

INTEREST ARBITRATION

BEFORE NEUTRAL ARBITRATOR TIMOTHY WILLIAMS

THE MATTER OF THE INTEREST)
)
ARBITRATION BETWEEN)
)
KING COUNTY SHERIFF'S OFFICE COURT)
MARSHALS GUILD)
)
"UNION" OR "GUILD") INTEREST ARBITRATION
) PERC CASE NO: 137289-I-23
AND)
)
KING COUNTY,)
)
"EMPLOYER" OR "COUNTY")

HEARING: June 26, 27, 28, July 25, 2024

BRIEFS RECEIVED: September 19, 2024

HEARING CLOSED: September 19, 2024

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Shane Watkins, Captain

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BACKGROUND

Washington statute provides interest arbitration for uniformed personnel as a method to resolve labor disputes while prohibiting the right to strike. RCW 41.56.430 sets forth the importance of the services provided by uniformed personnel which

makes an interruption of those services not acceptable. The language of that provision reads:

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

RCW 41.56.450 provides the "alternative means of settling disputes," stating that when the "parties remain at impasse, then an interest arbitration panel shall be created to resolve the dispute." King County and the King County Marshals Guild are in the process of negotiating their 2023 - 2024 collective bargaining agreement (CBA). By letter dated August 14, 2023, PERC indicated that the Parties were at impasse on two issues:

- Wages
- Creation of Longevity Premium (E 22)

PERC concluded the letter by finding "the parties are at impasse and will certify the above issues to interest arbitration" (E 22).

Thus, consistent with the statutory requirements, each Party selected a partisan Arbitrator and Timothy Williams was selected as the "neutral chair." A four-day hearing was conducted with a transcript provided to the Parties and to the arbitration panel. The Parties determined to present their final closing arguments in the form of a brief and the briefs were timely received. During

the hearing an extensive set of documents was presented. As a result, the Arbitrator requested and received an extension to November 22 for filing the final award. This document constitutes the final award and is presented within the time extension granted by the Parties.

DISCUSSION

King County and King County Sheriff’s Office Court Marshals Guild are in the process of negotiating the January 1, 2023 through December 31, 2024 labor agreement. All matters of negotiation have been resolved (E 30) except two issues that are before the Panel. Both issues involve a matter of wages. The County proposes to maintain the current wage structure and to increase wages by 4% on January 1, 2023, and another 4% on January 1, 2024. These increases will result in the following wage schedule:

<u>Year</u>	<u>Step 6</u>	<u>Step 7</u>	<u>Step 8</u>	<u>Step 9</u>	<u>Step 10</u>
1/1/23	\$35.7854	\$36.6441	\$37.5236	\$38.4242	\$39.3463
1/1/24	\$37.2168	\$38.1099	\$39.0246	\$39.9611	\$40.9202

The Guild proposes to increase wages by 8% on January 1, 2023, and another 8% on January 1, 2024. The wage schedule resulting from these increases is as follows:

<u>Year</u>	<u>Step 6</u>	<u>Step 7</u>	<u>Step 8</u>	<u>Step 9</u>	<u>Step 10</u>
1/1/23	\$37.16	\$38.05	\$38.97	\$39.90	\$40.86
1/1/24	\$40.13	\$41.10	\$42.08	\$43.09	\$44.13

The Guild also proposed adding a new longevity schedule to the existing wage provision. This provision reads as follows:

Longevity/Retention Schedule - The County agrees to a schedule that serves as a Longevity - Retention Schedule as follows:

Six (6) Years	2% of base pay
Nine (9) Years	3% of base pay
Twelve (12) Years	4% of base pay
Fifteen (15) Years	5% of base pay

The County is opposed to including this new provision in the CBA contending that any new money should be put into the regular salary schedule.

Washington statute provides guidance to the arbitration panel for the task of rendering a decision for the salary schedule with wage increase and concerning the potential longevity proposal. That guidance is found as follows:

RCW 41.56.465

Uniformed personnel-Interest arbitration panel-
Determinations-Factors to be considered

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

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

(b) Stipulations of the parties;

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

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

(e) Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. ...

