ATTACHMENT B

ADDENDUM A

IN INTEREST ARBITRATION BEFORE
MICHAEL E. CAVANAUGH, J.D.,
ARBITRATOR

KING COUNTY, WASHINGTON,	
and,	INTEREST ARBITRATOR'S DECISION AND AWARD
KING COUNTY CORRECTIONS GUILD,	
(2012 Wage Reopener)	

For the Employer:

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I. INTRODUCTION

The sole issue in this interest arbitration, which is before me pursuant to RCW 41.56.450,[1] is the size of a wage increase, if any, for the King County Corrections Guild bargaining unit for 2012. Negotiations between the parties in late 2010 for a successor Agreement to their 2007-10 CBA resulted in the Guild's acceptance of a wage freeze for 2011, but with an adjustment to longevity pay that resulted in the equivalent of a 0.71% increase in

[1] The parties waived the participation of the partisan arbitrators provided for in the statute.

compensation.[2] The parties also agreed to a wage reopener for 2012, and when they were unable to reach agreement on wages under the reopened contract, these proceedings followed.

At a hearing held in Seattle on October 31 and November 1, 2012, the parties had full opportunity to present evidence and argument, including the opportunity to cross examine witnesses. Counsel filed simultaneous electronic post-hearing briefs January 15, 2013, and with my receipt of the briefs, the record closed. Having carefully evaluated the evidence and argument in its entirety in light of the statutory standards, I am now prepared to render the following Interest Arbitration Award.[3]

II. STATUTORY CRITERIA

In reaching my Award, I am required to apply the following standards:

> 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:
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> (a) The constitutional and statutory authority of the employer;
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> (b) Stipulations of the parties;
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> (c) The average consumer prices for goods and services, commonly known as the cost of living;
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> (d) Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings; and
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> (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)(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] After entering into an MOU on these economic issues, the parties continued to bargain the noneconomic issues between them, and they successfully resolved those issues prior to the hearing in this matter.

[3] In light of my schedule, the parties graciously agreed to extend the 30-day statutory deadline for rendering this Award, which I greatly appreciate.

(2) For employees listed in *RCW 41.56.030(7) (a) through (d),[4] 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.

RCW 41.56.465(1). The "legislative purpose" referenced in the introductory paragraph quoted above is as follows:

> The intent and purpose [of the interest arbitration statute] 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 41.56.430.

III. FACTUAL BACKGROUND

King County is the largest county by population in Washington (or Oregon), and in fact, it is one of the most populous counties in the United States. The employees in this unit are Corrections Officers and Corrections Sergeants working in the King County Corrections Facility in downtown Seattle and the Maleng Regional Justice Center in Kent, Washington.[5] As is the case with corrections officers generally, these employees work in close contact with offenders, some of whom are mentally ill, have infectious diseases, and/or exhibit a propensity for violence. Within the secure perimeter of the facilities, they are usually unarmed, although when escorting

[4] The statutory reference is outdated, and the relevant provisions now appear in RCW 41.56.030(13)(a) through (d), which includes the employees at issue here, i.e. "correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(9), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates."

[5] There are approximately 520 Officers and 39 Sergeants in the unit.

prisoners off-site, e.g. to court or to receive medical care, they carry firearms.[6] A number of years ago, the jail officers were included in the same bargaining unit as "road deputies" and received the same pay. They continued to receive the same pay for a time even after they were split into two separate units, although the corrections officers eventually fell behind by approximately 4% as a result of a more generous contract settlement awarded the Deputies in interest arbitration. Tr. 217 (Karstetter). The Guild thereafter consistently attempted to restore wage parity, and in 1990, the County Council adopted Motion No. 8005 declaring it was the "sense of the Council" that Corrections Officers should receive "the same negotiated wage increases" as received by employees under the Sheriff's Deputies' Agreement." Exh. U-34.[7] Despite Motion No. 8005, however, the lack of perfect parity continued, and the gap widened substantially when the County agreed in 2008 to give 5% annual wage increases to the King County Police Officers Guild (KCPOG) unit for five successive years, apparently in exchange for the agreement of the KCPOG to accept a civilian review process.

Although the County enjoys a AAA bond rating and is in relatively good financial shape, "structural deficits" caused by statutory limitations on property tax increases require that annual "efficiencies" be achieved in order to provide the same level of services with financial resources that cannot grow at a rate sufficient to keep up with inflation and an increasing population.[8]

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[6] Approximately half the unit is firearms qualified.

[7] The County's labor negotiator for this contract, Rob Sprague, testified that the County's labor policies were reviewed and extensively revised in 2010, with many prior policies specifically rescinded. Motion No. 8005, however, is not listed among the rescissions. Exh. E-60 at 5. On the other hand, the record suggests that the "sense of the Council" in 1990 did not continue to be the sense of the Council over the years, because as the evidence demonstrates, wages in this unit have consistently lagged behind Deputies' pay.

