

BEFORE ARBITRATOR KATRINA I. BOEDECKER

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EMPLOYMENT
RELATIONS BOARD

In the matter of the arbitration)
of interest disputes between:)
MULTNOMAH COUNTY,)
Employer,)
MULTNOMAH COUNTY CORRECTIONS)
DEPUTIES ASSOCIATION,)
Union.)

INTEREST ARBITRATION
FINDINGS, OPINION
AND ORDER

Williams Zografos and Peck, by Kathy Peck,
Attorney at Law, appeared on behalf of the
employer.

Bennett, Hartman, Morris & Kaplan, by Henry
J. Kaplan, Attorney at Law, appeared on
behalf of the union.

JURISDICTION

On December 5, 2007, the undersigned Arbitrator was notified
that she had been selected to determine issues in an interest
arbitration resulting from an impasse in bargaining between the
Multnomah County (employer) and the Multnomah County Corrections
Deputies Association (association). The selection of the
Arbitrator, and the interest arbitration proceedings which
followed, were conducted pursuant to Chapter 243.746 ORS.

The interest arbitration hearing was held May 13 through 16,
2008, in Portland, Oregon. The record was completed when the
parties filed post hearing briefs with the Arbitrator by July 1,
2007.

PERTINENT STATUTORY LANGUAGE

The State of Oregon regulates interest arbitration procedures through the Oregon Revised Statutes (ORS). ORS 243.746 provides, in part:

(4) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, unresolved mandatory subjects submitted to the arbitrator in the parties' last best offer packages shall be decided by the arbitrator. Arbitrators shall base their findings and opinions on these criteria giving first priority to paragraph (a) of this subsection and secondary priority to subsections (b) to (h) of this subsection as follows:

(a) The interest and welfare of the public.

(b) The reasonable financial ability of the unit of government to meet the costs of the proposed contract giving due consideration and weight to the other services provided by, and other priorities of, the unit of government as determined by the governing body. A reasonable operating reserve against future contingencies, which does not include funds in contemplation of settlement of the labor dispute, shall not be considered as available toward a settlement.

(c) The ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided.

(d) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefits and all other direct or indirect monetary benefits received.

(e) Comparison of the overall compensation of other employees performing similar services with the same or other employees in comparable communities. As used in this paragraph, "comparable" is limited to communities of the same or nearest population range within Oregon. . . .

(f) The CPI-All Cities Index, commonly known as the cost of living.

(g) The stipulations of the parties.

(h) Such other factors, consistent with paragraphs (a) to (g) of this subsection as are traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of employment. However, the arbitrator shall not use such other factors, if in the judgment of the arbitrator, the factors in paragraphs (a) to (g) of this subsection provide sufficient evidence for an award.

(5) Not more than 30 days after the conclusion of the hearings or such further additional periods to which the parties may agree, the arbitrator shall select only one of the last best offer packages submitted by the parties and shall promulgate written findings along with an opinion and order. The opinion and order shall be served on the parties and the board. Service may be personal or by registered or certified mail. The findings, opinion and order shall be based on the criteria prescribed in subsection (4) of this section.

(6) The cost of arbitration shall be borne equally by the parties involved in the dispute.

[Emphasis by underline added.]

STATEMENT OF THE ISSUE AND STIPULATIONS

Given the dictates of ORS 243.746, it is appropriate to frame the issue as:

Does the employer's, or the association's, last best offer package better meet the criteria of ORS 243.746?

The parties stipulated that:

The parties will use only Clackamas and Washington Count[ies] in our total compensation analysis, with the proviso that the stipulation will not be considered

precedent-setting for any future negotiations or interest arbitration. However, the Association does not stipulate the MCCDA should be at the average of those comparators; we understand that the County takes the position that the average is appropriate, and the Association takes the position that its compensation should exceed those nearby comparators.

The parties also agreed that the employer's financial ability to pay is not at issue in this interest arbitration.

I have reviewed the notebooks of evidence, which totaled over nine inches of documentation, submitted during the four day hearing. I have evaluated the arguments submitted by the parties; the 52 page brief from the employer and the 90 page brief from the association. It would be impractical of me to restate and refer to each and every piece of evidence, testimony and argument presented. However, I did give careful consideration to all of the evidence and argument placed into the record by the parties.

After evaluating both package offers against the criteria of "the interest and welfare of the public" first, and then against the secondary criteria in the statute, I find that the employer's offer should be awarded.

PROCEDURAL BACKGROUND

The association represents a bargaining unit of about 440 corrections deputies and sergeants who staff the Multnomah County correctional facilities. The association has been the bargaining representative since 1983.

The parties are currently operating under a collective bargaining agreement effective July 1, 2004 through June 30, 2010. The agreement contains a re-opener for the fourth year, beginning July 1, 2007 and ending June 30, 2008. The parties jointly re-opened wages and health insurance. The re-opener allowed each party to bring two additional articles to the bargaining table.

The association chose to re-open Article 17 - Corrections Service and Training Achievement Program to propose more training time. It also re-opened Article 21 - General, in order to revise subcontracting language. The association elected to withdraw its proposals on these two articles for the purpose of interest arbitration. Thus it focused on its primary bargaining goal of getting a cost of living increase commensurate with the comparator jurisdictions.

The employer's bargaining goals were driven by criticism directed at the Sheriff's Office regarding alleged sick leave abuse and alleged misuse of the compensatory time program, both of which contribute to a perceived inequitable distribution of paid time off. To address these issues, the employer re-opened Article 10 - Sick Leave and Article 15 - Hours of Work.

ANALYSIS

Primary Criteria - Interest and Welfare of the Public

The Public Employees Collective Bargaining Act, Chapter 243 ORS, dictates that the "interest and welfare of the public" be given primary consideration when deciding which final package to award. Interest arbitrators have long struggled with how to give meaning

to that ambiguous phrase. Legislative history records Senator Bryant testifying that the purpose of the bill is "to respond to Oregon taxpayer demands for accountability and efficiency from government." In *Multnomah County and Multnomah County Correction Officers Association*, (Stratton, 1988), the arbitrator employed a balancing test to weigh what is reasonable to the taxpayer together with what is fair to the employee. I approve of this method of evaluating the offers. The balancing test approach allows each parties' package to be evaluated in a neutral, but defined, manner.