(2) For employees listed in RCW 41.56.030(7)¹ (a) through (d), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States.

The panel emphasizes that it has been carefully mindful of the statutory criteria as it reviewed the evidence and arguments of the Parties. Ultimately, the discussion will focus on the arguments and evidence that were found to weigh most heavily in the decision. The fact that a contention or point is not discussed does not mean that it was not considered. It does mean that it was not determined to be a major factor in arriving at the final award. Both Parties set forth strong arguments in their briefs and the ones found most pertinent involve the matter of comparability, cost-of-living increases and internal equity. This discussion continues by analyzing each of these.

¹ There is a **Reviser's note attached to the statute:** "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 s 11, changing subsection (14) to subsection (13). RCW 41.56.030 was subsequently amended by 2020 c 298 s 1, changing subsection (13) to subsection (14)."

Comparability

Washington statute provides interest arbitration for uniformed personnel as an alternative to a prohibited work stoppage. The Marshals provided court security and are uniformed personnel within the King County Sheriff's Department. As such, an impasse on unresolved issues at the bargaining table must be submitted to interest arbitration. Comparability is one of the criteria that the Arbitrator is required to use in resolving the impasse. Specifically, the panel is charged with comparing "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."

In the instant case, the Parties do not agree on the set of comparables. The Marshals' list consists of four counties in California while the County's list includes one of the four California counties and multiple counties from Washington. At hearing and in their briefs the Parties provided extensive analysis of what constitutes an appropriate set of comparables.

The statute provides that the comparables must be "like personnel of like employers of similar size on the west coast." Typically, the construct of like personnel does not pose a problem. City police are compared with City police, county deputy sheriffs with county deputy sheriffs and firefighters with firefighters.

The County Marshalls, however, pose a special problem in that court security is provided with a wide range of different options. There is no generally accepted, single approach. At times regular deputy sheriffs may be used or court security will be a function of corrections. In either case, there will be no court marshals.

Arbitrator Howell Lankford, in the only earlier interest arbitration case involving Washington court marshals, expressed this problem as follows:

The final variable, "like personnel," is usually the least problematic of the three. Usually, "like personnel" simply instructs the Arbitrator to compare police with police, corrections with corrections, and fire with fire. That is because both the legal authority and the actual work of most interest-arbitrable classifications do not vary much from employer to employer. Unfortunately, as far as this record shows, there is no widespread agreement that courthouse security should be assigned to commissioned court marshals. There are many answers to the question "How shall we assure security in and around the courthouse?" (E 24, P 6)

The other two variables that Arbitrator Lankford was referencing are that the comparables must be similar sized jurisdiction and must be west coast. Similar size has regularly been interpreted by arbitrators as plus or minus 50% (up to 50% bigger or 50% smaller). The Panel emphasizes, however, that the size of the location and its geographic position are useful only if there are "like personnel."

An additional issue is what Arbitrator Langford referenced as "The apparent hole in the statutory language" (E 24, P 3). RCW 41.56.465, paragraph (2) requires the panel to consider

comparability for uniformed personnel in similar seized west coast jurisdictions. This is required for "employees listed in RCW 41.56.030(14) (a) through (d)." the pertinent parts of RCW 41.56.030(14) read as follows:

(14) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more;... (i) court marshals of any county who are employed by, trained for, and commissioned by the county sheriff and charged with the responsibility of enforcing laws, protecting and maintaining security in all county-owned or contracted property, and performing any other duties assigned to them by the county sheriff or mandated by judicial order;...

Court marshals are not identified in (a) through (d) but rather are found in (i). Ultimately, Arbitrator Lankford explained that this was not a problem for his work since neither Party made an issue out of it and, simply set forth what each believed to be the appropriate comparators. He concluded that the Parties' decisions to go forward with evidence and arguments on comparators constituted a stipulation upon which he could proceed (E 24, P 4).

