reasonable, nor has it provided sufficient information regarding comparable jurisdiction to make a convincing argument. According to the Guild, the following counties provide a service weapon: Benton, Grant, Lewis, and Skagit (Island County does not). However, no specific details have been provided, as that information is generally not in the labor contracts, according to Guild witness Dana Bennett. For example, any of these counties may be providing one or more guns, rather than a cash allowance.

**ISSUE VIII: NEW ARTICLE - PAYROLL DATES**

Current Language: None

County's Proposal: The Guild recognizes that the County has the authority to change payroll dates.

Guild's Proposal: No change.

County's Position: At the present time, the County has four sets of payroll dates for its employees. The proposed Article would allow the County to make the system more efficient, by allowing for a single change so that all employees are paid on the same day. As Mr. Zdilar testified at hearing (Tr. 192), there is no intention to change the dates willy-nilly.

"The County presented a simple, cogent reason why it should be allowed to change the payroll dates, as a step towards uniformity among its 11 bargaining units and unrepresented employees. The Guild has not shown that regularizing payroll dates will disadvantage any of its members" (E's brief, pg. 33).

Guild's Position: The Guild objects to the County's proposal on the grounds that the language is so unspecific, as to constitute a "blank check", granting the County freedom to change pay dates at whim. Because people arrange their daily lives and finances around when they receive wages, a change in payroll dates can be a significant disruption. The County lacks a plan for what date they want and they have not negotiated with other unions.

"If the County is actually serious about consolidating pay dates, the Guild would suggest a better proposal would have been to have a re-opener so that once the County has finally developed a plan, they can negotiate with the Guild. That then would provide the Guild with the opportunity to protect its members from any dislocation that may occur as a result of the change in pay dates. Absent any other specificity, the County has simply not carried its burden to justify any change in status quo" (U's brief, pg. 35).

## **ISSUE IX: RETROACTIVITY**

The Union concludes its written arguments by drawing the Arbitrator's attention to the fact that, by the time the Arbitration award is rendered, employees will have gone without pay adjustments in over twenty-one months and some have retired. Both the Guild and the County have proposed retroactive pay increases beginning in January 1, 2006. The Guild asks that retirees not be denied the benefits of those increases.

**ANALYSIS OF ARGUMENTS**

**SUMMARY**



|                                  |   |                     |
|----------------------------------|---|---------------------|
| IN THE MATTER OF THE ARBITRATION | ) | ARBITRATOR'S        |
|                                  | ) |                     |
| BETWEEN                          | ) | AWARD               |
|                                  | ) |                     |
| STATE OF WASHINGTON DEPARTMENT   | ) |                     |
| OF CORRECTIONS                   | ) |                     |
|                                  | ) |                     |
| "THE STATE" or "THE EMPLOYER"    | ) |                     |
|                                  | ) |                     |
| AND                              | ) |                     |
|                                  | ) |                     |
| TEAMSTERS LOCAL NO. 117          | ) | Darren Kelly        |
|                                  | ) | Trash Run Grievance |
| "LOCAL 117" OR "THE UNION"       | ) |                     |

After careful consideration of all oral and written arguments and evidence, and for the reasons set forth in the Opinion that accompanies this Award, it is awarded that:

1. The Employer did not violate Article 13.1, 13.2, 19.1 or 19.2 by assigning the duty of trash run to response and movement officers.
2. The grievance is denied.
3. Per the requirements of Section 9.6 of the CBA, the Arbitrator is splitting his fees between the two Parties.

Respectfully submitted on this the of 3rd of July, 2007, by,

Timothy D.W. Williams  
Arbitrator