Additionally, in the record before me, the identification of the public interest and welfare has been aided by reports from other neutral forums. Multnomah County Corrections is subject to an annual review of its facilities and its management of those facilities by a Grand Jury. These Grand Jury reviews are mandated by Oregon law, at ORS 132.440. The grand jurors have the right to subpoena witnesses and records as they deem necessary. The Grand Jury review is neutral, serious and in depth. These Grand Juries can serve for over two months and call upwards of 100 witnesses to give sworn testimony. At the conclusion of the proceedings, the grand jurors issue a report identifying areas of concern with recommendations for improvement. The District Attorney's Office assists the grand jurors in drafting the report, but the jurors have final authority over all findings and recommendations contained in their report.

The employer introduced the Correctional Grand Jury Reports for the three fiscal years preceding the hearing. Each report identified sick leave abuse and excessive utilization of "comp time" as pressing concerns that needed to be fixed. All of the reports recognized the "multiplier effect" of the use of comp

time on overtime costs. The 2005 Correction Grand Jury described the "multiplier effect" as follows: "When a deputy takes comp time, it creates another problem; the person who backfills is likely to be on overtime. Therefore, comp time has a multiplier effect on overtime." The 2007 Grand Jury reported: "Although employees may only maintain a maximum of 80 hours in the books at any one time, the amount of comp time they may earn is limitless. Like other domino effects, comp time absences are back-filled with overtime, which is to say nothing of the hidden costs associated with lieutenants spending half of their shifts making phone calls to find bodies to fill the overtime posts."

The Grand Juries further expressed concern that excessive overtime leads to exhaustion which, in turn, leads to performance problems with potentially serious safety consequences. Another concern identified by the Grand Juries relates to the inability of significant numbers of deputies to get time off during certain times of the year, in particular, the summer months. The Grand Juries viewed this inequity in the distribution of time off opportunities as a factor contributing not only to sick leave abuse, but also to poor morale.

Certain exact Grand Juries' findings and recommendations are relevant to this interest arbitration proceeding.

2005 Grand Jury Report:

- The Corrections Grand Jury recommends that the Union contract be negotiated in a manner similar to the Portland Police Contract to allow management to require medical documentation supporting the need for any sick leave and

that management pursue appropriate remedies whenever they suspect that sick leave is being abused.

- We were told that currently a Corrections Officer could carry 80 hours of comp time and this is not a good idea if the County wants to limit overtime... We are mindful that the County needs to negotiate many of these recommendations with the Correction's Officers Union (sic). This is not an easy task. In addition to the contract, the County may be bound by past practices and those too may need to be negotiated.

- In the future the Sheriff and the County Commissioners need to scrutinize any contracts and look for ways to correct the problems we have outlined.

2006 Grand Jury Report:

- Sick leave use is out of control ... We are told that the use of sick leave might account for half of the Corrections Division[']s overtime ... Compensatory time is also a significant factor contributing to the overtime problem... We are concerned that the excessive reliance on overtime has had more than financial consequences in the jail system ... everyone who testified from the Sheriff's Office agreed that excessive overtime is often a cause for poor work performance. In a jail, poor work performance is a safety problem.

- We recommend that the County establish an oversight committee to investigate the conclusions and recommendations of each year's corrections Grand Jury. The most pressing

concerns which require the attention of the committee are ... the use of sick leave, compensatory time and overtime.

2007 Grand Jury Report:

- When we solicited recommendations from Lieutenants and Command Staff, many suggested that a cap on comp time would go a long way to curb the spiraling problems created by comp time absences. The author of the Post Factor Study agree (sic), as do Union representatives and many of the hard working corrections deputies who feel the brunt of working mandatory overtime. We recommend that the County continue to prioritize seeking a comp time cap in contractual negotiations.

- Despite an improvement, sick leave abuse persists ... Both the Sheriff and the County need to implement well understood and proven methods for combating sick leave abuse.

- We understand that these correction officers have sensed that much of the recent criticism of the Sheriff's Office from the news media has been aimed at them. We wish to correct that mis-perception. This Corrections Grand Jury has made an active attempt to solicit the opinions of front line corrections officers and to that end has heard extensive testimony from many of them. We are impressed with their sincerity, thoughtfulness, dedication and most of all with their professionalism ... Many, in fact, identified a lack of management leadership and employee supervision issues as one of the key contributors to the erosion of employee morale and effectiveness.

The District Attorney's Report:

In addition to the Corrections Grand Jury Reports, the Multnomah County Commissioners requested that the Multnomah County District Attorney's Office conduct an independent review of the management of the county correctional facilities. In its 2006 written report, the District Attorney's Office identified problems associated with the misuse of sick leave and the excessive use of compensatory time. The report included a recommendation that the employer "negotiate contractual terms where needed, or simply institute procedures where negotiation is not required, which will put some teeth into the enforcement of sick leave rules." It also included a recommendation that the employer control and limit the use of compensatory time.

The Post Factor Study:

The association submitted excerpts of the *Sheriff's Office Jails Post Factor Study* issued in November, 2007. It was prepared by Pulitzer/Bogard, LLC, from New York. The report contained findings and recommendations regarding the number of personnel needed to staff posts continuously in the jail. The excerpts did not include the reason for the study or who authorized and paid for it.

COMPARISON OF LAST BEST OFFERS

Sick Leave

The parties have already negotiated certain changes to their sick leave article. The employer is seeking two additional points:

sick leave verification language and sick leave abuse language.

Employer proposal:

The employer proposes sick leave verification language which would allow the Sheriff's Office to require employees to submit certification from a physician, or other acceptable source, when the employer can articulate reasonable cause to believe that an abuse of sick leave has occurred (questionable patterns of absence, etc.). The proposal requires that:

- A member of the command staff notifies the employee that, due to the articulated reasonable cause, future verification will be required; and
- The period that any verification is required cannot exceed six months following the notice to the employee.

The proposal also lets the Sheriff's Office require physician certification, or other acceptable verification, when an employee has exhausted all but 24 hours of sick leave or has called in sick five or more times for separate events during any six month period.

The employer language to curb a perceived sick leave abuse problem defines that sick leave is intended only to provide compensation to employees who are absent for the reason specified in the sick leave article. It requires employees to become familiar with those reasons. Finally, it notifies employees that giving false reasons to obtain sick leave benefits, or accepting sick leave benefits for reasons other than those specified, constitutes misuse of sick leave and is grounds for discipline.