[8] Although there have been substantial reductions in FTE's in Corrections over the last several years, they have resulted primarily from a declining Average Daily Population (ADP) in the jails, largely due to a sharp decrease in the number of inmates the State and municipalities had formerly contracted with King County to hold in the County's facilities. The Guild argues that additional sources of revenue, not subject to the statutory limitations,

Nevertheless, the County has reserves, some of which are specifically set aside to fund the cost of new labor agreements. Thus, says the Guild, the County can afford the increases in compensation for Corrections Officers that it says are called for under the statutory criteria given that the Officers have fallen far behind their statutory comparators on the West Coast, as well as their internal comparators who perform similar duties, such as the KCPOG. The Guild points as well to the County's non-uniformed Classification Specialists[9] with whom unit members work on a daily basis in the jail. In addition to these "comparator" arguments, the Guild observes that the purchasing power of the current wages has been eroded by inflation since the unit's last general increase in 2010, awarded under an interest arbitration award rendered by Arbiter Howell Lankford, a highly respected arbitrator in the Pacific Northwest and a long-time member of the National Academy of Arbitrators.[10]

The County counters, on the other hand, that an analysis of the wages and benefits of these officers, evaluated in light of the six comparator West Coast counties the parties have historically utilized in bargaining, establishes that the Officers' wages and benefits are above

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could be derived from an aggressive marketing campaign to sell vacant "beds" to other jurisdictions who could more economically meet their own custody requirements by contracting with the County to use its excess capacity.

[9] Classification Specialists, whose wage rate is approximately $4.00/hour higher than Corrections Officers, assign new inmates to an appropriate level of custodial supervision, and they also hold hearings on alleged infractions of the rules by inmates. Some of these duties were at one time performed by Corrections Officers, and the Officers tend to think of the Classifications Specialists as support staff. The County, on the other hand, views the Classification Specialist position as a "promotion" for Officers.

[10] Arbiter Lankford awarded annual COLA increases at 95% of the year-over-year CPI-W increases, with a minimum of 3% and a maximum of 6%. That formula resulted in a 3% increase in 2010, but no increase in 2011 because the Guild agreed to a wage freeze for that year. As noted, however, the Guild did receive changes in the longevity pay calculation equivalent to a 0.71% increase in 2011. As an aside, many of the arguments made here by the parties reprise their presentations to Arbiter Lankford, and to the extent his Award resolved those issues, I am inclined to follow his lead in the absence of substantially changed circumstances or demonstrably flawed reasoning—the latter an unlikely circumstance in the case of a neutral of Arbiter Lankford's ability. To do otherwise would introduce unnecessary instability into the parties' collective bargaining relationship by providing a perverse temptation for one or both parties to hold out for a better deal from a new interest arbitrator instead of resolving critical issues between them in bargaining in light of the principles previously enunciated by a neutral arbiter mutually selected by the parties.

market and thus do not justify a wage increase for 2012, even though these Corrections Officers received no general wage increase in 2011.

Additional pertinent facts will be developed in the course of the analysis that follows.

IV. POSITIONS OF THE PARTIES ON WAGES

The County has proposed a zero COLA for 2012, whereas the Guild proposes a 5% across the board wage increase.

V. DISCUSSION

A. Selection of Statutory Comparables

Given the statute's direction that interest arbitrators take into account "the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States," it is little wonder that in this case, as in most interest arbitrations, the issue of an appropriate set of "comparable" jurisdictions has touched off a major battle between the parties. The County argues that I should utilize the same group Arbiter Lankford used in 2009,[11] arguing that stability in the bargaining relationship is fostered by continuity of comparables from one negotiation to the next. The Guild, on the other hand, argues—as it did in 2009—that the list should be augmented with Sacramento and San Bernadino Counties, each of which is closer in population to King County than the four Pacific Northwest Counties the parties agree should be utilized in the analysis.[12]

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[11] Arbiter Lankford considered Pierce, Snohomish, and Spokane Counties in Washington, Multnomah County in Oregon, and Riverside and Santa Clara Counties in California.

[12] Although Arbiter Lankford rejected the addition of Sacramento and San Bernadino, the Guild notes that in doing so he observed that if those Counties employed "Deputies" on a long-term or career basis in corrections, a finding the evidence before him did not support, it would be difficult to exclude them from the statutory category of "like personnel." Exh. J-3 at 7. The Guild contends that the record before me establishes that those Counties do, indeed, employ corrections deputies on a career basis, and therefore that I should reach a different conclusion than Arbiter Lankford about the propriety of including them in the analysis.

As background, everyone recognizes that King County occupies a unique place in Washington interest arbitration because there are no Washington Counties, or even Pacific Northwest Counties, falling within the band of 50-150% of the population of the County, the "standard" method interest arbitrators have developed as a guide to determining whether an employer is similar in "size" within the meaning of the statute. In light of that fact, the County has little choice but to agree that at least *some* California jurisdictions should be included in the list of comparables. Therefore, the County accepts Riverside and Santa Clara Counties as appropriate comparables here, i.e. the California Counties used by Arbiter Lankford. Nevertheless, it seems to me beyond dispute that comparisons across state lines are problematic, and comparisons to California Counties are particularly so because of differing legal and economic structures, as well as the fact that those Counties lack "proximity" to the Pacific Northwest.[13] On the other hand, the statute specifically mentions "west coast" employers, and in light of that fact, the Guild draws the conclusion that an interest arbitrator *must* consider California Counties—and argues that given the complete lack of Pacific Northwest Counties of an appropriate size, I ought to consider additional Counties beyond the list utilized by Arbiter Lankford. Guild Brief at 21-31.

