BEFORE THE NEUTRAL ARBITRATOR

In the Matter of the Interest Arbitration Between	)	
	)	
Spokane County Sheriff's Office (Deputies/Sergeants)	)	**ARBITRATOR'S OPINION AND AWARD**
	)	
the County	)	
	)	
and	)	
	)	PERC No 25280-I-12-0614
Spokane County Deputy Sheriffs' Association	)	
	)	
the Association	)	
	)	

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Date of Award: February 8, 2015

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John Cook, Deputy Sheriff
Ward Sandberg, Retired, Former principle in health benefits management firm
Alan Rollins, Deputy Sheriff
Darell Stidham, Deputy Sheriff

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I. PROCEEDINGS

This arbitration concerns the open terms of a three-year collective bargaining agreement (2012-2014) between Spokane County (the Employer or County) and the Spokane County Deputy Sheriffs' Association (the DSA or Association) representing a bargaining unit of deputies and sergeants. The parties reached an impasse on various issues and pursuant to RCW 41.56.450, the Public Employment Relations Commission (PERC) certified those issues for interest arbitration. The parties submitted the disputed terms to neutral Arbitrator Jane R. Wilkinson for resolution. The parties waived the RCW 41.56.450 provisions for a tri-partite panel. The Arbitrator conducted evidentiary hearings, in Spokane Washington, on November 11, 12 and 13, 2014. Each party had the opportunity to present evidence, examine and cross-examine witnesses and argue its case. The proceeding was reported by court reporter Rachel Hall. The parties post-hearing briefs were dated and emailed January 9, 2015, though one was not received by the Arbitrator until January 11, 2015. The latter date is deemed the closing date of hearing.

RCW 41.56.030(13)(a), read in conjunction with RCW 41.56.430 and .450, states that unresolved disputes concerning the terms and conditions of a collective bargaining agreement must be settled by interest arbitration when the affected bargaining unit is composed of: "Law enforcement officers as defined in RCW 41.26.030 employed by the governing body … of any county with a population of ten thousand or more; …" RCW 41.56.450 specifies the powers and duties of the interest arbitrator or panel, who may consider only the issues certified by PERC's executive director. RCW 41.56.450 states that the arbitration determination "shall be final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious."

In RCW 41.56.465, the Washington Legislature specified that the interest arbitrator must apply the following criteria when determining the disputed terms of a new collective bargaining agreement:

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

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

(b) Stipulations of the parties;

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

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

(e) Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. For those employees listed in *RCW 41.56.030(7) [sic] (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) For employees listed in RCW 41.56.030(7)[sic] (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.

….

*[Code] Revisor's note: "RCW 41.56.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (7) to subsection (14). RCW 41.56.030 was subsequently amended by 2011 1st sp.s. c 21 § 11, changing subsection (14) to subsection (13)" Thus, the references above to RCW 41.56.030(7)(a) should actually be to RCW 41.56.030(13)(a), which pertains to law enforcement officers.

"Such other factors" referenced in RCW 41.56.465(e) typically includes turnover, the fiscal health of the employer, general economic considerations, and considerations relating to internal parity or equity. The statute does not specify the relative weight to be assigned to each enumerated consideration nor how they are to be measured. These matters are left to the discretion of the arbitrator. I have kept in mind all of the statutory considerations set forth above, whether or not specifically articulated in this opinion.

II. OVERVIEW OF SPOKANE COUNTY AND ITS SHERIFF'S DEPARTMENT

A. Services and Jurisdiction

Spokane County's population exceeds 475,000. It is the most populous county in eastern Washington. Fairchild Air Force Base is the largest employer. Health services also comprise a

significant element of the economy because the City of Spokane serves as a regional medical services center.

Spokane County (as a governmental entity) provides a wide range of regional services as an extension of State government, including but not limited to: tax assessment and collection, Superior Courts (including defense and prosecution), elections and detention of felons. It provides these services to both the incorporated and unincorporated areas of the County. It also provides important services to unincorporated areas of the County and by contract, to certain incorporated areas. Law enforcement, through the County Sheriff, may be one of the most important services.

When an unincorporated area is annexed to a city or incorporates itself, the County loses most of the tax revenue from that area. It retains only 15% of that revenue for the services it is required to provide, an insufficient amount in the County's opinion. In 2003, Spokane Valley (with a then-population of 80,000) incorporated, which had a significant impact on the County's finances. However, not long after that incorporation, the new City of Spokane Valley contracted with the County for law enforcement services. About half of the Sheriff's patrol services are assigned to the City of Spokane Valley. In 2010, an annexation to the City of Spokane occurred; another took place in 2012. The revenue loss from these annexations was particularly significant because the annexed areas contained a strong retail presence, including big box stores.

B. County Finances

The County's two primary sources of revenue are from property taxes and sales taxes. These sources combined represent more than half of the total general fund revenues of the County.

The general fund is the County’s primary operating fund designated for a number of services, including law enforcement.

As with virtually every political entity in the United States, the recent "great recession" severely affected the County's fiscal health. Between 2007 and 2013, general fund revenues increased by 4.5%. During that same period, general fund expenditures increased by 6.6%. This increase in spending was slightly over half the rate of inflation for the same period (12.3%) according to the County.

As one would expect, the revenue from sales taxes dropped off sharply during the recession. Unlike sales taxes, property taxes provide a fairly stable revenue stream. They are, however, limited by statute to a maximum 1% increase per year. If the 1% is not used, it can be “banked” for the future. The County maintains it currently has less than $400,000 in banked capacity, though the DSA disputes this. Property tax revenues are also amplified by new construction. However, the recession negatively affected that revenue stream because new construction dropped off significantly. Had it not done so, the County would have received an additional $690,000 annually between 2007 and 2013, it estimates. The County further estimates it lost $2.6 million annually in interest income because of the decline in interest rates. The County did not present evidence on how this same interest rate decline affected its borrowing costs. Overall, the County estimates, it lost about $6,430,000 annually in revenues because of the recession.

Criminal justice (which includes more than the Sheriff's Office) constituted about 73.1% of the general fund budget in 2014. This is up from 71.4% in 2007. During this same period, total law enforcement costs increased by 14.8%.

The average budgeted salary and benefit cost for an employee in the Sheriff’s Department increased by 10.52% between 2007 and 2014. This is less than the increase in the CPI over that period. Nevertheless, according to the County, the increase for all other general fund employees for that same period was only 3.27%. The County calculates the average current annual cost of a commissioned officer to be $154,000. (This forms the basis for the rate charged for contract services. It does not appear to include overhead costs).

The County balanced its budget during the recession by, *inter alia*, eliminating 144 general fund positions. It also reduced its reserves below its targeted levels, it maintains.

The good news is that 2014 and 2015 are looking to be good years, or at least better than the recession-era years. In particular, sales tax revenues are trending upwards.

C. Bargaining unit composition

The bargaining unit comprises slots (not necessarily filled) for 144 deputies, 42 detectives/corporals and 26 sergeants. There are approximately 202 slots filled, that is, actual members of the bargaining unit.

III. PARTIES' PROPOSALS, ARGUMENTS, DISCUSSION AND AWARD

The parties' proposals on the outstanding issues and my review and award thereon are in the following sections of this document.

A. Wages, Appendix A.1.

1. Proposals

The parties wage proposals are set forth in the next table:

TABLE 1

Year	Association	County
2012	CPI-U* = 2.9%	0%
2013	CPI-U = 2.0%	0%
2014	CPI-U = 2.8%	2.5% (half on 1-1-14 and half on 7-1-14)**

*Each CPI-U increase proposal is accompanied by a minimum/maximum amount of 2% and 5%.
**Contingent on bargaining unit moving to County's redesigned medical plan

The DSA apparently is taking an unorthodox approach to calculating its proposal. According to discussions at hearing, the percent CPI increase proposed above is first calculated based on the top step sergeant wage and then everyone in the bargaining unit will receive that dollar amount. The County stated that this is how it calculated the cost of the DSA's proposal. This method of calculation has not been placed in writing, as far as the record shows. Because it is so unorthodox (also not reasonable), I will not consider it further. Rather, I will view the

Association's proposal as a simple cost of living increase calculated in the normal year-over-year fashion based on data published by the Bureau of Labor Statistics.[1]

2. Analysis Pursuant to the Pertinent Statutory Considerations

The following addresses the pertinent statutory considerations in this proceeding.

a. Comparables

As discussed previously, the parties agreed to use Pierce County, Clark County, Kitsap County, Snohomish County and Yakima County as comparables. The following shows the base wages paid by these jurisdictions at the five-year level.