Association proposal:

The association proposes that the current contract language regarding sick leave verification remain unchanged. Currently, the employer may require an employee to submit physician certification of illness if an employee is absent in excess of three consecutive workdays.

The association proposes no language addressing any sick leave abuse.

Analysis of Sick Leave Proposals

The record supports the need for contract language which, as recommended by the District Attorney's Office, "will put some teeth into the enforcement of sick leave rules." Both the employer and the association have been criticized by neutral fact-finding bodies for not doing enough to curb the tide of sick leave abuse.

Sick leave verification language -

The sick leave verification language in the employer's proposal achieves a proper balance between what is reasonable to taxpayers and what is fair to employees. Under the proposed language, employees are given advance notice. Suspected abusers are alerted of the employer's intent to require medical certification for future absences. The language also creates cost-effective disincentives for abuse. Employees prone to misusing sick leave have the opportunity to correct their behavior. This self-correction requires no commitment of financial resources by the employer. Further, it allows the employee to take action to avoid disciplinary measures.

The reasonableness of the employer's sick leave verification language is further supported by Association President Anderchuk; he testified that the employer's sick leave verification language would likely create disincentives for abuse. On January 24, 2008, the County Chair and three Commissioners met with the president and two vice presidents of the association. Their interview was recorded and transcribed. During that interview, Anderchuk expressed his concern that the association was being characterized as the "stumbling block" to the employer's efforts to manage personnel issues. He pledged the association's commitment to assist the employer in combating sick leave abuse. Anderchuk further testified that he believed the employer's sick leave verification proposal was reasonable.¹

The employer submits that about 3-4% of the corrections deputies are engaging in sick leave abuse. Only 33 of 440 deputies had less than 8 hours of sick leave on the books as of February, 2008. However, contrary to the association's argument, the conclusion that sick leave abuse is occurring among a small percentage of bargaining unit employees does not negate the employer's need to curtail the abuse. The employer showed that the average use of sick leave by bargaining unit employees has increased from 46.65 hours in fiscal year 2001-2002 to 113.61 hours in the first nine months of fiscal year 2007-2008. The data also showed an increase in the number of employees who have eight or less hours of accumulated sick leave. Sick leave use has been abnormally high among bargaining unit employees for the months of June, July and August during the last three fiscal years, when judged against medical admissions data provided by

¹At the hearing, Anderchuk admitted that the objectives sought by the association's bargaining team do not always correspond with the objectives of the association's Executive Board.

Providence Health Systems. That data suggests high illness rates normally occur during the winter and early spring.

Additionally, an analysis of the sick leave usage patterns of individual employees suspected of sick leave abuse supports the need for change. The employer tracked the attendance and absenteeism patterns of employees month-by-month for the last five fiscal years.

- Employee MP was cited as a potential sick leave abuser by multiple Grand Juries and the *Oregonian* newspaper. In addition to his job as a correctional deputy, he has his own real estate business. He has used 1842 of the 1886 hours of sick leave he has accrued since he was hired, for a usage rate of 97.67%. During the approximate 4 1/2 year time period commencing July 1, 2003, MP had 39 "sick leave events", 33 of which were connected to a weekend or other leave.
- Employee JS used 96.69% of the sick leave he has accrued from his date of hire on November 17, 1986 through April 30, 2008. During the approximate 4 1/2 year time period from July 1, 2003 through January 2008, JS has had 32 sick leave events, 29 of which were connected to weekends or other leave.
- The employer introduced similar patterns and statistics to illustrate concerns regarding sick leave usage by other bargaining unit employees.

The sick leave verification approach proposed by the association provides no assistance to the Sheriff's Office in addressing the most common form of sick leave abuse. The association proposes that current contract language, which permits the employer to

require medical certification only after absences in excess of three consecutive workdays, be continued. However, witnesses testified that employees suspected of sick leave abuse are seldom absent more than three consecutive workdays. Instead, patterns of suspected sick leave abuse typically occur in one or two day increments and are frequently connected to a day off or leave time.

The association's proposal to continue the current practice regarding sick leave verification, creates no disincentive to employees who are prone to misuse sick leave. It perpetuates an unacceptable status quo. Instead of contributing to progressive and collaborative solutions to this proven problem, the current language creates incentives for sick leave abusers to escape detection by limiting their fraudulent usage to increments of three consecutive workdays or less - something that employees are doing now.

Language which permits an employer to require medical certification, only when an absence exceeds three consecutive workdays, creates a safe harbor for potential abusers. Continuation of such a rule would render the Sheriff's Office powerless to utilize medical certification options to address the very type of sick leave abuse that needs to be addressed - suspected patterns of abuse that occur in increments of three workdays or less.

The employer's sick leave verification language is not, as the association suggests, "draconian". It is reasonable to have sick leave verification language in the labor agreement for the simple reason that sick leave abuse is a joint problem. The task of addressing this problem should be accomplished through the

mutual efforts of the employer and the association. The association has no legitimate interest in protecting sick leave abusers. Sick leave abusers not only cause taxpayers to compensate them for benefits they are not entitled to receive, they also place strains on the honest employees who comprise the majority of the bargaining unit. It is these employees who are required to take time away from their families and personal activities to cover the work shifts of the abusers.

It is important to note that the employer's proposal includes numerous safeguards, some of which were proposed by the association during bargaining. It is undisputed that the association, after extensive bargaining, tentatively agreed upon the very same sick leave verification language that the employer incorporated into its Last Best Offer. The association proposed the requirement that employees who have questionable patterns of usage must be notified by a member of the command staff that future verification will be required. Likewise, it was the association that proposed the six month limitation on sick leave verification rights that was incorporated into the employer's proposal.

The association argues that management has "all it needs" to effectively enforce sick leave rules by pointing to language in the Sheriff's Office Manual. However, association witnesses revealed that the only sick leave verification rule that exists in that Manual is identical to the "absences in excess of three work day" rule in the current collective bargaining agreement.

The association also contends that the Sheriff's Office could conduct home checks and/or institute internal affairs (IA) investigations. Neither of these suggestions are workable. Home

checks would take supervisors away from current assignments to drive to an employees home. They are an intrusive approach to monitoring sick leave usage. In fact, employee MP testified that he felt home visits would be too invasive.