With respect to the statute's reference to West Coast Counties, I think it most likely that the statute defines the West Coast as the outer geographical limit for an interest arbitrator's selection of comparables, and does not necessarily reflect an injunction to use California Counties in every case. In other words, I think the statute leaves it to the arbitrator the parties have mutually selected to determine *which* other employers—going no farther than the West

[13] It is also clear that "proximity" matters. I note, for example, the lack of any evidence here that King County recruits corrections employees from California or that a significant number of King County corrections employees leave employment for jobs in California Counties. That is, it is not clear to me that California and Washington are in the same labor market for these purposes.

Coast—are sufficiently "like" the employer at issue, in light of the facts unique to each case, to be fairly considered in carrying out the required statutory analysis. I also agree with those Pacific Northwest interest arbitrators who have expressed a strong preference for focusing on Washington and Oregon jurisdictions whenever possible. But that approach carries its own difficulties here in light of the absence of Pacific Northwest Counties with populations similar to King County.

That is, as the Guild points out, the average population of the Pacific Northwest Counties utilized by Arbiter Lankford is only 35% of the population of King County. Exh. U-76, Table 1. Using those Counties as comparables, then, risks making these smaller Counties—presumably with fewer financial resources—the standard for judging the appropriate compensation for employees of King County, despite King County's potentially greater ability to pay. Thus, while I understand the County's argument that it is unfair to the County to allow remote and perhaps financially more prosperous California jurisdictions to dominate the comparability analysis, it seems to me it would be no less unfair to the Guild to allow smaller Pacific Northwest jurisdictions to drive the compensation of its members simply because those Counties are "local." The question remains, however, whether the inclusion of the two California Counties Arbiter Lankford utilized, Riverside and Santa Clara, is sufficient to balance the analysis, or whether, as the Guild argues, it would improve the reliability of the data to add Sacramento and San Bernadino Counties to better counteract the undue influence of the smaller Pacific Northwest jurisdictions.

The County responds that Sacramento and San Bernadino are not appropriate comparators because the employees the Guild points to in those counties for comparison are "deputies," not "corrections officers." In general, law enforcement officers such as deputies are

unlimited commissioned peace officers, with the authority to exercise those functions 24 hours a day whether on duty or off, and anywhere within the state, whereas Corrections Officers, although they might perform the same or substantially similar duties to some extent, only exercise their powers while on duty and only within the facility. Thus, argues the County, Corrections Officers and Deputies are simply not "like employees."[14] In response, the Guild points to Arbiter Lankford's observation that—whether formally designated as deputies or something else—if Sacramento and San Bernadino Counties employ career corrections employees, it would be difficult to say they would not be "like employees" within the meaning of the statute. Award at 7. Relying on the testimony of the Presidents of the respective Unions representing the Sacramento and San Bernadino deputies, the Guild contends that the evidence here (as opposed to the record before Arbiter Lankford) establishes just that.

But as I read his Award, Arbiter Lankford rejected Sacramento and San Bernadino not simply based on the lack of "career corrections" positions, but also because "there is no suggestion in the record that Corrections Officers perform these duties in the far reaches of a large County, as Deputies ordinarily do, or that those duties (for Corrections Officers) account for the great majority of their work time, as they do for Deputies." Award at 6. Nor is there such a record here. I would also add that, while the testimony before me established that "some" or "many" Deputies in these California Counties choose to make a career in corrections, it is also clear that there is substantial interchange between the two different "Deputy" assignments. For example, in San Bernadino, all Deputies now must be "patrol certified," which requires them to transfer out of the jail and be trained and serve as a patrol officer for a period of time, exercising the powers of an unlimited commission law enforcement officer. Tr. 254-55. There is no similar

[14] In addition, as Arbiter Lankford noted, the statute *itself* distinguishes between "law enforcement officers" and "correctional employees." RCW 41.56.030(13). That fact adds some weight to the County's argument here.

requirement in King County, of course, nor is it even possible, as I understand it, for King County Corrections Officers to transfer back and forth between being a CO and being a "road deputy." Thus, even if it is true that San Bernadino Corrections Deputies perform the same functions as King County CO's, they are required to maintain a level of commission for the uniformed services above that required of King County CO's. Consequently, it is not clear to me that the record here is sufficient to reach a different conclusion than Arbiter Lankford reached with respect to whether Sacramento and San Bernadino Counties are appropriate comparables for this bargaining unit.