TABLE 2

Jurisdiction	2012 Mo. Base Wage	Rank
Clark	$5,544	5
Kitsap	$5,882	2
Pierce	$6,243	1
Snohomish	$5,646	4
Yakima	$5,740	3
Average	*$5,811*	
Spokane	**$5,443**	**6**
Spokane to Average	*-.06 or -6%*	

The Association's case with respect to comparables is based on a base wage analysis, which as seen from this table, shows Spokane wages to be at the bottom of the heap, trailing the comparable average by a fairly significant amount.

(1) Total Compensation - Elements of

A comparison of base wages is not adequate, in my opinion. RCW 41.56.465(2) requires

> … 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.

[1] The parties also differ on the methodology by which the percentage increase in the CPI should be calculated. It is not necessary for me to discuss those methodologies in any detail because my ultimate award will be a percentage increase not specifically tied to the CPI change. In the discussion below, however, I determined the CPI-U national increase for 2013. I did it simply by comparing the annual 2013 figure to the annual 2012 figure shown on the relevant Bureau of Labor Statistics web page. This is a far more conventional (and simpler) method than the parties apparently used in negotiations.

A complete picture can be painted only by reviewing the total compensation paid by comparable employers and comparing those results with Spokane County's total compensation. Several elements of total compensation are fairly standard. These include paid vacation/holidays/personal leave day and total hours worked. These elements require compensation to be viewed on an hourly basis. Longevity pay also is an uncontroverted part of a total compensation analysis since it is obtainable by all bargaining unit members who need do nothing more than remain employed for a requisite period.

The inclusion of certain benefits that are not available to the entire bargaining unit is more debatable. I generally include such benefits if they are effectively available to most of the bargaining unit (and whose value can be readily determined). Thus, a shift differential might be included, at least if most officers work rotating shifts. On the other hand K-9 pay, which only a few law enforcement officers receive, is something I generally do not include in a total compensation analysis.

Educational incentives can be a more problematic component of total compensation. I consider them when they appear to be a significant pay component in the subject bargaining unit. Spokane bargaining unit members may collect education incentive pay or longevity pay, but not both. Longevity pay is more generous. For the bargaining unit, the crossover point for the AA degree is 12 years, and for the BA degree is 20 years, according to a County witness. Therefore, the educational incentive is only relevant at the five-year benchmark (as opposed to the 15 and 25-year benchmarks). Since the AA degree is most accessible to bargaining unit members, I will consider that incentive as an element of total compensation for five-year employees.

Here, the consideration of educational incentives among comparable jurisdictions is somewhat simplified because only Snohomish and Yakima counties pay an educational incentive. Snohomish's incentive, like Spokane's, is relatively generous; Yakima's is much less so. Yakima's incentive is less than 30% of those provided by Spokane and Snohomish

Counties. The collective bargaining agreement for Snohomish County, like that of Spokane County, allows the bargaining unit to receive an educational incentive or longevity pay, but not both. The wage analyses here assume that the benchmark position referenced receives whichever available incentive (AA degree or longevity) is highest.

When benefits do not neatly figure into a total compensation analysis, I might consider them on an *ad hoc* basis if they appear particularly significant for any given jurisdiction. Although the consideration of a take-home vehicle was discussed at hearing, it does not appear to be something that would have any material effect on a total compensation analysis in this case. Therefore, I am not considering that benefit.

(2) Total Compensation Analysis, Spokane Deputies/Sergeants

An appropriate total compensation analysis for 2012 (deputies) is shown on the next table. Wages have been converted to hourly.[2]

TABLE 3

DEPUTIES' TOTAL COMPENSATION, 2012					
Clark	**Kitsap**	**Pierce**	**Snohomish**	**Yakima***	**Spokane**
Five-year Deputy, AA degree					
$34.65	$36.56	$40.54	$37.40	$38.10	$38.50
Average:	***$37.45***	***Spokane to Average***	***+2.8%***	***Spokane Rank***	***2***
15-year Deputy AA degree/Longevity					
$35.24	$40.88	$41.81	$39.48	$40.13	$40.92
Average:	***$39.51***	***Spokane to Average***	***+3.6%***	***Spokane Rank***	***2***
25-year Deputy, AA degree/Longevity					
$38.53	41.67	$41.81	$42.48	$41.81	$44.98
Average:	***41.26***	***Spokane to Average***	***+9%***	***Spokane Rank***	***1***

*The Yakima wage includes a $1450 one-time signing bonus for 2012

[2] The subsequent pay tables mostly reflect the County's Exh. E-2.5 series. The DSA submitted one exhibit showing comparable pay, but it was less detailed than the County's. Further, a spot comparison of data showed the County's figures to be somewhat more generous to the bargaining unit than the DSA's own exhibit.

I have noted that Arbitrator Beck did not consider AA degree pay (which is only relevant here at the 5-year benchmark). *Spokane County (deputy Sheriffs' Association*), PERC No. 15174-I-00-341 (Beck, 2001). If I were to remove AA degree pay from consideration at that benchmark, pay would still be above the comparables' average, and rank would be third (in the 2012 analysis). The 2014 analysis, without the AA consideration at 5-years, would place total five-year employee compensation at slightly below average, with a rank of fourth. This, of course, is the status without factoring in any wage increase for the contract period.

The total compensation for Spokane bargaining unit members with a BA degree exceeded the comparator average by even a greater percentage (about a percentage point higher) at the five and fifteen-year marks.

The 2012 total compensation comparison for sergeants is shown on the next table.

TABLE 4

SERGEANTS' TOTAL COMPENSATION, 2012					
Clark	**Kitsap**	**Pierce**	**Snohomish**	**Yakima**	**Spokane**
15-year Sergeant, AA Degree/Longevity					
$45.01	$47.02	$47.88	$45.74	$46.70	47.46
Average:	***$46.47***	***Spokane to Average***	***+2.1%***	***Spokane Rank***	***3***
25-year Sergeant, AA Degree/Longevity					
$45.79	$47.93	$47.88	$49.22	$48.72	$52.17
Average:	***$47.91***	***Spokane to Average***	***+8.9%***	***Spokane Rank***	***1***

For 2012, when total compensation is viewed, the Spokane bargaining unit ranked high vis-à-vis the comparable jurisdictions. Five-year and 15-year Spokane deputies were second-highest paid among the comparable jurisdictions. The 25-year deputy in Spokane County was highest paid. A 15-year sergeant's pay ranks in the middle, at third. But the sergeant moves to first place by the 25th year.

The 2012 analysis creates a baseline for the bargaining unit status vis-à-vis the comparable going into the contract under consideration. It is the starting year for the parties' current Collective Bargaining Agreement, but it also was the last year for which all comparables had a collective bargaining agreement in place. Ideally, 2014 would be much more relevant for purposes of comparison. However, the last year of the Clark County collective bargaining agreement was 2012. The last year for Kitsap County was 2013. Given that 2013 remained a problematic year financially for counties, it is difficult to predict what amount of increase, if any, Clark County deputies will receive once their contract is finalized. It may be more reasonably assumed (though not certain) that both Kitsap deputies and Clark deputies will receive some sort of increase for 2014. To perform some sort of meaningful 2014 analysis, I had to

conservatively, but realistically estimate the increases Kitsap and Clark deputies will receive. In the following tables, which purport to give an estimated snapshot for 2014, I have increased Clark and Kitsap wages by 2.4%, which is the average wage increase of the other three comparables from 2013 to 2014. (The average increase of the comparables in 2013 was almost negligible; therefore I am assuming Clark County deputies will receive no increase for that year.) The wages shown for Pierce and Snohomish Counties are "composite," meaning that they take into account the fact that their 2014 wage increases took place in two increments. Spokane's wage shown below is the actual wage going into the current Collective Bargaining Agreement.