The association's suggestion, that the employer's sick leave verification proposal is not needed because the Sheriff's Office has the right to conduct IA investigations, is flawed. Both employer and association witnesses acknowledged that IA investigations are difficult to undergo. They are often stigmatizing. Captain Carol Hassler, the head of the IA Department and Inspections Unit, testified that an IA investigation should be the last resort. IA investigations should not be a regular event.

The issue is not, as the association suggests, whether IA investigations of sick leave abuse are appropriate. In some cases, IA investigations may become necessary. The issue is whether the Sheriff's Office should be afforded an additional tool in its efforts to uncover facts which will better enable it to determine whether an IA investigation is appropriate. The Sheriff's Office should be given the right to ensure that only the employees who are eligible for sick leave benefits actually receive those benefits.

Sick leave abuse language --

Since the association has acknowledged it has no legitimate interest in protecting sick leave abusers, the association should consequently have no legitimate interest in denying the Sheriff's Office a reasonable way to prevent sick leave abuse.

The Grand Juries and District Attorney's Office criticized both the Sheriff's Office and bargaining unit employees for contributing to the problem of sick leave abuse. Bargaining unit employees were criticized for having an "entitlement" mentality, that is, for viewing sick leave as the equivalent of vacation time to be used for any purpose. Management was criticized for taking a lax approach to the enforcement of the proper use of sick leave.

Irrespective of who is to be blamed for sick leave abuse, it is evident that past practices have developed which must be corrected. This correction must be made with clear and concise language which embodies the principle that sick leave usage is a joint responsibility and imposes balanced obligations on the parties to fulfill that responsibility. The employer's sick leave abuse proposal accomplishes those objectives. The association's approach does not.

The employer's proposal advising employees that sick leave must be used only for purposes listed is important to break any entitlement mentality. It places employees, who may have been lulled by lax enforcement, on notice of what they must do to comply.

The employer's proposed language, that requires employees to become familiar with the reasons for which sick leave can be used, is important. It requires employees to assume a fair degree of responsibility for compliance. It precludes any "I didn't understand" excuses. The language that advises employees that misuse will be grounds for discipline also is important. It places employees on notice of the consequences the Sheriff's Office intends to impose for violations.

The association responded to the employer concerns by having witnesses testify that no definition of sick leave abuse or other language addressing the problem is needed, because there is already language in the Sheriff's Office Manual about false reporting of sick leave. The reliance on the Manual again fails.

First, the language in the Manual is inadequate to address the concerns identified. It does not contain an "inverse" definition of sick leave abuse, i.e. a definition which describes abuse as giving false reasons or accepting sick leave benefits for any reason not listed in the section on sick leave. Second, it imposes no obligation on employees to become familiar with usage rules or cooperate with investigations. Third, it gives employees who are found guilty of sick leave abuse a false impression of the Sheriff's Office intended action by stating that an abuser "may" be disciplined, rather than "will" be disciplined. Fourth, the very placement of this language in the Agency Manual rather than the labor agreement dilutes the effect of what the employer is trying to accomplish. Employees should be able to locate the rules that pertain to sick leave in one document. As noted by Association President Anderchuk, it would seem to make sense to include the abuse rules with the rules related to sick leave usage. Anderchuk also acknowledged the need for sick leave abuse language during the interview with the County Chair and County Commissioners. In the course of that interview, he noted, "...people want to add sick leave language, define what abuse is."

At numerous points in the hearing, association witnesses suggested that no sick leave verification or sick leave abuse language should be included in the Agreement, because the parties do not need a contract the size of an "encyclopedia" or "phone

book". However, the sick leave abuse concerns identified by the Grand Juries and District Attorney's Office cannot be effectively addressed without new contract language.

The record establishes that sick leave abuse is a problem in the Sheriff's Office. The Grand Juries, who heard witnesses over multiple years, as well as the District Attorney's Office, found that sick leave abuse is a problem among employees in the bargaining unit. In addition, both management and association witnesses concurred. At the hearing, Anderchuk testified that sick leave abuse does occur.

In this case, where other neutral forums have uniformly called for the negotiation of stronger tools to enforce sick leave rules, there should be no further delay. Change is needed now. The Sheriff's Office needs sick leave verification and abuse language that provides a foundation for more effective enforcement today.

The employer's proposal best balances the interests of both parties. It assures that benefits paid for with taxpayer dollars are used in a manner that is consistent with benefit eligibility criteria. At the same time, it gives due process protections to employees. They will receive advance notice, for a specified period of time, and details of consequences. The balance is struck by the inclusion of language in the Agreement that defines sick leave abuse and notifies employees of their obligation to become familiar with the reasons for which sick leave may be used, as well as the consequences of violations.

Hours of Work

Current contract language allows employees to have a "rolling" bank of up to 80 hours of compensatory time (comp time). After 80 hours of comp time are on the books, the employee must accept cash for overtime work.

Employees currently bid for vacation by seniority, based on the availability of empty vacation slots per shift. Over the years, the parties have developed a practice of having employees sign up for open vacation slots that they call "shot-gunning" the vacation book. This practice occurs after the regular vacation bid is complete. Shot-gunning allows an employee to claim a vacation slot based on comp time that the employee has not yet earned, but believes he or she will have on the books by the time the date comes up on the calendar. The employee may then cancel the vacation slot if he or she does not earn the comp time or decides not to use it.

Every year during or about October, employees sign up for shifts and days off by seniority, for the next year. Bidding begins after the Sheriff's Office determines how many employees can be absent on a given shift. Employees are allowed to bid in two stages. First employees bid for vacations and personal holidays by seniority. The Lieutenants use these bids to give vacation and personal holiday preference for available dates to the most senior deputy, second most senior deputy, third most senior deputy and continuing in that order to the lowest seniority deputy. This process is generally completed by November.

Once the vacation and personal holiday bidding is completed, employees may sign up for comp time off. Comp time is not

granted by seniority. Instead, it is granted on a first-come-first-served basis.

It is the second step in the process that the employer seeks to address in its proposal. At present, there is no limitation on the number of comp time days an individual can sign up to receive. Employees are free to sign up for as many days as they wish, even if they have no comp time hours banked and no realistic opportunity to accrue the number of hours they have signed up to use. This "shot-gunning the books" practice has been criticized by the Grand Juries, the District Attorney's Office, and the Sheriff's Office, as well as by association representatives, as being an unfair and inequitable way to distribute time off opportunities among bargaining unit members.