Nor does it seem to me that the difficulty of finding appropriate comparable jurisdictions for King County is necessarily solved by adding *more* jurisdictions to the six the parties have used in the past, when virtually *all* of them, new and old, could be said to be inapt for one reason or another. That is, the additional proposed jurisdictions simply present the interest arbitrator with a *different* set of distinctions that must be kept in mind in determining what weight to give them. In the end, however, it does not seem necessary to me to answer the question definitively here. Paraphrasing Arbiter Lankford, perhaps "the best we can do is to keep in mind several perspectives, one of which is these six Washington, Oregon, and California Counties," Award at 7, and another of which is the broader set of comparables—for whatever they are worth—utilized by the Guild in its analysis.[15]

In this context, it is also important to remember that the statute empowers an interest arbitrator to consider factors *beyond* strict notions of "comparability." In fact, in terms of the order in which the factors to be considered are set forth in the statute, comparability appears *after*

[15] But in determining "what they are worth," an interest arbitrator is entitled to consider issues such as the "remoteness" of the California comparators. *See*, e.g. Lankford Award at 5 (the fact that the statute authorizes the consideration of comparables on the West Coast "does not mean that interest arbitrators should completely ignore the geographical remoteness of the California portion of comparability data").

the legislative purpose of "promot[ing] . . . dedicated and uninterrupted public service [by providing] an effective and adequate alternative [to strikes as a] means of settling disputes," and *also after* the "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." One of those "such other factors," of course, is internal equity. In any event, whether or not the primacy of the various considerations is reflected in the order in which the statute mentions them (a matter I do not decide), in a case in which the "comparability" analysis is so difficult because of the unique status of the employer, it may well be that these statutory considerations beyond external comparability will play a greater role in the arbitrator's decision than they otherwise might —and might even come close to overshadowing the external comparables altogether. Nevertheless, I will begin the discussion with issues of comparability.

B. Comparability Analysis

The external comparables, depending on which jurisdictions are included in the analysis, as well as which elements of compensation are included, either show that Officers are substantially above market (County's analysis) or that they are substantially below market (Guild's analysis). In considering that question, the parties agree that net hourly pay is the appropriate standard, i.e. appropriate elements of compensation should be added together and divided by regularly scheduled hours in order to determine a net hourly rate.[16] They also agree that top step base wages and longevity pay should be included in the calculation, but differ over

[16] That calculation is necessary because King County Corrections employees work more weekly hours than employees in the comparator jurisdictions. Thus, making the compensation comparison meaningful requires a net hourly wage analysis.

some of the other compensation elements, e.g. retirement pick up,[17] medical benefits,[18] firearms certification[19] and educational incentives. In fact, it is clear that the Guild's calculations establish that the compensation deficits it sees for Officers are due primarily to the inclusion of certification bonuses and educational incentives in the analysis. *See*, Exh. U-76, Tables 9-11. That is, without those educational and certification bonuses, the top net hourly wage at 5 years for Officers is a -3.21% (including Sacramento and San Bernadino in the analysis), whereas *with* those bonuses the deficit rises to -6.41% with an intermediate certificate and a -9.38% with the advanced. *Id.* Washington does not have a certificate requirement, however, and thus the Guild's analysis tends to give credit to the Officers for something the County does not necessarily benefit from.[20] Nevertheless, even without those features, the Guild's computations show an approximately 3% deficit at the 60-month Officer level (when Sacramento and San Bernadino are included), and approximately the same deficit for Corrections Sergeants. Exh. U-76, Table

[17] Arbiter Lankford held—and I hold with him—that retirement pick up is an appropriate element of the net hourly compensation. Even though Washington prohibits the County from providing that form of compensation to its employees, Oregon and California do permit it, and as the Guild correctly points out, it is reasonable to assume that where such CBA provisions exist, the parties have negotiated them in lieu of some other form of compensation.

[18] The County notes that some of the comparator jurisdictions require employees to pick up a share of medical insurance premiums, which can be substantial—the monthly pick up in Riverside County, for example, is $768. This premium share, says the County, effectively reduces monthly pay as compared to the County's zero premium share. Exh. E-40. The Guild argues, however—and I agree—that it is difficult to evaluate the precise effect of premium share on compensation without detailed information about the comparative benefits received, and the County has not included that sort of detail in the record.

[19] Given that only half the unit possesses firearms certification, I agree that the 3% firearms premium should not be included in the analysis. *See*, e.g. Lankford Award at 9, fn. 10.

[20] Arbiter Lankford rejected the Guild's inclusion of education and certification premiums on the ground that they were not so nearly universal as to be properly considered. Award at 9. The Guild argues that they are "available" to any member and thus should be included, distinguishing them from the firearms premium (which the Guild says the County has *improperly* included) because that premium is for a "specialty assignment." Guild Brief at 32. I have difficulty with the distinction. Firearms certification requires an additional training course that only some employees take, just like only some employees obtain other certifications or attain certain general education levels. Unless I am missing something, it seems to me that if one should be excluded, so should the other. In any event, I do not find the Guild's argument for including education and certification premiums to be persuasive enough on the present record to depart from Arbiter Lankford's conclusion.

12. I will weigh that evidence, along with the County's evidence to the contrary, in light of the other considerations the statute requires me to take into account in rendering my Award.