TABLE 5

DEPUTIES' TOTAL COMPENSATION, 2014					
Clark	**Kitsap**	**Pierce**	**Snohomish**	**Yakima**	**Spokane**
5-year Deputy, AA degree					
$35.48	$37.44	$41.32	$39.57	$38.41	$38.50
Average:	***$38.44***	***Spokane to Average***	***+.16%***	***Spokane Rank***	***3***
15-year Deputy, AA degree/Longevity					
$39.79	$41.86	$42.61	$41.77	$40.46	$40.92
Average:	***$41.30***	***Spokane to Average***	***-1%***	***Spokane Rank***	***3***
25-year Deputy, AA degree/Longevity					
40.47	42.67	42.61	44.9	42.14	$44.98
Average:	***42.57***	***Spokane to Average***	***+5.7%***	***Spokane Rank***	***1***

TABLE 6

SERGEANTS' TOTAL COMPENSATION, 2014					
Clark	**Kitsap**	**Pierce**	**Snohomish**	**Yakima**	**Spokane**
15-year Sergeant, AA degree/Longevity					
$46.09	$48.15	$51.25	$48.39	$47.22	47.46
Average:	***$48.22***	***Spokane to Average***	***-1.6%***	***Spokane Rank***	***4***
25-year Sergeant, AA degree/Longevity					
46.89	49.08	51.25	52.07	49.28	$52.17
Average:	***49.71***	***Spokane to Average***	***+4.9%***	***Spokane Rank***	***1***

To reiterate, the 2012 analysis shown in Tables 3 and 4 demonstrated that the total compensation for each benchmark bargaining unit position was healthily above the average of

the comparable jurisdictions. For long-term employees (25 years), the pay exceeded the average of the comparable jurisdictions by a substantial amount.

Not surprisingly, by 2014, increases in the pay of the comparable jurisdictions reduced the bargaining unit's pay relative to the average. (To be clear, the above analyses for 2014 assume no bargaining unit wage increase over the life of the Spokane contract at issue). The five-year deputy with an AA degree stands at slightly above average but continues to rank third (as the position did in 2012). The 15-year employee (deputy or sergeant) fell to a slightly below average wage. The ranking of the 15-year deputy fell from second to third, and for the 15-year sergeant, the ranking fell from third to fourth. However, 25-year deputies and sergeants maintained their first place position in 2014, even without any wage increase. However, their percentage lead over the comparable average shrank to 5.7% and 4.9% respectively.

In sum, a total compensation analysis shows that Spokane deputies would rank roughly in middle of the comparable jurisdictions in pay, even without an increase during the current contract term. Pay for five-year (AA degree) and 25-year deputies and sergeants would be above average, but the respective pay for the 15-year deputy and sergeant would be about one percent and 1.6% below average. The pay increase proposed by the DSA would again place the pay of bargaining unit members well above average. The County's proposal also would cause the average bargaining unit pay to rise at all levels to above average, but with a more modest result

b. Cost of Living Considerations

(1) The Meaning of the Statutory Cost of Living Criterion

RCW 41.56.465(1)(c) requires arbitrators to consider "The average consumer prices for goods and services, commonly known as the cost of living." The statutory language is ambiguous. The cost of living is a relational concept and the statutory language fails to specify the target comparison metric. Arbitrators have traditionally considered changes in the cost of living over a designated time span. A given year is specified as the baseline, and increases year

to year thereafter are considered. This consideration in large part stems from the salutary notion that wages should keep pace with inflation. In stable economic times, many collective bargaining agreements and arbitration awards simply contain CPI-based annual wage increases.

Historically, arbitration awards have not contained a detailed examination of the cost of living in the subject jurisdiction relative to the comparables.[3] This, I believe, stemmed more from the paucity of reliable, accessible data than from any objection to a consideration of this sort. While Bureau of Labor Statistics cost of living data on various metropolitan areas has long been available, that data only shows cost of living changes. The data does not reveal the relative cost of living among metropolitan areas. However, the amount of reliable data has improved over the past decade or two. Data collection has accelerated and with the Internet and the information is widely and quickly accessible. (A subsidiary issue is whether the data is reliable; that issue was not raised in this case.)

One knows, as a matter of common sense, that cost of living differentials go a long way in explaining why a wage earner in New York or Los Angeles, for example, is paid significantly more than a person performing the identical job in, say, Walla Walla or Spokane. Nevertheless, the DSA objects to this Arbitrator's consideration of relative cost of living information because of statutory language suggesting that the legislature has taken the topic off the table. RCW 41.56.465(1)(e) states specifically that for law enforcement employees "employed by the governing … county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living." Spokane County has a population much higher than 70,000. Thus, the DSA contends, it would be improper for the Arbitrator to consider

[3] Arbitrators for some time have considered the bigger picture and have found that, in general, the cost of living west of the "Cascade Curtain" is higher than that in eastern Washington. *See, e.g., Spokane County (deputy Sheriffs' Associatio*n), PERC No. 15174-I-00-341 (Beck, 2001) and cases cited therein.

regional differences in the cost of living because had the legislature intended to mandate or allow comparable cost of living considerations in larger counties, it would have so stated.

The DSA has a point, but ultimately I am rejecting it. This language, like much of RCW 41.56.465, is peculiar. The record does not show the legislative history of that language. It doesn't make sense that the legislature would not want available and reliable cost of living information to be considered regardless of the size of the employer or nature of the work. I note that the language mandates relative cost of living considerations for employees in specified small jurisdictions. The implication is that the consideration is permissive in larger jurisdictions. In other words, that consideration is within the arbitrator's discretion. I find this is the better view of the language and, therefore, I will consider the County's cost of living evidence.

(2) Changes in the Cost of Living over Time

According to Exh. E-2.3.1, the CPI-U for all urban cities increased by 2.1% from 2011 to 2012, and by 1.5% between 2012 and 2013. The increase between 2013 and 2014 was not available at the time of hearing. However, by the time the post-hearing briefs came in, the U.S. Bureau of Labor Statistics website showed that increase to be 1.6%. See, http://data.bls.gov/cgi-bin/surveymost?cu (as a starting point).

The Employer's proposal will fall short of the 2012-2014 compounded cumulative CPI changes by 2.73%, while the DSA's compounded proposal will exceed the same CPI changes by 2.6%.

The County presented evidence (Exh. E-2.3.1) of how bargaining unit wage changes (top step) tracked CPI increases/decreases between 2002 (as the base year) and 2011.[4] That evidence showed a compounded CPI increase of 23% and a compounded wage increase of 28.6%. Thus, over that period, wage increases outpaced the CPI by 5.6%. This information

[4] Exh. E-2.3.3 did not include wage changes for 2011, but an examination of the Collective Bargaining Agreement's one-year extension signed for that year showed that wages were frozen.

shows that over the long haul, both the County's and the DSA's proposals will keep the bargaining unit ahead of cumulative compounded CPI changes.

(3) Cost of Living Relative to Comparables

The County presented evidence showing the cost of living in Spokane County relative to the designated comparable jurisdictions. That evidence shows that the cost of living in Spokane is lower than all of the comparable counties. That difference is particularly significant when compared to the counties in western Washington. Specifically, Exh. E-2.3.4 shows the following cost of living differentials:

TABLE 7

	Percent Difference
Spokane Co.	0%
Yakima Co.	1%
Kitsap Co.	14%
Pierce Co.	15%
Clark Co.	18%
Snohomish Co.	24%

The County also presented data on other metrics: cost of homes, cost of rent, median family income, average family income, per capita income and an affordability index. That information, set forth in the next table, shows that Spokane ranks behind all the other comparables, except Yakima, on each metric.

TABLE 8

	Median Household Income	Home Price Q1 2014	Rental Price (mo)	Per Capita Income	Affordability Index 1st Q 2014
Clark	$58,986	$233,200	$916	$27,885	164.4
Kitsap	$66,412	$231,700	$917	$31,287	171.6
Pierce	$54,091	$224,900	$887	$28,187	167.2
Snohomish	$65,115	$309,900	$1043	$31,310	140.8
Yakima	$42,294	$146,800	$678	$19,610	183.2
Average	*$57,380*	*$229,300*	*$888*	*$27,656*	*165.44*
Spokane	$51,002	$168,000	$749	$25,891	196.4

The DSA objects to the use of housing as a principal cost of living measure. In response, I note that while the information on Table 8 includes housing, it is presented as reinforcement to Table 7 showing cost of living in general.