Employer proposal:

The employer proposes to have a 96 hour cap on the total amount of compensatory time that could be accrued OR USED in the course of a year. The employer also proposes a ten-day cancellation notice for comp days. Its proposal includes discipline for an employee who fails to cancel a previously claimed comp day, and shows up for work instead.

The employer believes that its proposal would curtail the practice of "shot-gunning" the vacation book. This, in turn, would leave more vacation slots unclaimed, which would allow more days to be available for time off by junior members of the bargaining unit.

Association proposal:

The association proposes an increase in the amount of time that an employee has to give notice to cancel a scheduled comp day

off. It proposes changing 10 days notice to 45 days notice. The association's proposal would conform the comp time cancellation policy with the contract language for cancellation of vacation days.

The association claims that its proposal would make an employee's inability to cancel vacation days at the last minute a deterrent for an employee from signing up for a comp day that he/she does not necessarily plan to use. Under the association's proposal, if an employee signed up for the day off, but had a change of mind within the 45 days, the employee would still have to take the day off by burning a vacation or comp day from the leave bank. The association argues that this would encourage employees who do not intend to use the slot to cancel far enough in advance so that others wishing to use the cancelled slots will have time to plan a real vacation.

Analysis of Hours of Work Proposals

The Grand Juries and District Attorney's Office found that the current practice of permitting employees unlimited use of comp time, as well as the practice of allowing a small percentage of bargaining unit employees to monopolize paid time off during favorable calendar periods, contributes to escalating overtime costs and encourages sick leave abuse. The investigations found that there were safety concerns created by excessive overtime. They also found that the shot-gunning practice imposes inequitable working conditions on employees. In particular, since mandatory overtime is assigned in inverse order of seniority, low seniority employees have to cover for the bargaining unit members who take advantage of existing contract provisions to take excessive amounts of comp time off.

The 2005 Grand Jury found, "Compensatory time is also a significant factor contributing to the overtime problem."

The 2006 Grand Jury found, "When a deputy takes comp time, it creates another problem; the person who backfills is also likely to be getting overtime. Therefore, comp time has a multiplier effect on overtime. We were told that currently a corrections officer could carry 80 hours of comp time and that this is not a good idea if the county wants to limit overtime."

The 2007 Grand Jury found, "Although employees may only maintain a maximum of 80 hours on the books at any one time, the amount of comp time they may earn is limitless. Like other domino effects, comp time absences are back-filled with overtime ..."

The District Attorney's Office found, "Compensatory or comp time generally occurs when someone is compensated for more than a 40-hour week. A corrections officer can elect to be paid for the time worked, or take comp time. Either method will result in time-and-a-half or double time. Currently each corrections officer can accumulate 80 hours of comp time. Last year's Corrections Grand Jury outlined the problems with comp time. In addition, the Auditor's report, after studying the practice in great depth, concluded it was the fastest growing category of absence. Unfortunately when comp time is used, the position is filled by someone who is working overtime and who is getting time-and-one-half or double time. The Sheriff acknowledges this has become a big problem and he would like to find a way to fix it."

All three of the Grand Jury Reports recognized that there is a "multiplier effect" to the unlimited use of comp time. Each

report recommended that the Sheriff's Office place a cap on comp time usage. The association argues that there is no evidence of a significant impact. It argues that, in fact, the claim that a multiplier effect is responsible for overtime is pure speculation. I find, however, that the grand juries heard sworn testimony from both employer and association witnesses. Their findings are based on credible evidence: The multiplier effect is caused by the current contract language. An employee who works overtime currently has the option of choosing either overtime pay or comp time. When an employee chooses overtime pay, a single overtime event occurs. When an employee chooses comp time, and the Sheriff's Office is not overstaffed, the employee's comp time absence must be back-filled with another employee on overtime, which creates a second overtime event. That employee, in turn, has the right to choose comp time and, when that time is taken, his/her shift must be back-filled with yet another employee on overtime, which creates a third overtime event. This multiplier effect continues indefinitely until interrupted by an employee's decision to elect pay rather than comp time. Association President Anderchuk testified that the multiplier effect does exist.

Significantly, no comparator has the shot-gunning practice of claiming comp time before it is earned.

Escalating overtime-

The employer's proposed 96 hour comp time cap will not affect the vast majority of the bargaining unit employees. Over the last four fiscal years, the average bargaining unit employee has used less than 96 hours of comp time. The employer's proposal is not intended to interfere with the right of this group of employees to use comp time as they have historically. Instead, it is

designed to preclude the small percentage of employees who have historically used exorbitant amounts of comp time from continuing to do so. The employer's proposal seeks to preclude certain bargaining unit employees who used upwards of 600, 700 and 800 hours of comp time per year, while the association's proposal sanctions such usage. It is fair and reasonable to limit employees to 96 hours of comp time per year, which is the equivalent of eight hours of comp time off per month.

The employer introduced exhibits which put a "face" on those who are permitted to take excessive amounts of comp time off under the language the association seeks to continue.

- Deputy JS has taken 3,433.50 hours in comp time since July 1, 2003.
- Deputy MP has taken 2,222.25 hours in comp time during the same approximate five year period.
- Deputy CG has taken 1,000.50 comp time hours during that period.

A normal reaction to an employer attempt to limit comp time would be to resist it since the employee had to work more than a normal work week to earn the comp time. But here the employer has shown that employees are trading regular shifts for overtime shifts to get comp time accruing at one and a half time the normal rate. This second, less obvious, abuse occurs when employees, like those identified above, are allowed to take excessive comp time. They are taking comp time off during their regular straight-time shifts and picking up automatic overtime shifts outside their regular work hours. Deputy MP admitted that he "used to" ask other employees to trade shifts when he wanted time off work, but now simply uses comp days when he wants time off. The

significance of this practice is this: When MP was exchanging shifts, he was trading one straight-time shift for another straight-time shift. When MP began using comp time to rearrange his shifts, he began trading straight-time shifts for overtime shifts.