C. Cost of Living

The County asserts that this unit has received wage increases since 2001 that exceed inflation during that same period. County Brief at 19-20. Thus, says the County, "The Guild's claim that itys member's wages have lost purchasing power is simply without merit." *Id.* The Guild replies that the unit's wages have lost purchasing power *since their last general wage increase in 2010* given that inflation since September 2009, as measured by the CPI-W, has been 5.8% (1.4% from September 2009-September 2010, plus an additional 4.4% September to September 2010 to 2011). Guild Brief at 19-20.[21] While the statute does not specify precisely how I am to factor in the "the cost of living," and thus does not preclude me from accepting the form of analysis the County suggests here, I think the Guild has the better of the argument, at least under these precise circumstances. The sole question before me is whether an increase in the wage rate is appropriate *now*—or more precisely, retroactively for last year. In the context of a bargaining unit that reluctantly accepted a wage freeze in 2011 to assist the County with its financial difficulties (even though it had a contractual right to receive a 3% increase that year),[22] the relevant time frame to consider the effect of changes in the cost of living is the recent past rather than a historical trend measured over more than a decade. As the Guild persuasively

[21] As the Guild recognizes, however, it is appropriate to consider the 0.71% longevity pay increase in 2011 in calculating the effect of cost of living on the unit's wages. Brief at 20, fn. 13.

[22] Although inflation was only 1.4% year over year in 2010, Arbiter Lankford had awarded 95% of CPI-W, but with a *minimum* increase of 3%. Thus, the Guild was entitled to a 3% increase in 2011. As an aside, not all County bargaining units agreed to forego scheduled wage increases in 2011. The KCPOG, for instance, received its contractual 5% raise, even though there is some suggestion in the record that it had offered to reduce that scheduled raise to 3%. There is also a suggestion that in units which accepted the County's revised COLA formula, the savings were used to reduce the number of employees laid off, whereas units that did not agree, including KCPOG, received no such consideration.

argues, "if the Guild has been successful in convincing the County to agree to increases in excess of the increases in the CPI-W (or convincing an arbitrator to award such increases), there is no basis for undoing that bargain and depriving the Guild of its benefit." Brief at 20. I agree. Consequently, a substantial increase in the cost of living since 2010, only partially offset by a small increase in longevity pay in the unit, is a factor I must consider in reaching my decision.

D. Internal Comparability

It is clear that the County's 2008 deal with the KCPOG, resulting in an increase in pay for Deputies of more than 25% (when compounded over the course of five years) continues to rankle in Corrections, a unit which has long considered itself entitled to pay equal to that of general law enforcement officers. The County dismisses the Guild's argument as an attempt to "resurrect outdated historical parity with police officers." Brief at 37. Moreover, notes the County, the KCPOG settlement preceded the "Great Recession," was concluded by an administration different from the one responsible for the County's finances today, and was made in consideration of perceived needs of the County that are very different from what is at issue here, i.e. in exchange for civilian oversight of the Deputies. *Id.* The County also points out that Arbiter Lankford rejected the Guild's argument for wage increases based on the 2008 deal with KCPOG, Award at 14-15, but I would say that is only partially true.[23]

[23] While Arbiter Lankford clearly rejected an increase that would bring the Guild to parity with the KCPOG, it is important to note that he awarded a COLA formula more generous to this unit, as compared to the deal the County had worked out with non-interest arbitration units. He did so, he said, because the record demonstrated Corrections employees were "too far behind." Award at 15. That fact leads me to two observations. First, Arbiter Lankford did not explicitly state *which* bargaining units these employees were "too far behind." On the other hand, because that conclusion appears in a section in which he specifically mentions the "very expensive contract" with the Deputies, and because he goes on to state that "the Guild's picture of [external] comparability depends substantially on education premiums and certification premiums which, so far as the record shows, a substantial portion of this unit may not be entitled to," I must conclude that Arbiter Lankford took into account the size of the disparity between KCPOG and Corrections in determining that this unit was "too far behind" to accept the deal worked out with other units. Second, I note that the County's financial difficulties, and the Corrections Guild's willingness to assist, deprived this unit of the full benefit of the mechanism Arbiter Lankford had devised to address that disparity, i.e. the Corrections unit so far has received only a 0.71% increase in longevity pay instead of the 7.18% across the board COLA increases it would have received in 2011-12 under the Lankford formula. *See*, Guild Brief at 19.

Without taking a position on the question of full parity with KCPOG, it is clear to me (as it was no doubt clear to Arbiter Lankford) that even if an interest arbitrator granted the Guild's position on wages, Corrections wages would not be restored to the historical parity the Guild apparently seeks.[24] Thus, the question before me is not precise parity between the Guild and KCPOG, nor whether parity in wages is the appropriate result as a matter of policy, but rather whether the size of the *current disparity* is a factor I should take into account in determining the Guild's appropriate wage increase, if any, for 2012. There can be no doubt that there are significant differences between the work of Deputies and Corrections Officers, just as the County contends. There can also be no doubt, however, that there are substantial similarities—indeed, both units are comprised of members of the uniformed services, and if there is another unit in the County to which Corrections could be more appropriately compared for internal equity purposes, the record does not disclose what it would be. Therefore, I believe it is proper to consider the current size of the disparity between KCPOG and Corrections—not, as the County suggests, as a matter of revisiting perceived slights of the past[25]—but rather as a matter of determining whether this unit, in light of its similarity to KCPOG, should *continue* to be at such a steep (and growing) comparative wage disadvantage.