This cost of living data strongly supports the County's position that the pay for bargaining unit members should rank behind all of the Western Washington comparable jurisdictions, but perhaps somewhat ahead of the Yakima Sheriff's bargaining unit.

c. "Such Other Factors"

(1) County's Fiscal Health

The County does not maintain that it lacks the ability to pay more than what it offered, but it does contend its fiscal health is not good and a significant wage award could lead to an offsetting reduction of service levels. The DSA charges that the County sits on a healthy pool of untapped funds and property tax potential that could be utilized for wage increases beyond those proposed by the County. The County's primary assertions are as follows:

1. Over the last seven years, the County has been forced to make significant and painful cuts in spending, reduce personnel, and freeze wages. This is because of the recent recession and because of annexations and incorporations, as discussed next.

2. Three significant annexations occurred over the past 11 years. These annexations/incorporations included large retail establishments, meaning a loss of substantial sales tax revenue to the County.

    - The County receives a 1% sales tax rate for taxable sales within unincorporated areas; it receives a mere 0.15% for the same activities in annexed or incorporated areas. This is an 85% loss of revenue from these areas.

    - Yet, the County still must provide certain services to those annexed areas, such as judicial, treasury and auditor's services. The small amount of revenue the County retains is insufficient to cover the cost of those services.

    - The impact to the County’s revenues from losing these areas has been significant. In 2012 the taxable sales within Spokane County increased by 2.6% over 2011, yet the County’s sales tax revenue decreased by 5.93%. For 2014, total sales tax revenue is expected to remain below 2008 levels.

3. Additional taxes may be collected on new construction, but post-recession declines in this area have limited these revenues.

4. Unemployment jumped to 9.7% during the recession (from 5.6%) and the County has only recently regained half or less of that loss.

5. The economic crisis affected the County's general fund (which funds the bargaining unit services). From 2007 to 2013, revenues rose by 4%, yet expenditures increased by 6.6%.

6. Although the County contracts to provide Sheriff's services to the referenced annexed/incorporated areas, the revenues from those contracts do not entirely cover its costs, such as overhead. Nevertheless, over half the Sheriff's operating budget goes to providing those services. A significant bargaining unit wage increase would have to be passed along, which would risk the loss of those contracts.

7. The County has been forced to significantly tighten its belt over the past half decade. It has eliminated 144 general fund positions, withheld cost-of-living increases to almost all employee groups, and moved all employees (except for this bargaining unit) to a new medical plan. (Even so, its health care costs have risen rapidly).

8. The County has been paying rapidly increasing contributions to PERS. The PERS contribution rates have increased 69% between 2007 and 2013. Contribution rates for the 2015-2017 biennium threaten to more than double the County's contribution since 2007.

As stated above, the Association contends that the County has ample funds as well as an untapped property tax potential. The DSA's consultant, Stan Finkelstein, a former Executive Director of the Association of Washington Cities, testified that two additional County resources are:

1. A very large beginning fund balance year after year, which greatly exceeds the 16% figure recommended by the General Financial Officers Association.

2. About a 1% untapped property tax increase potential that would only cost the owner of a $250,000 home about $10 per year.

The DSA disputed the County witnesses who testified that the ending cash balances described by Mr. Finkelstein were misleading. The County witnesses stated the cash balances cited in their materials were related to *unrestricted* funds, whereas the ending cash balances listed in the reports issued by the State Auditor also included *assigned and restricted* funds. However, the DSA asserts, these witnesses failed to mention the ability of the Board of County Commissioners to unilaterally move funds among those various accounts, thus artificially reducing the apparent level of ending cash balances. The DSA believes

Spokane County manipulated the designation of cash balances to gain an advantage at the bargaining table. The DSA cites Exh. C-1, which shows the restricted cash balances increasing from $208,630 in 2009 to more than $26,000,000 in 2013. During that same period, unrestricted cash balances stayed between $15,000,000 and $17,000,000, evidencing a clear intent to diminish unrestricted cash balances by designating such funds as restricted.

The DSA also maintained that:

1. On average Spokane County's ending cash balance was 50% greater than the ending cash balances of Pierce, Snohomish, Kitsap, Clark and Yakima counties;
2. Since 2010, revenue has increased 5.1%, which is higher than the comparable counties.

The County disputed the DSA's economic analysis, Mr. Finkelstein's testimony and the conclusions the DSA drew from the evidence presented.

I do not have sufficient information before me to make a comfortably informed decision as to whether the County has sufficient unrestricted cash reserves or untapped property tax revenues to pay for the DSA's proposal or any other significant increase beyond its offer. I suspect that it could pay more than its own modest offer without cutting back on services or losing its contracts in the annexed jurisdictions. However, I need not make a specific finding. I am finding that the other statutory considerations here give greater support to a modest wage increase as opposed to a more generous one. In addition, I always take the view that "[e]ven if the employer is relatively flush, wage and benefit increases awarded in arbitration should be fiscally prudent." *Snohomish County (Corrections Sergeants and Lieutenants*) 19, PERC No 25993-I-13-0632 (Wilkinson, 2014).

(2) Internal Equity

The parties disagree as to whether maintaining pay increase equity among County employees is a valid consideration in interest arbitration.

The DSA contends:

1. At least two arbitrators (citations omitted here) have down-graded the internal equity

consideration. One arbitrator found comparability to be more compelling, and another noted that interest arbitration units differ from non-interest arbitration eligible units.

2. The work performed by the bargaining unit members differs substantially from the work performed by County's other employees. For one thing, it entails much greater risk.

3. The reduction of the number of employees of the Sheriff s Office between 2010 and 2014 exceeded the reduction of Spokane County employees in other departments.

4. The bargaining unit was required to give up the right to strike as a *quid pro quo* for interest arbitration. Therefore, it should not be put on the same footing as other County employees.

The County, on the other hand, maintains that internal parity should be a compelling consideration in this case; arbitrators have recognized the importance of this consideration. (Citations not included here). It presented evidence that other internal units in Spokane County have agreed to multiple years (three to four years) of no COLA. The County averred:

1. The County's proposal recognizes the sacrifices these other groups have made, including their move to the redesigned healthcare benefits.

2. Conditioning a third-year increase on agreement to move to County’s redesigned medical plans with increased employee contributions to premiums is consistent with other County bargaining units.

3. Adoption of the DSA’s proposal will undoubtedly harm employee morale, as uniformed personnel will not be asked to make the same sacrifices demanded of other employees.

My view on internal parity or equity is that it is a valid consideration in interest arbitration, particularly when times are hard. However, I am reluctant to let it override considerations pertaining to market pay (i.e., a total compensation analysis) and other important statutory criteria, at least if it appears some money might be available to bring a bargaining unit's pay closer to statutorily optimal levels. In this case, the total compensation analysis and other considerations show that the bargaining unit will receive competitive pay with an increase along the lines of the County's offer. Internal equity considerations further support something approximating the County's offer, as opposed to a higher increase.

(3) Retention

The Association presented evidence in the form of a generalized statement from its consultant Stan Finkelstein that a number of bargaining unit members have taken a job with the better paying Spokane Police Department in recent years.

The County's evidence does not show any particular retention problem until 2014. Since January 1, 2014, five deputies have left for jobs with the better-paying Spokane Police Department, and one went over the Cascades to the Lakewood Police Department.

This information is of concern, but overall it is insufficient to show a serious retention problem. It is a fact that the Spokane Police Department has better pay and is an attractive target for a lateral move by a Spokane County Sheriff's deputy. Neither party proposes using the City of Spokane as a comparable because it is a much different agency. Ultimately, I find the retention consideration to be a wash.

3. Arbitrator's Wage Award

The first thing to consider when determining the final wage award is the bargaining unit wages relative to the comparable jurisdictions and the unit's optimal position among the comparables. When comparable jurisdictions' demographics, including population, assessed valuation, cost of living, underlying economic health and the like are relatively equal, placing the subject jurisdiction roughly in the middle is a desirable outcome. Alternatively, it is sometimes preferable to maintain the subject jurisdiction's historical position. The difficulty is that a perfect universe of nearly identical comparators is rare. Here, the basic demographic differences (population and per capita assessed valuation) are striking:

TABLE 9

County	Population	AV/Capita	PropTaxRev/Capita
Clark	442,800	$88,114.27	$131.98
Kitsap	255,900	$101,254.40	$122.64
Pierce	821,300	$87,115.55	$133.27
Snohomish	741,000	$107,218.62	$105.56
Spokane	*484,500*	*$76,862.75*	*$101.11*
Yakima	248,800	$60,385.85	$104.36
CompAverage	**501,960**	**$92,019.28**	**$120.91**

Sales tax revenues, which are the other principal measure of a county's income, also show a similarly uneven distribution among the comparable jurisdictions.