No one is suggesting that this practice violates the Agreement. It does not. Deputy MP and others like him are simply taking advantage of the opportunity the current contract language provides to work the same number of hours for much more compensation. It is the employer's position that this opportunity should be foreclosed through a cap on the amount of comp time allowed to be taken off each year. After the cap is reached, the employee would get paid cash for the extra hours worked. Even MP acknowledged that 96 hours was a fair cap. He further noted that he would simply revert to his previous practice of engaging in shift exchanges to get time off from work. The 96 hour cap achieves a reasonable balance between employee and taxpayer interests.

The association's proposal does nothing to address the concerns set forth in the Grand Jury and District Attorney's Office reports. It must be rejected. It is not reasonable to expect taxpayers of Multnomah County to accommodate the granting of hundreds of hours in comp time to individual employees by back-filling their comp time absences with employees on overtime. The public has an interest in controlling overtime costs. The employer's proposal achieves that goal in a manner that is both fair to the employees and reasonable to taxpayers.

Sick leave abuse -

Witnesses also testified that capping comp time sign-ups to 96 hours would create a disincentive for sick leave abuse. Captain Linda Yankee, a witness for the employer, testified that an employee who cannot take comp time off during the summer months or other desirable time periods, because other employees have shot-gunned the books, would first try to trade shifts. If that is not successful, the employee would call in sick. Her testimony is supported by exhibits which show atypical sick leave usage rates among the corrections bargaining unit employees during the summer months.

Former Association President and Vice President Darcy Bjork testified that the practice of shot-gunning the books is unfair and objectionable to many officers. He, himself, has called in sick to attend his son's soccer game when he was unable to find an open vacation slot.

Safety concerns -

The price of excessive comp time usage by a small number of employees cannot be measured exclusively in overtime dollars. This practice also takes its toll on the employees who have to work overtime to back-fill the vacancies created by employees taking hundreds of hours in comp time off each year.

The grand jurors who served in 2007 expressed concern that excessive reliance on overtime caused by sick leave abuse and unlimited comp time usage "has had more than financial consequences in the jail system." The 2006 Grand Jury reported that: "...everyone who testified from the Sheriff's Office agreed that excessive overtime is often a cause for poor work

performance. In a jail, poor work performance is a safety problem."

A similar concern was expressed by the grand jurors who served in 2005. The 2005 Grand Jury Report includes: "The President of the Corrections Officers' Union (sic) testified that he believes that overtime is out of hand. He is worried that when corrections officers work many shifts with few or no breaks, they are not as sharp as they need to be and this is not a good situation. He understands that some overtime is necessary but testified that the maximum should be in the area of between \$2 million and \$2.5 million. The union president and Sheriff's staff testified that more corrections staff should be hired to alleviate the overtime problem. The \$5 million overtime figure is compounded by the practice of allowing corrections officers to accumulate comp time. In the past five years comp time has skyrocketed 600%." (A discussion on the reference to hiring more deputies is below.)

The record established that excessive overtime puts undue stress on bargaining unit employees and raises safety concerns. Also, extended overtime can result in deputies having to miss regularly scheduled work shifts to catch up on sleep, thus requiring another person to go on overtime.

Inequitable working conditions -

Employer witnesses likened shot-gunning the books to standing in line for concert tickets. A handful of employees literally line to bid at midnight on the date designated for comp time sign-ups. However, unlike concert goers who may be limited to the purchase of six tickets, "shot-gunners" can sign up for an unlimited number of comp days off, including every available day during the summer months or every Monday and Friday. Since there are a

limited number of available opportunities for deputies to take time off, every time a shot-gunner signs up for a comp day, that slot is not available for another bargaining unit employee to have off. The impact of shot-gunning the books falls more heavily on lower seniority employees because vacations and holidays are bid by seniority before comp time sign-ups. Consequently, lower seniority employees already have limited opportunity to schedule time off during the summer months or other times their children are out of school and able to attend family outings. Shot-gunning exacerbates this problem.

It should also be emphasized that shot-gunning the books is not merely a potential problem. It is an actual problem. Deputy TW is an example of an employee who engages in this practice to the detriment of other deputies in the bargaining unit. This year TW signed up for 69 days of comp time off, in addition to 26 days of scheduled vacation and personal holidays. For each day he signed up for comp time, another employee was prevented from signing up for that shift off work. Yet, at the time of the hearing, TW only had nine hours of leave on the books.

Captain Rai Adgers testified that he has received complaints from other employees who asked whether there was anything he could do about TW's shot-gunning the books. As Adgers credibly testified he raised the issue with TW in an attempt to make him realize the negative effect his behavior had on other employees. TW told him, "That's my right." In the view of numerous members of the command staff who testified before the Grand Juries, the employer's proposal limiting employees to a maximum usage of 96 hours of comp time per year, would go far in addressing the inequities caused by unlimited comp time sign-ups. In so doing, it would improve morale.

Any argument from the association suggesting that the problems related to shot-gunning can be corrected through simple enforcement of cancellation obligations misses the point. The point is that there must be a more balanced approach to enable employees to plan time off to be with their families or engage in personal pursuits. A cancellation provision does not accomplish this objective. The ability of a junior employee to schedule trips and family activities remains dependent on the willingness of the shot-gunner to cancel. In addition, it is not uncommon for shot-gunners to simply fail to cancel the day off and show up for work. Although it is true that the Sheriff's Office can either send that employee home or assign the employee to another open position, that argument also misses the point. The real victim in this scenario is not the Sheriff's Office, but the bargaining unit members who are not able to take a desired day off. Sending the employee home, or reassigning the employee, does not fully remedy the wrong to the junior employee.

Likewise, the association's argument that the Manual enables the Sheriff's Office to sufficiently address the problems created by shot-gunning must also be rejected. Section 7.02 of the Manual merely grants the Sheriff's Office the right to deny comp time off, if the employee has no comp time accrued on the date he/she has signed up to take comp time off. It does not prevent employees from shot-gunning the books. If it did, shot-gunning would not be an issue in this hearing.

At various points in the hearing, the association suggested that the concerns identified by the Grand Juries and District Attorney's Office could be "fixed" by simply increasing the number of employees who work in the employer's correctional facilities. This argument is rejected because it is based on the

assumption that there is only one "driver" of escalating overtime costs. That is not true. The record establishes that overtime costs are increasing as a result of three factors: 1) unlimited comp time usage; 2) abuse of sick leave; and 3) past staffing levels. Association witness Doug Hewitt agreed that one component in reducing overtime is limiting comp time usage. Association witness Molly McDade-Hood further testified that placing a 96 hour cap on comp time usage and curbing sick leave abuse would improve staffing ratios. It makes no sense to address one of the causes of escalating overtime, but let two other causes continue untouched.

