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PUBLIC EMPLOYMENT
RELATIONS COMMISSION

IN THE MATTER OF

CLARK COUNTY

AND

CLARK COUNTY CUSTODY OFFICER'S GUILD

PERC No.: 20017-I-05-0460

Date Issued: April 3, 2008

INTEREST ARBITRATION OPINION AND AWARD

OF

ALAN KREBS

Appearances:

CLARK COUNTY

CLARK COUNTY CUSTODY OFFICER'S GUILD

Curt Wyrick

Monica Blackwood

**IN THE MATTER OF
CLARK COUNTY
AND
CLARK COUNTY CUSTODY OFFICER'S GUILD**

OPINION OF THE ARBITRATOR

PROCEDURAL MATTERS

In accordance with RCW 41.56.450, an interest arbitration hearing involving certain uniformed personnel of Clark County, Washington was held on January 28, 2008, in Vancouver, Washington. The parties agreed that the matter would be heard before a single arbitrator jointly selected by the parties, Alan Krebs, rather than a three-person panel. Clark County was represented by Curt Wyrick, Chief Deputy of the Prosecuting Attorney's Office. Clark County Custody Officer's Guild was represented by Monica Blackwood, Labor Consultant for the law firm Garrettson, Goldberg, Fenrich & Makler.

At the hearing, witnesses testified under oath and the parties presented documentary evidence. There was no court reporter, and therefore, the Arbitrator tape recorded the proceedings. The parties agreed that these tapes should be preserved for three months following the date of this Opinion and Award. Post-hearing briefs were received by the Arbitrator in a timely manner.

APPLICABLE STATUTORY PROVISIONS

Where certain public employers in the state of Washington and their uniformed personnel are unable to reach agreement on new contract terms by means of negotiations and mediation, RCW 41.56.450 calls for interest arbitration to resolve their dispute. The parties agree that RCW 41.56.450 is applicable to the bargaining unit of custody officers and sergeants involved here. Arbitrators are generally mindful that interest arbitration is an extension of the bargaining process. They recognize those contract provisions upon which the parties could agree and decide the remaining issues in a manner which would approximate the result the parties would likely have reached in good faith negotiations considering the statutory criteria.

RCW 41.56.465 sets forth certain criteria which must be considered by an arbitrator in deciding the controversy:

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

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

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

* * *

NATURE OF THE EMPLOYER

Clark County employs custody officers and sergeants (hereinafter referred to collectively as custody officers) at three locations. Two of those, the Main Jail and the Courthouse, are situated on the County's downtown campus. Some custody officers work outside of the downtown campus, at the Jail Work Center. There are 152 custody officers in the bargaining unit. These employees work various shifts, including five 8 1/2-hour days with a work cycle of five days on followed by two off, four 10 1/2-hour days with a work cycle of four days on followed by three off, and four 12-hour days with a work cycle of four days on followed by four off. Employees work day, swing, and graveyard shifts. Employees work frequent overtime, sometimes involuntarily.

ISSUE

On December 22, 2005, the Public Employment Relations Commission (PERC) certified for interest arbitration one issue which was at impasse following mediation. That issue is "Parking." In the past, the parties' collective bargaining agreements have contained no provision regarding parking. The Guild's position is that no language regarding parking should be added to the Agreement, but rather that the County should maintain the status quo of providing parking to

Guild members without a charge. The County proposes that the following language be added to the collective bargaining agreement:

20.6 Parking.

The County Campus Parking Management Plan represents the guideline for parking within the downtown campus. Except as indicated herein, this Plan applies in its entirety to the Custody Officer's Guild. Changes to this Plan made during the life of this Agreement with the exception of fees or restrictions on employee parking may be made without additional bargaining.

Employees choosing to park in the downtown campus, County-provided parking lots shall pay a monthly fee as shown in the schedule below. The County agrees to provide a minimum of thirty (30) days notice prior to increasing the cost of permits to the levels shown.

<u>CATEGORY OF PARKING</u>	<u>CURRENT FEE</u>	<u>MAXIMUM FEE</u>
General Access	\$20.00	\$23.00
Uncovered Reserved	\$35.00	\$40.25
Covered Reserved	\$50.00	\$57.50

Per the County Campus Parking management Plan, employees will be subject to additional fees in the event of lost or duplicate permits.

BACKGROUND

Early in 2003, the County completed construction of a large building, the Public Service Center, on its downtown campus. This new building is located on land that was previously a large gravel parking lot that had been used by employees for parking. Prior to the completion of the Public Service Center, the County did not charge a parking fee for employee parking. In 2002, the County completed construction of a three-level garage on the capital campus. In addition, during 2006, another parking lot, referred to as the parking annex, was completed. There are also a number of other preexisting parking lots on the downtown campus, including the North Lot, which is located next to the Sheriff's office and Main Jail.