Using population and tax revenues as measures (which is common in interest arbitration proceedings), the positioning of Spokane County should be about fifth among the comparators, or somewhat below average. As discussed previously, cost of living considerations also support this positioning.

I am not suggesting revenues, population and cost of living should be the only determining consideration with respect to positioning. Pierce County, for instance, pays fairly robust wages, despite its fourth place position in per capita assessed valuation and cost of living. Nearby Kitsap County, with a fairly high assessed valuation per capita, has lower pay. I am surmising that this is because Pierce County is populous, has a higher crime rate, and is adjacent to presumably top-paying King County. Kitsap is more rural, more affluent, and not contiguous to King County. It probably has a lower crime rate. Nevertheless, there is no evidence that Spokane County has any peculiar characteristics that would justify an escalation of wages to well above the average of the comparable jurisdictions. Indeed, the County's evidence shows that it is not a high wage area generally.

A simple snapshot of the bargaining unit focuses on the 15-year deputy (in other words, mid-range longevity). This position went into the current contract period with a 3.6% total compensation advantage. (The figure was 2.1% for the 15-year sergeant.) Equivalent employees in comparable jurisdictions have received modest wage increases since 2012. If this bargaining unit were to receive no wage increase during this period, 15-year deputies' wages would trail the comparable average by 1% (1.6% for sergeants). Thus, a 1%/1.6% wage increase would bring these positions up to the average of the comparators. The County's 2.5% wage offer would take the 15-year deputy position to 1.5% over average (and 0.9% over average for sergeants). It is a fair offer under a comparable analysis. It also is a fair offer for the better situated bargaining unit members with five years (and an AA degree) or 25 years. The pay for the five-year AA deputy, with a 2.5% increase, will exceed the comparables average by 2.66%; the 25-year deputy pay will exceed the average by

an impressive 8.2% (and 7.4% for the 25-year sergeant). Another one-percent can be added on with respect to five and 15-year bargaining unit members with BA degrees.

A wage award also should consider changes in the CPI. As stated above, the County's proposal falls short of the recent three-year change in the CPI-U, but the DSA's proposal exceeds it. Although the CPI-change consideration would support a wage increase commensurate with that change, I find that this is offset by the fact that the bargaining unit over time managed to receive wages that have more generously outpaced changes in the CPI.

The remaining considerations in interest arbitration (the County's fiscal health and internal parity) are considerations that place a downward pressure on wage increases. Although I do not find these considerations to be so compelling that they should drive this wage award, they nevertheless merit consideration. If this bargaining unit's total compensation relative to the comparable jurisdictions lagged significantly, I would consider some measure of a "catch-up" increase. But a more generous increase is not warranted here. Therefore considerations pertaining to fiscal prudence and internal parity have been justifiably entertained.

Accordingly, I will award this bargaining unit a 2.5% wage increase to take place the third year of the contract. In prior interest arbitration awards, I have awarded staged increases like that proposed here by the County (viz: January and July). But I have done so to cushion the impact on the employer of "catch-up" wage increases. The County apparently proposes a two-staged increase so as not to "reward" the DSA for the unfair labor practice it committed in late 2013. I am not convinced; I see no reason for a staged increase in this case. Hence, this 2.5% award will be retroactive to January 1, 2014.

B. Article 15: Medical/Dental/Vision Benefits

The County proposed moving the bargaining unit to its new, redesigned benefit plan. It also proposed increasing the employees' share of the premium. Its proposal reads as follows:

> For the period January 1, 2012 through November 30, 2014, the County proposes no change to the medical, dental, and vision benefits. Effective

> December 1, 2014, the County proposes that employees contribute 5% towards the employee's medical, dental and vision premium and 10% towards the employee's dependents' premiums. Also, effective December 1, 2014, the County proposes that Association members move to the County's redesigned medical plan, the plan all other County employees are currently on.

The DSA opposes any changes to the previous contract language.

The County, which is self-insured, currently offers a Group Health HMO and a Premera PPO. Its redesigned plan would do the same. The following table highlights key features or effects of the County's proposed change:

TABLE 10

Existing Plans			New Plans	
HMO	PPO		HMO	PPO
Premium: 9% of increased family cost only			Premium: Employee only-5% Employee plus-10%	
No Deductible	$200 / $600 Deductible		$200 / $600 Family Deductible	$500 / $1500 Family Deductible
100% Co-insurance	80/20 Coinsurance		90/10 Coinsurance	80/20 Coinsurance
$15 Office Visit Co-pay	$15 Office Visit Co-pay + Deductible		$30 Office Visit Co-pay	$30 Office Visit Co-pay + Deductible
Preventative-no out-of-pocket exemption	Preventative-no out-of-pocket exemption		Preventative-no out of pocket payment	Preventative-no out of pocket payment
$1,200 Out of Pocket Maximum	$1,250 Out of Pocket Maximum + Deductible		$1,000/$3,000 Family Out of Pocket Maximum	$2,000/$6,000 FamilyOut of Pocket Maximum + Deductible
$10/$20/$50 RX Retail Mandatory Generics $20/$40/$100 RX Mail Order Mandatory Generics	$10/$20/$40 RX Retail Mandatory Generics $20/$40/$80 RX Mail Order Mandatory Generics		$15/$30/$50 RX Retail Mandatory Generics $30/$60/$100 RX Mail Order Mandatory Generics	$37/$95/$125 RX Retail Mandatory Generics $30/$60/$100 RX Mail Order Mandatory Generics
$75 ER Co-pay	$75 ER Co-Pay		$150 ER Co-pay	$150 ER Co-Pay
$150 Vision Hardware Every 24 Months	Covered in Full Up to $300 Calendar Year Maximum		No change	No change

Note that under the new plan, the premium sharing also applies to dental coverage. Currently, the County pays the dental premium. Also, note that the County's proposal contained certain other language changes that were not addressed at hearing and are not being addressed here.

The County, of course, has redesigned its plan in order to save money, something that is needed with rapidly escalating health care costs. Its key contention is that every other employee

group in the County has accepted this new plan, except for this bargaining unit. The Association finds the redesigned plan too costly for its members, especially with the increased premium sharing.

In support of its proposal, the County argues:

1. Health insurance costs have skyrocketed (117% in six years for full family premiums) over the last several years. It has used medical reserves in the past to "buy down" the premium rate, but cannot continue to do that.

2. The change will delay the "Cadillac Tax" provision of the Affordable Care Act.

3. Most arbitrators give internal comparables considerable weight when it comes to health plans. All other employee groups are on the revised plan. The proposal is also consistent with national trends.

4. The redesigned plan continues to give "gold" level coverage and has some increased benefits over the status quo in the form of preventative care without co-pays.

5. The bargaining unit member cost for a change starting in December 2014 will be non-existent because it is offset by the wage increase.

In opposition to the County, the DSA maintains:

1. The DSA asserts the Arbitrator lacks the ability to order its members to move to medical plans beyond the years of the contract in question, and after said contract has expired.

2. The record shows the significant financial impact which would result if the requested transition was implemented:

    - Exh. DSA-22 (pages 1-2) identifies 18 separate categories (Group Health) and 14 categories (Premera) in which a greater percentage of the cost is shifted to plan members. Page 4 illustrates the significant cost to the DSA members, and the resulting financial windfall to Spokane County.

    - Exh. DSA-23 compares the increase in utilizing typical services for a family of common composition. Transition to the revised Group Health plan would result in a 98% increase in cost for the identical utilization, while transition to the revised Premera plan would result in a 45% increase.

    - Exh. DSA-25 illustrates the percentage of annual salary required to satisfy the current and proposed premium share, for each plan as applied to deputies, detective/corporals and sergeants with five, ten and fifteen years of service.

    - In sum, as conceded by several of the witnesses for Spokane County, movement to the revised plans would come at a cost <u>greater than the total wage adjustment</u> it proposes for 2012, 2013 and 2014. These are law enforcement officers who haven't had a raise in four years.

3. The DSA's response to the internal equity argument is twofold.

   - First, Arbitrator Lehleitner in *Spokane County (Deputy Sheriffs' Association)* (2006) (hereafter referred to as the Arbitrator Lehleitner decision) ruled that internal parity with other bargaining units is not relevant because members of this bargaining unit are governed by RCW 4.56.