With regard to staffing levels, the employer has not, as the association implies, ignored staffing level concerns. The association offers general information regarding historical staffing levels. That information is not a reliable indicator of current staffing needs because it does not take into consideration the decrease in jail beds.

In addition, this approach merely sanctions conduct that is contrary to the public's interest by basing staffing needs on the expectation of continued sick leave abuse and excessive comp time usage. The employer should not be expected to "staff up" to accommodate leave abuses by employees. The union's proposal is based on assumptions which institutionalize practices that are contrary to the interest and welfare of the public.

The Sheriff's Office, in fact, has hired new officers to address problems associated with under-staffing. The employer allocated money for 16 new positions in the Corrections Division in the current budget. Seven deputies were hired between the period of July 1, 2007 and April 1, 2008. Five more deputies were

scheduled to start work on the Monday following the hearing; another four were scheduled to start work on June 16, 2008. In addition, 35 to 40 applicants have completed all the steps of the selection process, except the psychological and physical examination steps, and have been placed on a certification list. "Staffing up" was, however, only one of the concerns identified by the Grand Jurors and District Attorney's Office. If the dual interests in promoting the effective use of taxpayer resources and safe correctional facilities are to be satisfied, all three causes of overtime must be addressed.

In conclusion, the employees' interest is served by having a comp time sign-up policy that more equitably distributes time off opportunities among the whole of the bargaining unit. The association has no legitimate interest in preserving the right of a small number of employees to monopolize time off opportunities to the detriment of the majority. A provision which grants all employees the opportunity to sign-up for the same number of comp time hours off each year is fair and responsive to the public concerns identified by the Grand Jurors and District Attorney's Office. Inasmuch as it is in the interest of the public and the bargaining unit members to promote safety in the employer's correctional facilities by reducing overtime, the employer's proposal for a 96 hour comp time usage cap best serves that interest.

Wages and Classifications

Employer proposal:

The employer proposes a 2.7% across the board increase effective July 1, 2007. The employer is also proposing a 1.5% premium for employees who complete and maintain an Uncontrolled Environment

Training (UNET) qualification. The employer contends that this premium will be paid to more than half the bargaining unit.

(The employer also proposes language regarding call-in time which puts a current practice in the contract. Specifically, range time scheduled within 5 minutes of the beginning or end of an employee's shift will not trigger a four-hour minimum pay requirement. Witnesses acknowledged that this is the status quo. The association submitted no counter argument.)

Association proposal:

The association proposes a 3.3% wage increase effective July 1, 2007. It claims this is in line with the comparators and the cost of living index. The association asserts that this wage proposal is actually less expensive than the employer's proposal.

The association does not propose a premium for UNET, but gives the Sheriff the option to implement the premium.

Analysis of Wages and Classifications Proposals

The employer supplemented its proposal for an across-the-board wage increase of 2.7% with a proposal with a premium to any employee who completes UNET. At the time of the hearing, 60% of the sergeants and 62% of the deputies in the bargaining unit were UNET qualified.

UNET is designed to train deputies who are assigned to accompany inmates to court proceedings; guard inmates who are hospitalized; transport inmates; or serve in other uncontrolled environments, to effectively respond to incidents that occur in those environments. UNET qualified employees are not only able to

better perform this wider variety of assignments, but are also authorized to carry firearms. To become UNET qualified, employees must complete eight hours of classroom, and eight hours of conflict simulation, training. Employees must also maintain UNET credentials.

The association argues that Multnomah County has the highest standards for recruitment, qualification and training of any jail facility in the state; as well as housing the highest-risk inmate population in the state. The union advances that upwards of 40,000 arrestees come through the system, often intoxicated or addicted to controlled substances, or having severe mental health problems, or with a variety of physical afflictions ranging from injuries related to their arrest to chronic, deadly communicable diseases. The association claims that it is common for the inmates to be angry, violent, irrational and/or disease ridden. The association contends that its correction deputies are not passive turn-keys separated from the inmates by iron bars. It asserts that they work at stations that are physically integrated with the inmates' space and are required to exercise a high level of interpersonal communication skills. The association submits these arguments to support its proposal for a 3.3% across the board increase. I find, however, that all these arguments provide strong justification for recognizing and rewarding UNET qualifications.

As Lieutenant Drew Brosh testified, without rebuttal, UNET training reduces mistakes and makes deputies better assets in the field. Consequently, he testified, "the public is safer." The safety of the public is, without question, an identifiable public interest. The employer's proposal best serves the public's

interest by offering an economic incentive to employees who become better qualified to protect the public.

The association does not question the value of UNET training. However, association bargaining team chair Doug Hewitt testified to a past history of some short-lived forms of premium pay which undermines the associations' confidence that UNET training will be consistently supported. The parties should cross that bridge when, and if, they come to it.

Secondary Criteria

When analyzing compensation proposals, ORS 243.746 directs consideration of secondary priority factors, after consideration of the primary factor of the interest and welfare of the public.

ORS 243.746(4)(b) Ability to Pay:

The parties stipulated that the employer does not lack the ability to meet the costs of the association's Last Best Offer.

ORS 243.746(4)(c) Attract and Retain Employees:

The wages and benefits paid to bargaining unit employees do not impede the employer's ability to attract and retain employees.

The employer has a multi-step process for hiring deputies. This process includes: screening applicants for minimum qualifications; conducting criminal background and driving record checks; and requiring the completion of written and personality tests, as well as the Oregon Physical Agility Test. Applicants who are not eliminated as a result of that process are subjected to an additional comprehensive background check, a command staff interview, and post-offer psychological and physical

examinations. As a result of this process, only 3-5% of applicants are actually hired. Most of the "fall out" occurs with applicants who fail to appear at various stages in the selection process or fail background checks.

The Sheriff's Office has recently implemented a continuous recruitment process and revised the minimum qualifications required for candidates by including military service in an effort to enhance recruitment efforts. As a result, 832 candidates applied for corrections positions during the period between September 1, 2007 and the date of the hearing. These candidates included individuals from as far away as Arizona, as well as a candidate from one of the comparators, Clackamas County.