But the stipulation upon which Arbitrator Lankford preceded is not present in the instant case. King County strongly argues that while comparability should be considered as part of "Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into

consideration...," greater latitude should be allowed in terms of choosing appropriate comparators. The County states:

However, that RCW does not apply in this interest arbitration because, as argued above, Court Marshal is not an "employee listed in RCW 41.56.030(14)(a)-(d) which is required to make that consideration mandatory. This does not mean that comparability of employers should not be considered, it simply means that the statutory limitation of only considering employees that have a population that is plus or minus 50 percent does not apply to this interest arbitration. (E Br, P 12)

The Union contends that there was no legislative intent to restrict the use of comparability as part of an interest arbitration proceeding involving Court Marshals. Thus, the effort by the County to use comparators from the State of Washington that ignore the plus or minus 50 percent population principal should be ignored by the panel.

The panel concludes that the best approach to addressing the two comparability issues described above is to look specifically at those jurisdictions proposed by each of the Parties. The Guild proposes Alameda, Orange, Riverside and San Diego counties in California. All four are within the plus or minus 50 percent population requirement. Riverside is also on the Employer's list of comparables and, therefore, the Arbitrator will accept that one without comment. The Arbitrator finds the other three deficient over concerns about "like personnel."

San Diego County uses regular sheriff's deputies to provide court security. The fact that court security is a separately

listed function in the class specification does not change the fact that they are simply sheriff's deputies. The class specification indicates that the employees filling this position "perform a variety of general law enforcement functions consisting of patrol, court services, investigations, arrest, apprehension, supervision, and control of incarcerated persons, and to perform related work as required" (U II C 6, P 1).

The evidence also indicates that Alameda County provides court security with regular sheriff's deputies. While there is a position called the deputy sheriff SAN (service as needed), the description is an employee that "provides limited law enforcement services... on a services-as-needed basis." These employees are only used to "provide supplemental law enforcement surfaces to meet temporary fluctuation in staffing needs" (U IIC2). The daily requirements of court security could hardly be considered "temporary fluctuation." And further evidence indicates that there are 97 regular deputies assigned to Court Services (UR 32).

For Orange County, the Guild submitted a position called Sheriff's Special Officer and this position is not a regular sheriff's deputy. An employee in this position "patrols and provide security for properties against theft and illegal entry; enforces laws, ordinances, rules and regulations at County or special district facility, John Wayne Airport, or in County Jail facilities; perform special duty assignments and other work as

required" (U II C 3). There is no mention of court security services in the description of this position. More important, the license and certification for this position is not that of a regular sheriff's deputy, the basic peace officers' certificate is not required. A person in this position does not have arrest powers but must call for a law enforcement officer if an arrest is needed.

As previously noted, both Parties have included Riverside County as a comparable. It has a position called "Court Deputy." While there are certainly differences between King County Court Marshals and Riverside County Court Deputies, there are enough similarities to make this a viable comparator (U II C 5).

Ultimately the panel finds that only Riverside County provides court security with a position similar to Court Marshals. The panel does not find appropriate making a comparison where court security is performed by regular deputy sheriffs. Obviously, such a comparison will place Court Marshals behind since regular deputy sheriffs in all of the data make a higher wage. The Orange County position is flawed because it does not rise to the same level as that of a King County Court Marshal and it's questionable whether or not it actually performs court security duties.

Which brings us to the point of looking at the County's proposed list of comparables. The County fully acknowledges that this list, except Riverside County in California, does not make

the plus or minus 50 percent population requirement. Four Washington counties were found to be comparable when applying two criteria: "a) commissioned by a county sheriff and b) focused on courthouse security as a primary duty" (E Br, P 9). Those counties are Snohomish, Thurston, Kitsap, and Yakima. All four are significantly smaller than King County. With the possible exception of Kitsap County, the panel found that these counties have "like personnel."

The statute requires that "the panel shall also consider a comparison..." What the statute does not do is mandate how that comparison should be applied to each individual case. Should the Party in the interest arbitration proceedings strive for an average of the comparators? Would there be cases where the appropriate position would be to lead the comparators? Perhaps conditions are such that slightly behind would be appropriate. The panel finds that these questions and concerns are particularly important when we have a comparator of one that fully meets the statutory definition. Additionally, these questions are significant when considering the two problem areas related to court marshals previously discussed.