   - Second, as illustrated by Exhibit DSA-24, two of the four comparable counties (Kitsap and Snohomish), maintain separate medical plans for law enforcement and civilian personnel.

Medical benefit and cost comparisons among comparable jurisdictions are problematical because of the varying structures of health plans. Nevertheless, information provided by the County shows that under the current plan structure, bargaining unit members' costs are well below average:

TABLE 11

Coverage	**Comparator Low Prem-ium Ave.**	**Comparator High Prem-ium Ave**	Present Spok. Low Premium	Present Spok. High Premium	Proposed Spok. Low Premium	Proposed Spok. High Premium
Employee only	**$24.91**	**$28.31**	$0	$0	$19	$25
Employee+Sp	**$54.46**	**$65.66**	$37	$39	$69	$88
Employee+Ch	**$60.46**	**$74.86**	$45	$47	$76	$96
Full Family	**$81.64**	**$103.64**	$81	$85	$107	$134

As seen on Table 11, with the County's proposal, bargaining unit members' premium costs will be above average (except for the employee only category) by 26% to 34%, according to my calculations. This translates into a *simple, non weighted average* (across coverage tiers) increase of about $15 per month ($180 per year), or 0.27% (0.0027) of base wages (increased by my base wage award of 2.5%).

Under the County's proposal, other employee out-of-pocket costs (co-pay, deductible, annual maximums, etc) will also increase to above the comparable jurisdictions' average. The amount of that increase will vary according to utilization. According to the DSA's estimates, typical family of four out-of pocket costs (excluding premium increases) under a full family plan could increase by $400-$600 for routine medical usage. This would be in addition to the

increased premiums of $312 - $588 annually under a full family plan. I note, however, that some aspects of the redesigned plan (in the preventative care area), will save bargaining unit members money.

In sum, The DSA seeks to perpetuate the status quo, which places bargaining unit at a modest advantage over the comparators. The County seeks to flip that to a modest disadvantage.

As part of my decision-making in prior interest arbitration proceedings, I reviewed past Washington interest arbitration awards and noted a trend for requiring employees to bear a larger share of the costs of medical premiums because those rapidly insurance costs have placed a staggering burden on employers. The County here proposes an increase in employee contributions to what previously was a fairly generous medical plan, plus a restructuring of that plan that would shift some costs to the employee, depending on utilization.

The County's strongest suits are cost containment and internal equity. I appreciate the benefit of uniformity and fairness when an employer is asking for or has obtained concessions from all other employee groups. Given the continuing escalating costs of medical care, and hence medical insurance, and the fact that all other employee units in the County have shifted to the County's new plans, I find the County's proposal to be reasonable and fair.

The DSA makes a case that the increased premium and the redesigned plan could cost some bargaining unit members a great deal. While this may be true, as I said previously, the cost varies according to utilization. There also are some savings built into the resigned plan. One simply cannot predict how much the costs will shift. Clearly, employees who cover dependents will be paying more in premiums and probably in out-of-pocket costs, and I acknowledge this.

I considered, but rejected the notion of giving a wage increase (over and above what was previously awarded) to offset the bargaining unit employees' increased premium costs. I rejected that idea because:

1. The wage award already places the bargaining unit above the total compensation average for comparators;

2. The wage award is retroactive to January 1, 2014 (as opposed to the County's proposed date of July 1, 2014 for half the award). This medical plan award only begins on December 1, 2014. Thus, there is a built-in offsetting wage benefit to the bargaining unit.

3. Bargaining unit members will be unevenly affected by the new plan; therefore, an increased wage award would benefit some much more than others;

4. The County, like employers everywhere with good medical plans, has absorbed the lion's share (when measured in constant dollars) of the rapidly escalating premium costs that has now gone on for decades. So even though employees' contributions have been rising, employees dollar share of those increases have been relatively small. Thus, employees have been getting a rapidly increasing (relative to CPI changes) benefit in the form of the escalating employer contributions to premium.

By awarding the County's proposal here, the bargaining unit total compensation (including health care) will be much closer to the comparables' average mark, which is appropriate. In a perfect world, health benefits would be included in a total compensation analysis. It is not (though some attempts have been made in other cases) because of the apples to oranges problem. This is due to substantial variations in plan design and plan costs among the various jurisdictions. Any given plan in a particular jurisdiction may cost more because of plan design, because medical costs in that jurisdiction are higher, or because the employer simply is not getting the biggest bang for the buck.

The DSA argued that I lacked the authority to award the County's proposal to begin at the end of the contract term. That is true. That is why the award begins on the date proposed, which is December 1, 2014.

Accordingly, it is my decision to award the County's proposals on employee contribution to premiums and on its redesigned medical plans.

C. Article 14.7.1: Clothing Allowance

The previous contract language stated:

> Effective January 1, 2001, the County will provide a clothing allowance of nine hundred dollars ($900) per year for each and every member of the Sheriffs Department whose primary function is law enforcement.

Bargaining unit members receive this allowance regardless of whether or not they actually purchase the clothing, since no receipt is required.

The DSA proposed to increase the allowance to 20% of the top step deputy's monthly rate of pay for one month (base, not including longevity), paid annually. The DSA calculates this new amount to be $1088. The DSA points out that in 2001, Arbitrator Michael Beck increased the uniform allowance by 20% from $750 to $900. In that award, Arbitrator Beck found it was difficult to refer to comparable agencies because all of them utilized a quartermaster system where deputies were issued uniforms, replacements as needed and also received a cleaning allowance. *Spokane County (Deputy Sheriffs' Associatio*n), PERC No. 15174-I-00-341 (Beck, 2001) (hereafter referred to as the Arbitrator Beck award). The bargaining unit has not received an increase in the allowance since then, despite increases in the cost for purchasing and maintaining uniforms. It now seeks the same 20% increase. The DSA presented evidence on the cost of items most bargaining unit members must purchase. Some of these items are quite costly because of their specialized law enforcement design.

The County opposed this increase, arguing that:

1. The current allowance provides ample compensation to deputies for clothing expenses and is on par with the County's other interest arbitration eligible unions.

2. Moreover, the current allowance for deputies is significantly greater than allowances from comparable counties.

3. The allowance is given to everyone in the bargaining unit, regardless of whether they wear a uniform. Bargaining unit members are not required to submit receipts. Deputies are allowed to use their discretion to replace or not replace items. The outlay for new hires is not significant: Typically, new hires purchase pants and three shirts.

4. Even assuming, *arguendo*, that new hires typically have uniform costs above the $900 allowance in the first year, the Association's witness implied that costs would be much lower in subsequent years.

After reviewing the evidence and arguments, I find that the Association has the better case. Some of the uniform requirements can be quite costly and they do need replacing from time to time. The uniform allowance amount has not been raised since 2001. The County's objections

could be met by giving the allowance only upon the presentation of receipts. But the County did not propose this. For simplicity's sake, my award will be a flat amount, $1088. It will not be tied to top step deputy pay. It will be retroactive to January 1, 2014.

D. Article 8.3: Sick Leave Cash Out

The previous contract language stated:

> Employees shall be compensated in cash for 50% of all accumulated unused sick leave upon retirement, death, or separation after 20 years of continuous service with the Sheriff's Department….

The DSA proposed decreasing the eligibility for cash out to 10 years of continuous service. The County opposed any change.

The DSA contended that the proposed language change would create an additional incentive to not use sick leave. Given the cuts in personnel in the bargaining unit, there already is a minimum staffing problem. When a deputy is sick, it disrupts the schedule and increases the need for overtime. Therefore, the use of sick leave can be very costly to the County. The DSA adds that requiring 20 years of service for a stressful, dangerous job minimizes the practical ability of realizing that benefit. Denying a discharged employee the ability to sell back any un-used sick leave constitutes a form of discipline in violation of section 12.1 of the Collective Bargaining Agreement

The County contends that the Association's proposal is not supported by external or internal comparables, would be extremely costly, and is a solution in search of a problem.

While the abuse of sick leave is not to be encouraged, it also is not a good idea to promote the idea of an employee coming to work when ill. There is the risk of contagion for common ailments like colds and flu. An ill employee will not be in top shape for performance and could even be a hazard, for instance, when driving a vehicle. The DSA's language proposal would also discourage retention by allowing an employee to cash out after ten years, as opposed to the current 20. As the County contends, the proposal is not supported by comparables. I will not award the DSA's proposal.