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[24] Here, for example, granting the Guild's request for a 5% increase in 2012 would at most keep the Corrections unit even with KCPOG for 2012, but it would not address the deficits accumulating from earlier disparities, including the increase in the disparity for year 2011 in which the gap widened by an additional 4.29% (5% for KCPOG less the Guild's 0.71% longevity pay increase).

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

The other internal comparable the Guild cites is the Classification Specialist position represented by Local 21-AD of the Washington State Council of County and City Employees (WSCCCE). According to the testimony, these employees make approximately $4.00 per hour more than Corrections Officers, although much of their work used to be done by CO's, and Corrections Officers think of them as support staff, not as a "promotional opportunity" as the County sees it. These employees, too, seem to me to be an appropriate internal comparable given that they work in the jail with CO's and do work that CO's used to do.[26] Again, the question is not necessarily one of parity, but rather whether the comparative compensation between these two classifications that work together should be taken into account. Without making any judgment at present about how, if at all, the relative compensation of the two groups might affect the outcome here,[27] I believe it is something I should consider in reaching my decision.

Similarly, I believe the fact that most County bargaining units have accepted the new COLA formula, *see* Exh. E-47, is an internal comparability factor that should be taken into account. While this issue is intertwined with the "ability to pay" or "financial responsibility" issue I will turn to later, it is also reflects an internal comparability aspect. That is, if most bargaining units (in addition to groups of employees who do not engage in collective bargaining) are covered by a less generous COLA provision than the one the Guild seeks, that is the kind of matter that is traditionally taken into account in determining wages, hours and working conditions—as it should be, because as the Guild well understands, substantial differences in

[26] On the other hand, the Specialists do not work directly with the inmate populations and have less stringent working conditions, e.g. they are able to leave the premises and have no role in responding to emergencies within the facility. Thus, as the Guild points out, they receive greater pay despite having less onerous working conditions than Corrections Officers.

[27] Theoretically, this is a factor that could point in either direction—or it could be a wash. For example, while Classification Specialists have a higher wage rate, they have also agreed to the County's new COLA formula, Exh E-47, which is less generous than the formula Arbiter Lankford awarded to this unit in 2009 and which the Guild urges me to extend. *See*, the discussion in the next paragraph of the text.

wage increases between groups of County employees can sow seeds of discord within the work force, particularly when the employees regularly interact during the course of the workday. Consequently, if a formula gains traction as the widely accepted manner of calculating COLA within the County, departures from that formula should be supported by a very good reason demonstrated in the record.

E. Ability to Attract and Retain Employees

Interest Arbitrators often consider whether a specific level of compensation is sufficient to attract and retain qualified employees for the position(s) at issue. At present, however, the County is in something of a contraction mode given declining ADP as a result of fewer contract inmates from other government agencies. While the Guild would like the County to aggressively seek new sources of contract work, and the County has expressed interest in doing so, unless and until ADP begins to increase again, the parties are more focused on doing what they can to avoid further reductions in FTE's within the jails, not recruiting new employees to fill vacant positions. In addition, the parties agree that the overwhelming majority of current Officers are at the top step, a fact that seems clearly to indicate that retaining employees is not a problem at this time. Consequently, I do not find that this factor adds substance to the specific issue before me.

F. Financial Responsibility Issues

While the County does not (and could not) plead a strict inability to pay what the Guild asks, it notes that its relative budget health may be traced to implementation of the sound fiscal policies required to maintain County services in the face of structural deficits that limit the County's ability to raise revenue. As a central feature of those policies, County employees have been asked to provide the same level of service year after year by finding 3% annual "efficiencies," i.e. ways to spend the taxpayers' money more wisely to achieve the same results

despite projected deficits. It appears that much of the County's projected budget deficit for 2013 can be traced to declining revenue from reduced ADP in the jails—$10 Million for 2012 and an additional projected $13 Million for 2013. A focus on marketing these empty beds may (or, in light of budget difficulties besetting the potential customers just as such difficulties face the County—may not) result in lower than projected revenue loss from lower ADP. In addition, because of the recent recession, assessed property valuations continue to decline, and sales tax revenues are not yet rebounding to pre-recession levels.[28]

Nevertheless, there is much good news. The County's bond rating continues at the highest level, which lowers the County's cost of borrowing, and reserves are increasing (which protects the high bond ratings), although some reserves are dedicated to specific needs (e.g. the Rainy Day Fund, set aside for expensive emergencies such as natural disasters). Nevertheless, there is also a reserve fund set aside specifically to fund contract settlements and interest arbitration awards, which is an important factor here. That is, the "Salary and Wage Reserve Fund" was $1.6 Million for 2012,[29] and the 2013 budget increases that amount to $5.1 Million, with the fund projected to rise to $7.3 Million in 2014 and to $10 Million by 2015. Exh. U-62.[30]

In any event, against this background, the County costs the Guild's 2012 5% wage increase demand at $2.67 Million, calculated by taking total payroll for 2011 (regular pay, overtime, and retirement contributions) and multiplying by a factor of 1.05. *See*, Exh. E-52.