The basic conclusion of the panel is that the Court Marshals are not behind comparators when they are not being compared to regular sheriff deputies. The panel will return to the matter of

the comparators and provide a more complete analysis at a later point in this discussion

Cost of Living

The panel is required to consider the impact on wages of the "average consumer prices for goods and services, commonly known as the cost of living." The Guild asserts and the panel agrees that in "collective bargaining for a January wage increase, the prior year's June CPI number, released in July, is the relevant indicator for wage settlements" (U Br, P 31).

2009 was year one for the Guild bargaining unit and a collective bargaining agreement with a negotiated wage schedule. CPI data shows that from 2009 through 2021 contractual wages regularly exceeded the Seattle CPI-W by 5% to 10% -- the bargaining unit stayed ahead of cost of living (E 27, P 14 & 15). That reality changed substantially in 2022 (June 2021) where the cost-of-living increase was 6.3% and the wage increase was 2%. 2023 (June 2022) saw another big increase in the Seattle CPI-W of 9.5% and 4.5% 2024 (June 2023). The result, as acknowledged by the County, is that even with a 4% plus 4% wages increase, Guild wages in 2023 and 2024 will fall below the increase in Seattle CPI-W (E 27, P 15).

Clearly, these facts established a justification for a wage increase greater than 4% and 4%. The panel will look more closely at the impact of the Seattle CPI-W latter in this decision.

Internal Equity

The panel is directed by statute to consider "Such other factors... that are normally or traditionally taken into consideration in the determination of wages..." The Guild strongly argues that one of those "other factors" should be internal equity. Wages for the Guild should be compared to wages for other interest arbitration eligible bargaining units which would include deputy sheriffs and corrections officers. The Guild points out that in 2017, 5-year wages of Marshals were 79% of deputy sheriffs and the County's proposed wage increase and would leave the Marshals in 2024 at 67% (U Br, P 49). Similar attrition occurs regarding corrections which would see a reduction from 94% of corrections pay to 88% (U Br, P 50).

The panel finds that while the evidence does show attrition compared to other King County interest arbitration eligible bargaining units, much of that attrition can meet justified when looking at the issues of recruitment and retention. The sheriff's department is hiring and has had a difficult time filling all of its open positions. Testimony of County witnesses is quite clear that while there it has been no recruitment problem for court marshals there has been one for deputy sheriff, corrections officer and detention officer (Tr 277). In the past, this problem has been sufficient as to justify the creation of an employee referral bonus of \$5000 (E 11).

The panel notes that where an employer is having a recruitment and retention problem, significant wage increases are likely to follow. In the alternative, where an employer is having no retention problems and recruitment generates multiple qualified candidates for any open position, there will not be a lot of incentive for the Employer to raise the wages of the group. The growing gap between the wages of King County Court Marshals and King County deputy sheriffs and King County corrections officers appear to be justified based on the disparity in matters of recruitment and retention.

Longevity

The Guild proposes a new wage provision which consists of a longevity steps to the salary schedule; longevity wage increases at year six, nine, twelve and fifteen. The Guild contends there are four good reasons to support adding this provision to the CBA:

(1) it is a benefit provided in a number of comparable jurisdictions; (2) the senior officers who remain with the department provide a demonstrated value to the Employer; (3) internal equity strongly supports such an award; and (4) employee retention would be improved. (U Br, P 56)

The County sees the matter quite differently and argues that the comparability data does not support adopting a longevity provision nor do the demographic realities related to the Court Marshals. The Company points to the fact that the four comparables proposed by the Guild have only one with a longevity provision which does not work very well for the Court Marshals.

...if applied to the demographics of the current court marshals, who at hire have a median age of 55.7 years old, the premium would kick-in at a median marshal age of 75.7 years old, and the second would kick-in at a median marshal age of 80.7 years old. (E Br, P 22)

The evidence indicates that from 2014 to 2024 the average age at hire was 55.38 and the average age and employment ended was 59.09 with an average tenure of 2.86 years (E 13). For most of the court marshals, this was work after retirement and after the start of a pension.