E. Appendix B: Bill of Rights

The Association proposed to change the language of the Collective Bargaining Agreement as follows:

> (6) All investigations will be completed in a timely manner, not to exceed ~~60~~ 90 calendar days from the date the matter is assigned to the Office of Professional Standards for investigation to the date discipline is imposed. ~~At the completion of the investigation the Employee will be notified in writing of the result of the investigation. In the case of a complex investigation that may exceed the 60-day time limit, the employee will be notified of the extension and approximate time needed to conclude the investigation~~. If discipline is not imposed within that time period, no discipline shall be imposed thereafter and the incident forming the basis for the complaint shall not be used in the imposition of progressive discipline at a later time. If the investigator determines that the investigation cannot be concluded within such time period due to its complex nature or other pertinent factors, the investigator shall notify the Association in writing as to the nature of the circumstances requiring an extension of the 90 day period, and the length of the extension required. The Association shall notify the investigator of its acceptance or objection to the request within 10 days of receiving the same. If the Association objects, any discipline imposed, and the violation of this provision, may be grieved as set forth in section 12.5 of the Collective Bargaining Agreement. Further, the date said grievance becomes ripe is the date on which discipline is imposed.

The DSA's proposed language does the following:

- It allows 90 days for most investigations.
- It defines the investigative period as starting on the date the matter is assigned to the Office of Professional Standards and ending on the date discipline is imposed
- Unless an extension is obtained, the penalty for missing the 90 day deadline is no discipline
- An extension can be obtained with the Association's consent (the Association has 10 days to respond to the request)
- If the Association responds negatively, any discipline imposed, and the violation of this provision, may be grieved,

The DSA presented its argument within the framework I identified for non-economic proposals in *Snohomish County (Corrections Sergeants and Lieutenants),* PERC No. 25993-I-13-0632 (Wilkinson, 2014):

1. Does a problem exist that needs correcting? The current language is ambiguous as to what segment of the investigatory process is included within the 60 day limitation, and

there is no remedy for violation of that limit. A situation with one bargaining unit member involved an investigation that exceeded 13 months. In addition, County Exhibits 7.3 through 7.6 illustrate the following: 2011 - 66% of the investigations exceeded 60 days; 2013 - 50% of the investigations exceeded 60 days; 2014 - 50% of the investigations exceeded 60 days.

2. Does the proposed language address and resolve those issues? Yes, the proposed language clearly identifies when the 90-day period begins and it identifies the act that stops the clock from ticking. Further, the remedy for exceeding the time limitations applicable to each investigation is specifically identified.

3. Does the proposed language create the potential for unforeseen future problems? No, the proposed language clearly address the problems associated with the current language, and it eliminates the potential for unforeseen future problems by providing a mechanism for expanding the time limit when appropriate, and a basis for determining whether the conduct of either party is unreasonable.

The County opposes any change to the current language. It maintains that:

1. The current investigative timeliness (60 day) language has been interpreted by a previous arbitrator to pertain to the investigation phase only, and not to the decision-making phase on discipline.

2. Significant public policy concerns undermine the Association's proposal as it could rush investigations for allegations of significant misconduct.

    a. Some allegations require complex investigations, requiring extensive fact-finding and interviews. The proposal incentivizes a rush to judgment

    b. Employee discipline should be standard across the entire County; this requires careful consideration

3. The Association's "consent" for extension language is too wide-open.

4. The Association's proposal for a hard 90-day limit is also impracticable because the County sometimes has little control over the length of the investigation, for instance, when crimes have been alleged that are being separately investigated by another agency. There may be delays due to witness unavailability or for a required Loudermill hearing.

5. Finally, the proposal is simply unneeded. The County has provided compilations of its investigation timelines since 2011, which show that on average, the County completes all of its investigations and imposes discipline within 60 days. Keep in mind that the evidence the County presented measured the length of time from the initiation of the investigation to the imposition of discipline (if any). The County has a good, and improving, track record of investigating allegations of misconduct and timely issuing discipline. Also note that in 2011, 9 of the 14 investigations that took more than 90 days ended in no discipline. In addition, to the extent the Association claims the proposal is really about receiving notice, according to testimony provided by Undersheriff Tower, notice is already provided.

6. The Draconian penalty proposed by the Association of disallowing any discipline where it is not handed out within 90 days is unwarranted.

This proposal presents a close question to the Arbitrator. There have been past issues, the evidence shows, with investigations and discipline that take too long. However, there appears no generalized pattern of unreasonably lengthy investigations. As a grievance arbitrator, I have observed investigative and decision-making periods that, at least superficially, appear to be unreasonably long. While I do not condone lengthy investigations or decision-making, I also recognize that unions have difficulty proving that the length of time was unreasonable. There are always excuses, such as key people (including investigators) being on vacation, having other more pressing duties or being otherwise unavailable. Even without these "excuses," I recognize that there may be legitimate reasons for a lengthy investigation or decision-making process.

The biggest flaw in the proposal is the requirement that the Association consent to investigations that last beyond 90 days. This flaw could be corrected with the language "which consent shall not be unreasonably withheld." In my opinion, it would be unreasonable for the Association to withhold consent when, for example (1) there is an ongoing criminal investigation; (2) resources (personnel or witnesses) are unavailable; (3) decision-making is delayed for various legitimate reasons; (4) more time is needed to schedule a Loudermill hearing.

The second biggest drawback to the proposal is the Draconian penalty of no discipline for missing the deadline. Of course, with the "consent shall not be unreasonably withheld" language, the County should be able to obtain extensions as needed. But there may be times when someone simply makes a mistake - forgets about the deadline or doesn't count the days properly. There are a couple of language "cures" for this situation. One would be to distinguish between minor offenses and serious offenses; the automatic penalty would only apply to minor offense. However, drawing a bright line between the two is difficult. The other, would be to have

presumptive language, but require the ultimate determination to be made by a grievance arbitrator. I believe this latter approach provides greater flexibility, but it also has its drawbacks.

I appreciate the DSA's problem, but I am inclined to agree with the County that its proposed language is not a good solution. The penalty of no discipline is harsh. Just as importantly, the extension language is flawed. I considered, but rejected, doing a re-write of the proposal. Although I believe it is appropriate for an interest Arbitrator to make minor corrective changes to proposed language, a wholesale re-write is something to be avoided. Therefore, the DSA's proposal is not awarded.

F. Article 6.2: Vacation "Sell Back"

Article 6.12 of the last Collective Bargaining Agreement stated:

> Employees may elect to be compensated for up to forty (40) hours of unused Personal holidays, accumulated annual leave, or a combination thereof each year. ….

The Association proposed to change the vacation accrual "sell back" maximum to 120 hours annually. The County opposed the change.

The Association complains it's difficult to take all available leave days and this is because the County is perpetually understaffed. Deputy Cook, one of only two members of the Spokane County Sheriff s Office with 29 years of service, provided documentation (Exhibit DSA-26) of the twenty-five requests he submitted for vacation time in 2013 that were denied each and every time. There is a 40-hour cap on the number of vacation hours that can be accrued and cashed out. Once that cap has been exceeded, the hours above the cap are lost. Deputy Cook lost 38.6 hours of vacation time in 2013 (Exhibit DSA-27) which prompted him to seek a transfer to the Spokane Valley. Requests to increase the amount of vacation hours that can be accrued have been denied. See Exh. DSA-29.

The County's opposition argument makes the following points:

1. The Association’s proposal represents an overwhelming cost increase to County's already overtaxed budget. Based on historical trends, the County’s estimates this proposal would cost the County $351,926 per year.

2. Internal comparables: Only a handful of units have leave cash outs, and the maximum number of hours is 40.

3. External comparables: Among the five stipulated comparables, none offer vacation sellbacks like the one proposed by the Association. Only two counties allow sellback, but limit its use to "funds being available." Since the recession began, neither has made funds available.

4. The Association's proposal is premised on the mistaken assumption that bargaining unit members are unable to use their annual leave time. As of January 15, 2013, only six deputies were at the maximum accruals. Additionally, Undersheriff Tower testified to making exceptions and allowing carryover to the following year when a deputy was faced with losing accrued vacation.

I appreciate the frustration of bargaining unit members when they are unable to take vacations when desired. This seems to be a particular problem with law enforcement agencies where 24/7 coverage is required. Nevertheless, the Association has failed to make a case that loss of vacation accruals is a significant problem. Raising the cap to the extent desired by the DSA would be a costly proposition for the County. The proposal is not awarded.