In 2002, the Board of County Commissioners adopted a Campus Parking Management Plan. The Plan called for the implementation of the following parking fees for employees:

General Access Permit	\$20
Reserved Uncovered Parking Permit	\$35
Reserved Covered Parking Permit	\$50

The Plan required a parking permit to be displayed whenever parking on the downtown campus between 6:00 a.m. and 6:00 p.m. A parking permit was not required for parking at other times or at County facilities located outside the downtown campus. A reserved parking permit would provide an employee with the exclusive right to park in a specified space. A general access permit would provide a right to park at any space on the downtown campus other than reserved spaces.

Francine Reis, the County's Human Resources Director, testified to three reasons for the implementation of parking fees. First, it would allocate the limited parking which was available on the downtown campus. Second, the parking fees would help fund the garage construction bond and would also help pay for maintenance and security for the garage. Third, the parking fee was intended as part of the County's commute trip reduction program. In this regard, the County relies on RCW 70.94.527 which requires each county containing an urban growth area to "adopt a commute trip reduction plan and ordinance for major employers in the affected urban growth area" "designed to achieve reductions in the proportion of single-occupant vehicle commute trips." The County Campus Parking Management Plan which was adopted states that it was not intended to directly address the commute trip reduction law, but that requiring paid parking could serve the County's transportation objectives by encouraging public transit.

Representatives of the County and its various unions met and discussed the impact of the County Campus Parking Management Plan on employees. Contract language similar to the

language proposed by the County in this dispute was negotiated into a number of collective bargaining agreements, including those applying to Laborers International Union, Local 335; the Information Technology Guild; the Juvenile Detention Guild; International Association of Machinists, Local 1374; OPEIU, Local 11; AFSCME, Local 307CO; and the Sheriff's Office Support Guild. These bargaining units are not legally entitled to interest arbitration. Non-represented employees, elected officials, department heads, and judges all must pay the parking fee in order to park in a downtown campus lot.

The collective bargaining agreement for the Clark County Deputy Sheriffs' Guild, which is subject to interest arbitration, does not contain a provision for parking fees. The deputies generally drive assigned County vehicles and park in reserved fleet spaces. Those fleet spaces are paid for in the budget of the Sheriff's Department. On the occasions when deputies drive their personal vehicles to the downtown campus, they are allowed to park them in the reserved fleet spaces, without having to pay a parking fee. A bargaining unit of commanders in the Sheriff's Department has not yet reached agreement on a new contract.

Late in 2001, the Guild advised the County that the parking issues would need to be bargained and that until they were resolved, the status quo should be maintained. The parties' collective bargaining agreement expired at the end of 2001. Negotiations soon stalled as a question concerning representation arose and needed to be resolved by PERC before bargaining resumed. The County agreed to maintain the status quo on parking for the custody officers pending the resolution of the question concerning representation and any subsequent bargaining for a new contract. In order to maintain the status quo, the County proposed, and the Guild accepted, that 21 parking spaces in the North Lot be dedicated to parking for the custody officers on a first come, first serve basis. Custody officers were provided permits which permitted them

to park in those spaces or any general access space. In 2003, negotiations resumed after the question concerning representation was resolved. During the negotiations for what would be their 2005-2007 contract, the County proposed to add a new section on parking which would include parking fees. The Guild resisted this proposal. In June 2005, the Guild advised the County that it would accept the County's last offer made in mediation, "except the parking section, which as part of this agreement, [the Guild] would agree to submit the parking issue, alone, to arbitration." The County agreed. In December 2005, the parking issue was certified for interest arbitration. Thereafter, there was an unexplained delay by the parties in advancing the matter to hearing. In 2007, the parties acted to set the matter for hearing.

PARAMETERS OF THIS AWARD

The Guild argues in its brief that the Arbitrator's award should only apply to the term of the parties' 2005-2007 collective bargaining agreement, and not their 2008-2010 collective bargaining agreement which was awaiting approval by the Board of County Commissioners at the time of the arbitration hearing. I am not persuaded by this argument. The fact that interest arbitration in this matter was delayed for a lengthy period after PERC's certification of the parking issue for interest arbitration, such that the parties proceeded into their next contract cycle, does not mean that any parking language which may be ordered by the interest arbitrator disappears upon ratification of the 2008-2010 contract. If the Guild wanted to remove any ordered parking language effective with the implementation of the 2008-2010 contract, it needed to announce this before agreement was reached on that contract, and certainly before it submitted its brief. Neither the County nor the Arbitrator was put on notice that this would be the Guild's position and the County has not had an opportunity to respond. The necessary assumption based