Proof of this "second career" status is found in the demographic data of the employees that belong to the bargaining unit. Of the Court Marshals that left employment during the prior 10 years between 2014-2024, the median age at hire was 58.5 years. For the currently employed Court Marshals, the median age at hire is 53.6 years. This was also confirmed by testimony of Court Marshal Dave Scontrino who stated, "We typically were looking for people in a retired status from what's called a LEOFF 2 position, regular employment as a full-time police officer. They could retire, draw their LEOFF 2 retirement pension and then come to work for us as a marshal." Marshal Scontrino was himself retired from another career prior to becoming a court marshal. [citations omitted] (E Br, P 6 & 7)

However, Marshall Scontrino's testimony is significant in that he fully acknowledges that "we typically are looking for people in a retired status from what's called a LEOFF 2 position" (Tr 121). However, he goes on to testify that things are changing, "we've got a newer group, we have a lot of young people that come in that are in their thirties and there looking for a different avenue rather than law enforcement on the street for various family reasons or whatever personal reasons, they've decided to go this

direction and make their career as far as the marshal" (Tr 121 & 122).

The Panel has determined to award a longevity provision but one that is set at 10 years and 15 years. For those employees who do make more of a career out of the Court Marshal position, there are certainly values to the Employer from their longevity, a value for which a wage adjustment is justified. On the other hand, for those employees that are already on a pension when they are hired and whose tenure is quite short, the longevity provision will have no meaning nor any cost to the County.

Summary

The Panel has determined to award a 6% increase January 1, 2023 and a 4% increase January 1, 2024. The CPI data alone is sufficient to warrant the 6% increase. Additionally, the panel will provide language for a long Javed the premium and that will include a longevity wage increase of 3% after completing 10 years has a Marshal and another 3% after completing 15 years.

This decision was not much influenced by comparability data as there was so little of it. However, the Panel was fully aware that regional price differences impact the ability to make a valid comparison regarding wages. Money is not intrinsically valuable; its value is only in what it can be exchanged for. Thus, a smaller wage may actually be a larger wage in terms of what it buys. The other counties in Washington which have a like position to Court

Marshals are simply too small to make a valid comparison. However, both the Guild's evidence and that of the County clearly established that King County is the most expensive place to live in the State of Washington. As such, and given its size, wages provided the King County Court Marshals should be greater than those provided by any other County. The panel believes 6% and 4% achieves that goal (E 27, P 2).

Finally, the Employer specifically indicated that it was not making an inability to pay argument but it did want the panel to be conscious of the fact that there were serious financial limitations. The Guild, on the other hand, provided extensive financial evidence and arguments as to why the County fully had the ability to pay what the Guild was proposing. Ultimately, the panel believes that the award is justified by the evidence and arguments and that it does not create financial harm for the County.

AWARD

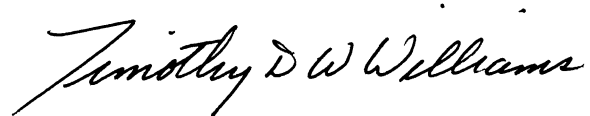
The Parties 2023-2024 CBA shall include all the language that the Parties have tentatively approved to date. The compensation rates under that agreement shall include a retroactive across the board increase of 6% January 1, 2023 and a retroactive 4% January 1, 2024.

The following longevity provision should be placed in Addendum A with any resulting wage increase taking place the first full pay period following the date of this decision.

Longevity - base pay will be increased by the amount indicated upon completion of the required time working as a Court Martial.

10 years (120 months)	3%
15 years (180 months)	3%


This interest arbitration award is respectfully submitted on the 22nd day of November, 2024, by,



Timothy D.W. Williams
Arbitrator


Josh Marburger (Nov 22, 2024 16:16 PST)

Josh Marburger
County Partisan Arbitrator


Brad McClennen (Nov 22, 2024 18:50 PST)

Brad McClennen
Union Partisan Arbitrator

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