The County proposed language to make the vacation/holiday sell back contingent on available funds (with no increase in the cap on sell back hours). Neither party addressed this proposal in its post-hearing brief. Therefore, it is not awarded.

G. Articles 7 and 8; Appendix C: Leave Accrual Rate

The County proposes to change the leave accruals in order to define each leave day accrual as 8 hours, regardless of the length of shift worked by the employee. The DSA opposes the language changes. As of hearing, 60.3% of the DSA members work a 12-hour shift. 32.4% work a 10-hour shift and 7.3% work a eight-hour shift. The precise language changes proposed by the County are lengthy and not included here.

The County argues:

1. In 2006, Arbitrator Lehleitner upended years of past practice by requiring leave accrual rates to be based on the length of an employee's shift. Thus, at the starter level, a deputy working a 12-hour shift earns 248 more hours of leave than an employee working an eight-hour shift. The 12-hour deputy's leave accrues at 1.5 times the rate as the 8 hour employee. All deputies work 2080 hours per year. Obviously, this is not fair to the 8-hour employee.

2. This also results in the 12-hour deputy being able to most easily accumulate hours under the 40-hour buy out provision.

3. The County's proposal is amply supported by external comparables. Compared to the two other counties that use 12-hour shifts, Spokane County deputies with less than 5 years of experience accrue 130% of the leave accrued by a similar employee at Yakima, and 162% of the leave accrued by a Clark County deputy. As seniority increases, so too does the gap between Spokane County and its comparables.

4. Further, all of the other County bargaining unit's accrue at a rate of 7.5 or 8 hours, except for Sheriff Lieutenants and Captains, regardless of length of shift.

5. Contrary to the DSA's claim, the County's proposal does not penalize 12-hour shift employees because they are cushioned by "Kelly Days," which gives them one additional leave day per month.

The Association's post-hearing brief contends:

1. The County is advancing this proposal for the third time in arbitration. It received a contrary ruling, with respect to personal leave, from Arbitrator Michael Beck in interest arbitration in 2001. The day-for-a-day concept was extended to annual and sick leave by Arbitrator George Lehleitner's decision in 2006.
2. Adoption of the proposed change would have the following adverse consequences: (1) An employee working a 12 hour shift would be docked 12 hours from his/her leave bank for each day of vacation/sick leave, therefore it takes such an individual a month and a half to acquire the same day an 8 hour shift employee would take a month to accrue; and (2) if that same employee desired to take a 2 week vacation he/she would be required to use 96 hours of leave, whereas the rare deputy working an 8 hour shift would be required to use 80 hours to take a vacation of the identical length.

I initially found this issue very confusing but in sorting it out, I found the confusion seemed to stem from the lack of clarity in the record over the number of hours debited against a leave account for a day off. The County argued that the status quo allows 12-hour employees to accumulate more leave hours than the 8-hour employee. This is an obvious inequity, or it would be, if the 12-hour employee also could take more leave days off. Clearly, every employee at the same longevity benchmark should have the same leave time off. Leave time off is customarily marked in a 24-hour period, i.e., "days." For example, if an employee wants a scheduled Tuesday off, that employee is taking one "day" or a 24-hour period off. If that employee is an eight-hour employee, then eight hours of accrued leave is charged against that employee's leave balance. If only eight hours were charged for this same "day" off for a 10 or 12-hour

employee, then there would be an inequity. Although the record was far from clear, there were a few clues therein that lead me to conclude that the number of leave hours charged (against the accrued leave balance) for a 10-hour employee is 10 hours and 12 hours for a 12-hour employee when such employee takes a "day" off. Arbitrator Beck so implied in his 2001 interest arbitration award on personal days off. Tim O'Brien clarified, in response to my (admittedly ambiguous) question at hearing, that a 12-hour employee is charged 12 hours of leave time for a day off. Finally, the DSA so implied in its post-hearing brief.

Assuming the above to be the case, the *status quo* is that eight-, 10- and 12-hour employees all get the same amount of leave days off. The County has not made a convincing case to disrupt the *status quo*.

The only legitimate complaint the County has is that the 12-hour employee accumulates leave faster than the 10-hour, and the 10-hour employee accumulates leave faster than the 8-hour employee. This gives the 12-hour employee the comparative advantage. By my calculations, the starter employee (0-5 years) working a 12-hour shift could cash out 40 hours of leave, and still take about 1.66 more calendar days leave time than the eight hour employee who also cashes out under the cap. Arbitrator Lehleitner's decision acknowledged this in his decision and suggested the parties might negotiate something different on leave cash outs. I assume he meant that the parties should try to negotiate something that creates a more level playing field. As I understand the County's proposal, it is a Draconian response to a relatively minor problem.

The County's proposal is not awarded.

H. Article 10.8: Overtime

The County proposed to change the method for determining weekly overtime eligibility, as follows:

10.8 <u>Overtime</u>

Time and one-half (1 1/2) the employee's regular rate of pay shall be paid for work under

any of the following conditions, but, compensation shall not be paid twice for the same hours.

10.8.1 All actual hours worked ~~work performed~~ in excess of ~~(~~8 hours if on a 5 day, 8 hour shift, ~~(~~10 hours if on a 4 day, 10 hour shift or 12 hours if on a 3 day, 12 hour shift~~)~~ in any work day.

10.8.2 All actual hours worked ~~work performed~~ in excess of forty (40) hours in any work week.

Essentially, the County's proposal would not allow paid time off to count against the 40-hour threshold for overtime. Under current practice, for example, if a 5/8 employee takes a vacation day but then works five days in the week, overtime would kick in for the fifth day because the employee would be paid as if actually working six days. The County's proposal would do away with overtime pay in that example because the actual work of the employee would have been only 40 hours. The County's avers that its proposal is consistent with wage and hour law, while the expired contract language is more generous.

Specifically, the County contends:

1. In practice, the current contract language has morphed into giving “work performed” credit for time spent on paid leave, despite its plain language.
2. It is fundamentally unfair to treat actual time worked as the equivalent of paid time off.
3. In response to the Association's argument that the new language would “punish” deputies who take sick leave or vacation by denying them the opportunity for overtime, the County notes that bargaining unit members are eligible for overtime if in the course of any shift they work in excess of their scheduled hours. This overtime trigger is more generous than the FLSA and would continue under the County’s proposal. Nor is the County proposing that if a deputy was called in, he or should would not receive overtime.

In response, the Association notes that the County is basically asking for a change in past practice. The DSA further avers that such change will aggravate the current staffing shortages because there will be no incentive for an employee to agree to work on his or her day off (assuming that the employee has taken a leave day during the work week).

What the County seeks here is a better deal. While its proposal is not unreasonable, it bears the burden of proving the need to disrupt the status quo. It has not presented any

evidence or arguments specifically tied to the statutory criteria. Therefore, its proposal is not awarded.

IV. RECAP: FINAL AWARD OF THE ARBITRATOR

A. Wage Award

For the reasons discussed above, I find the following to be an appropriate wage award for this bargaining unit, retroactive to January 1, 2014:

TABLE 12

Year	Wage Adjustment
2012	0
2013	0
2014	2.5%

B. Article 15: Medical/Dental/Vision Benefits

The County's proposals for a change in the employees' share of premiums and to change its plans are awarded.

C. Article 14.7.1: Clothing Allowance

The Association's proposal to increase the clothing allowance to $1088.00 is awarded. This shall be flat dollar amount and not tied to a designated pay grade. The award is retroactive to January 1, 2014.

D. Article 8.3: Sick Leave Cash Out

The Association's proposal to change the sick leave cash out language is not awarded. There will be no change in the contract language.

E. Appendix B: Bill of Rights

The Association's proposal to change the "Bill of Rights" language with respect to timelines for investigation and discipline is not awarded. There will be no change to the contract language.

F. Article 6.2: Vacation "Sell Back"

The Association's proposal to increase the number of vacation "sell back" hours is not awarded. There will be no change in the contract language.

G. Articles 7 and 8; Appendix C: Leave Accrual Rate

The County's proposal to change the leave accrual rates is not awarded. There will be no change in the contract language.

H. Article 10.8: Overtime

The County's proposal to change overtime language is not awarded. There will be no change in the contract language.

Date: February 8, 2015

Jane R. Wilkinson
Labor Arbitrator