on the bargaining history and the manner in which this matter has been presented must be that any contract language on parking ordered by the Arbitrator shall remain in effect unless and until it is deleted or modified by a negotiated agreement or by a subsequent interest arbitration. In its brief, the Guild asserted that testimony at the hearing indicated that the Guild never agreed to send the issue of parking to interest arbitration for the successor contract. The evidence presented does not reveal that the Guild expressed its intent regarding the parking issue as it applies to the 2008-2010 contract. However, an email dated January 4, 2008 from the County to the Guild states: “The County believes that the parking language should be incorporated in the successor labor agreement if awarded by the arbitrator.” There is no evidence in the record that the Guild disputed this position. It appears most likely that the parties did not negotiate the parking issue in the context of the negotiations for the 2008-2010 contract, but rather understood that the matter would be resolved by the interest arbitrator. Therefore, your Arbitrator does not agree with the Guild’s contention that any award issued would have no prospective effect. In fact, such an award would render this interest arbitration meaningless inasmuch as the 2005-07 collective bargaining agreement has expired, the 2008-2010 agreement is likely now in effect, and at hearing, the County indicated that it did not intend to apply the Arbitrator’s award on parking retroactively so as to collect parking fees for time periods preceding the award. Presumably, the parties did not engage in this interest arbitration as a meaningless exercise.

COMPARABLE JURISDICTIONS

One of the primary “standards or guidelines” set forth in RCW 41.56.465 upon which an arbitrator must rely in reaching a decision is 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.” While the governing statute requires a comparison with like employers “of similar size,” it does not specify how similar size is to be determined. In making this determination, interest arbitrators have been limited by the nature of the statistics which the parties have placed into evidence. One of the most commonly referenced criteria to determine “similar size” recognized in other interest arbitration decisions is population. That is the criteria upon which the parties here have justified their proposed comparables.

The County proposes the following counties as comparable to Clark County:

<u>County</u>	<u>Population</u> ¹	<u>Percent of Clark County</u>
Kitsap Co., WA	244,100	59%
Pierce Co., WA	778,689	188%
Snohomish Co., WA	678,093	164%
Spokane Co., WA	448,953	108%
Thurston Co., WA	234,550	57%
Yakima Co., WA	233,000	56%
Clackamas Co., OR	366,785	89%
Lane Co., OR	341,440	82%
Marion Co., OR	308,867	75%
Washington Co., OR	500,430	121%
Clark Co., WA	413,969	

The Guild proposed that the same comparables be used, except not Pierce and Snohomish Counties.

The County argues that its proposed comparables should be utilized because they fall within range of between 50 percent and 200 percent of the population of Clark County. The

¹ The population figures set forth are an average of the differing population figures provided by the parties. There is no basis in the record for determining which of the proposed population figures are more accurate. In any event, the variations are too small to make any difference in the selection of comparables.

County observes that some other interest arbitrators have adopted such a range for appropriate comparables. Ms. Reis testified that the County used the same comparables as it proposes here in its most recent contract negotiations with the Guild, though she conceded that the Guild would not agree to the inclusion of Pierce and Snohomish Counties. The County maintains that Pierce and Snohomish Counties should be included because like Clark County, they are large urbanized counties whose facilities are located in the core of the city.

The Guild argues for its proposed comparables on the basis that they fall within a range of 50 percent to 150 percent of that of Clark County, and Pierce and Snohomish Counties fall outside that range. The Guild points to interest arbitration decisions where a range of 50 percent to 150 percent has been utilized, particularly when the parties have historically used such a range for comparables in their negotiations. In this regard, Dana Bennett, who is now a research analyst for the law firm which represents the Guild, testified that in the past she was the human resource manager for the Clark County Sheriff's Department for six years and during that time the practice in negotiations was for both parties to utilize a population range of 50 percent to 150 percent to determine comparables.

In fact, interest arbitrators have, in determining comparables in different cases, utilized both a population range between 50 percent and 200 percent and between 50 percent and 150 percent and have adopted other parameters as well. Both of the ranges suggested by the parties are reasonably utilized to select comparables. In this dispute, I have determined to utilize a population range of between 50 percent and 150 percent of that of Clark County. That appears to have been the basis for selecting comparables that the parties themselves have historically utilized prior to the most recent negotiations, and good cause has not been established for

deviating from that which has been deemed fair by the parties in the past. Moreover, the number of comparables established by utilizing such parameters is sufficient to make a reasonable comparison.

The parties each submitted into evidence a chart which indicated how the comparable employers treated parking for their custody officers. These charts were based on contacts made with representatives of the comparable counties. In addition to its chart, the Guild submitted the email responses which it received from those representatives. Neither party presented evidence of any contract language regarding parking which is in the labor contract of any of the comparable employers. Below is reflected the information which can be gleaned from the exhibits which were submitted.

Kitsap County

According to an email from a human resources analyst from Kitsap County Personnel, “Kitsap County has a couple of parking lots for reserved parking [and] spaces . . . cost the employee \$30 per month.” It was also reported that “[t]he County also has a couple of free lots that are available . . . on a first-come, first-serve basis.”

Spokane County

An “HR/Parking Secretary” reported in an email that there is a limited amount of paid parking available to employees at a cost of \$10 per month. According to a chart submitted as an exhibit by Clark County, employees pay \$10-\$15 per month for parking.