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[28] The data suggest that despite some recovery from the depths of the economic downturn, King County residents are not spending as much as they used to on the kinds of goods and services that produce sales tax revenue. Whether the recession has resulted in changes to spending patterns that will persist over time is unclear at this stage.

[29] As an aside, I find it would be inconsistent with the statutory procedure for me to treat the County's wage reserve as the outside limit available to pay wage increases that might be called for in light of an interest arbitrator's application of the statutory standards.

[30] The Guild also points to the County's "exceptional success" in restraining the cost of providing health insurance for its employees. *See*, e.g., Exh. U-42 (as of September 20, 2011, the County Executive planned to reduce health care budgets by $23 Million in 2011 and $38 Million in 2012 because of sharply lower than projected costs, and to direct the savings to preserve services that might otherwise be cut).

According to the County, this amount constitutes the equivalent of the annual cost of hiring an additional 29.5 Officers. *Id.*[31] But in evaluating whether the Guild is entitled to a wage increase for 2012, I must take account of the budgeted increases in the Salary and Wage Reserve in the period 2012-15. The higher numbers in the out years may well reflect a higher number of open contracts, as the County argues, but the level of projected reserves—and the County's conservative budgeting assumptions that typically lead to higher than forecast surpluses—suggests that the County has access to sufficient funds to pay higher wages to this unit if increases are indicated by the statutory criteria.

G. Arbitrator's Analysis

After carefully considering all the relevant statutory criteria outlined above, I conclude that a wage increase for 2012 is appropriate for this bargaining unit. I reach that conclusion based not so much on the external comparables—which seem to me to indicate, at best (at least when inappropriate elements of compensation have been removed from the calculation), that these employees are slightly behind their comparators only at the 60 month level and for Corrections Sergeants. But there are other aspects of the analysis that point to a general increase. First, comparing the Corrections unit to their closest internal comparators, Sheriff's Deputies, there is a disparity in pay substantially beyond what one would reasonably expect given the differences—and similarities—in job duties, qualifications, and working conditions.[32] That is, while significant differences unquestionably exist between these two uniformed classifications, those differences are not sufficient to completely overcome the many similarities between them.

[31] The Guild notes, however, that overtime can vary from year to year, and could even be reduced by hiring additional Corrections Officers. Nevertheless, the amounts necessary to fund the Guild's proposal unquestionably are substantial.

[32] That the Deputies' wage increases arose under a different administration and in a different economy is a factor to be considered, to be sure, but that factor is not a basis on which to entirely dismiss the significance of the substantial present wage disparity between the two units.

Consequently, while I am not in a position to say on the basis of this record whether a differential of just under 7% (as it apparently existed in 2007)[33] would have been unreasonable, I do find that the current differential of roughly 22% is out of line in light of the similarities between the two units.

Second, there has been a 5.8% increase in CPI-W since this unit's last across the board raise in 2010, while the Corrections employees have only received the 0.71% longevity pay increase during that period.[34] The Guild notes that it would have received a 3% increase in 2011 under the Lankford formula and 4.18% in 2012 for a total of 7.18% (or 5.51% ignoring the Lankford 3% minimum for 2011), but the County counters that the Guild bargained away its 2011 increase in the MOU. I agree, but there is still a substantial increase in the cost of living in 2012, a year for which the Union bargained for a reopener and is now entitled to argue for an increase based on CPI data showing that the cost of living went up 4.4% in the relevant period.[35]

Third, however, there is another internal comparability issue that must become part of the discussion, and it tends to point in the opposite direction—specifically, the fact that the County's new "standard" COLA formula resulted in increases of just 1.63% in 2012. It is true, of course, that many interest arbitrators refuse to limit arbitration eligible units to the increases received by employees who are not permitted to present their demands in interest arbitration, but at least one of the County units that accepted the new COLA is Amalgamated Transit Union, Division 587,

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[33] After the KCPOG received a 2% higher raise in 2008 than Corrections, the gap between the two stood at 8.74%. Exh. U-35. The gap declined slightly in 2009 (when Corrections received an extra 0.15% as compared to Deputies), then rose again to 10.69% in 2010 (the last year of an across the board wage increase for this unit) when Deputies received a 2% higher raise than Corrections. Since 2010, however, the gap has more than doubled to nearly 22% because of additional 5% increases for the Deputies in 2011 and 2012, while Corrections has received only a 0.71% longevity pay increase in 2011.

[34] It is also important to note, however, that many County units did not receive even that i.e. they accepted zero COLA in 2011, apparently in hopes of preserving as many unit jobs as possible.

[35] Exh. U-27.

which *is* eligible for interest arbitration (and which also appears to be the largest unit in the County). Exh. E-47. Like the other units agreeing to that formula, ATU received a 1.63% COLA increase, not the 4.4% (or some percentage of that increase in the CPI-W) that the Guild suggests should be utilized in calculating its wage increase. Thus, if a large arbitration eligible unit accepted the new standard COLA, that is a fact I must weigh in determining the appropriate wage increase for this unit. It is also significant, while in no way controlling, that the Classification Specialists, a unit the Guild asks me to consider for purposes of internal comparability, *also* agreed to the new COLA formula and received just 1.63% in 2012. Exh. E-47.

Fourth, while I agree that the County can afford some reasonable increase for this unit without abandoning its obligation to manage the County's finances responsibly, the relatively stable economic condition of the County appears to have been carefully constructed through prudent budgeting, skillful and innovative handling of the formerly skyrocketing costs of employee health insurance, and a commitment to find 3% efficiencies *year after year*. But whether these approaches will continue to succeed is not entirely dependent on circumstances the County can control. The recovery could slip back into recession, a distinct possibility according to many economists in light of the federal budget Sequester. Those compounding annual 3% efficiencies may or may not be possible indefinitely into the future once the "low hanging fruit" has been picked. And even with conservative budgeting at the 65% confidence level, there is still a greater than one-in-three chance that budget projections will turn out to have erred on the down side. Thus, a measure of caution is appropriate here.

As noted at the outset of this Analysis, taking all of these considerations into account, including the legislative purpose of the interest arbitration statute for uniformed employees cited

above, I have concluded that the Corrections unit should receive an across the board wage increase for 2012. The floor for that increase, in my view, would be measured against the 1.63% other bargaining units received under the County's new COLA formula—and arguably, it might even be the 1.63% less the 0.71% Corrections received in 2011 when most units received zero COLA. In light of the substantial and continuing disparity between this unit and the similar KCPOG uniformed unit, however, the Guild is still "too far behind to accept the same COLA deal" as the other units. *cf.*, Lankford Award at 15. Therefore, I will award an across the board increase of 3.5% for 2012. This increase is slightly more than halfway between the 5% received by KCPOG and the 1.63% received by most other units in 2012.[36] While this wage increase takes account, as it must, of the gap between this unit and KCPOG—just as with Arbiter Lankford's Award, my award only serves to reduce, by a small amount, the continuing *increases* in that gap from 2008 through 2012 arising from the Deputies' cumulative wage increases during that period of more than 25% compounded.[37]

I acknowledge the County's argument that because of the 2011 longevity pay increase, even an increase of 1.63% for Corrections employees would unfairly give them a larger increase than the units that accepted the new standard COLA, and I suspect the County would add that the larger increase I have awarded here compounds the unfairness. I disagree. While it is true that most other units that had settled as of the time of the hearing in this matter agreed to accept the new standard COLA, those other units, as I understand it, did so in an effort to reduce the

[36] The wage increase I have awarded is based primarily on internal comparability, a factor which has turned out to be the most important consideration in this precise situation. In considering internal equity, however, both the KCPOG and standard COLA settlements must be taken into account, and because they pull in opposite directions, a wage increase for this unit that blends the two is appropriate.

[37] That is, even with the longevity pay increase in 2011 and the 3.5% across the board increase I am awarding here, the Corrections unit will have received a total increase of 4.21% in 2011 and 2012 combined, as compared to a 10% increase for KCPOG for those two years. Under the circumstances, however, that is as far as I can go at this time under the statutory criteria.

number of FTE's eliminated from their units. In Corrections, however, FTE's were being reduced over time *primarily* because of reduced ADP, so Corrections is not entirely in the same position.[38] In addition, few—if any—of those other units appear to be entitled to claim some consideration of internal comparability with the Deputies. On the other hand, KCPOG is the *closest* internal comparator for the Corrections employees. Once again, the other units simply are not similarly situated to Corrections for these precise purposes. Thus, I am not convinced that it is "unfair" to treat the Guild differently in light of its different situation.

I award an across the board increase in wages of 3.5%.

[38] Moreover, to the extent the level of Corrections wages might have been part of determining the correct number of FTE's, the Guild agreed to reduce its 2011 compensation increase to 0.71% from the 3% to which they were entitled under the Lankford Award. Thus, it cannot be said that Corrections made no effort to assist the County in responding to its financial challenges in 2011.

AWARD

Having carefully considered the evidence and argument in its entirety, I hereby render the following Interest Arbitration Award:

1. The King County Corrections Guild unit shall receive an across the board wage increase of 3.5% for 2012;

2. The parties shall attempt to agree on appropriate language and/or tables to include in their Agreement to implement this Award, and I will reserve jurisdiction to resolve any disputes in that regard that the parties are unable to resolve on their own; either party may invoke this reserved jurisdiction by fax or email sent, or letter postmarked, within ninety (90) days of the date of this Award (original to the Arbitrator, copy to the other party) or within such reasonable extensions as the parties may mutually agree (with prompt notice to the Arbitrator) or that the Arbitrator may order for good cause shown; and

3. The parties shall bear the fees and expenses of the Interest Arbitrator in equal proportion.

Dated this 11th day of March, 2013

Michael E. Cavanaugh, J.D.
Interest Arbitrator