Witnesses from the two comparators, to which the parties stipulated for this proceeding, Clackamas and Washington Counties, testified that they experienced similar "fall out" for the same reasons. Erin Tokos, Human Resources Analyst for Clackamas County, testified that the applicants for corrections positions in Clackamas County are required to undergo a similar multi-step process. As with Multnomah County, most of the "fall out" occurred among candidates who did not appear for examinations or failed background checks. Kimberly Phillips, a sergeant for Washington County, testified that a similar multi-step hiring process used to select Washington County corrections deputies, results in similar applicant/hiring ratios.

In short, there is no evidence that the wages and benefits paid by Multnomah County are interfering with the employer's ability to attract candidates. The evidence reveals that Multnomah County experiences the same difficulty that Clackamas and

Washington Counties face in recruiting candidates. Those who do apply are subjected to intense screening, which eliminates a significant percentage of those who did express an interest. It is these factors, not the wage and benefit levels paid to corrections division employees, which makes recruitment difficult. This common problem is reflected in the testimony of the witnesses from the comparable counties.

Nor does the employer have a problem retaining corrections deputies. During the period between July 2000 and the date of the hearing, not a single corrections division employee has left employment because of dissatisfaction with wage and benefit levels provided by the employer. Those who did resign did so for reasons unrelated to wages and benefits.

ORS 243.746(4)(d) Overall Compensation and

ORS 243.746(4)(e) Overall Compensation in Comparable Communities:
The 2.7% is the same increase that has been accepted by some of the employer's other bargaining units, although not all its contracts are settled.

The overall compensation paid to the deputies and sergeants who are employed by Multnomah County compares favorably with the overall compensation paid to employees in similar positions by the stipulated comparator counties. The employer's data shows overall compensation comparisons effective July 1, 2007 and January 1, 2008. (Separate spreadsheets were offered because Clackamas County corrections employees began contributing to their insurance effective January 1, 2008.)

The employer selected the following benchmarks for the overall compensation comparisons: new hire with a basic DPSST

certification; five year with an intermediate DPSST certification; and 10, 15 and 20 year with advanced DPSST certifications. The employer grouped length of service and certification levels based on assumptions regarding what certifications employees with various lengths of service would most likely have.

New hires employed in Clackamas County corrections receive a six month step increase. The association questions the appropriateness of combining a basic certification with new hire status, based on the fact that new hires generally obtain basic certification after they are employed. The point raised by the association is valid. However, when the spreadsheets are examined, it appears that the employer did not include basic certification pay. The employer's new hire spreadsheets were mislabeled; in the columns entitled "Certification Monthly" no certification pay is listed for new hires.

An adjustment does, however, need to be made in the overall compensation comparisons submitted by the employer for employees at the five year benchmark. As the association correctly notes, the six month step increase granted to Clackamas County officers counts as one of the steps used by that jurisdiction to move employees from step-to-step on Clackamas County's wage schedule. Therefore, Clackamas County deputies and sergeants who have been employed five years are at the top step in their wage schedule. Inasmuch as the employer was unaware of this practice, the base wage figures in its data for Clackamas County employees at the five year benchmark should be adjusted upward.²

²Although the methodology used by the employer and association to compute overall compensation is similar, it is not identical. It should be noted that the compilation of overall compensation

The association did not use the classification of Senior Corrections Officer, i.e. the top position in the bargaining unit, for Washington County's comparison to Multnomah County's sergeants. Instead, the non-bargaining unit position of sergeant was used for the comparison. ORS 243.746 (4)(d) mandates a comparison of job duties, not reliance on job titles. Sergeant Kimberly Phillips, a sergeant for Washington County, testified that she considers herself to be a "true supervisor" and a member of the management team. To support this statement, Sergeant Phillips testified, by the way of example, that she possesses the authority to discipline employees, including the right to suspend employees for up to five days. Consequently, the association's comparison of overall compensation for sergeants is inflated for all benchmarks, i.e. new hire, 5 year, 10 year, 15 year and 20 year. The employer did include a comparison of the overall compensation of its sergeants to the overall compensation received by the sergeants in both Clackamas and Washington Counties. As detailed below, this comparison shows that Multnomah County sergeants are well compensated, even when compared to unrepresented sergeants who are true supervisors.

The association's comparison of sergeant's overall compensation to employees performing similar duties in the stipulated comparator jurisdictions is further inflated, because that comparison presumes that Washington County picks up the PERS contribution for its sergeants. It does not.

data is arduous. Further, the accuracy of such compilations is dependent on the accuracy and completeness of the information gathered from comparator jurisdictions. Nothing in this discussion is intended to imply that inaccurate data was knowingly presented.

If the employer's 2.7% across-the-board wage increase is implemented, the overall compensation paid to Multnomah County employees compared to the overall compensation paid to their counterparts at Clackamas and Washington Counties will be as follows:

Effective July 1, 2007

- Overall compensation paid to Multnomah County deputies will exceed that paid by its comparators by an average of 4.15% for day shift, 7.30% for swing shift and 8.36% for graveyard shift.
- Overall compensation paid to Multnomah County sergeants, using the classification of Senior Corrections Officer for Washington County, will exceed that paid by its comparators by an average of 8.69% for day shift, 11.93% for swing shift and 13.07% for graveyard.
- Overall compensation paid to Multnomah County sergeants, using the non-represented classification of sergeant for Washington County will be lower than that paid by its comparators an average of 1.86% for day shift employees and higher than that paid by its comparators by an average of 1.07% for swing shift employees and 2.05% for graveyard employees.

Effective January 1, 2008

- Overall compensation paid to Multnomah County deputies will exceed that paid by its comparators by an average of 4.60% for day shift, 7.77% for swing shift and 8.83% for graveyard shift.
- Overall compensation paid to Multnomah County sergeants, using the classification of Senior Corrections Officer for Washington County, will exceed that paid by its comparators by an average of 9.07% for day shift, 12.33% for swing shift and 13.41% for graveyard.

- Overall compensation paid to Multnomah County sergeants, using the non-represented classification of sergeant for Washington County will be lower than that paid by its comparators an average of 1.55% for day shift employees and higher than that paid by its comparators by an average of 1.39% for swing shift employees and 2.37% for graveyard employees. Any adjustment necessary to reflect the payment of top step wages to officers in Clackamas County who are employed five years would not change Multnomah County's position as the leader in providing compensation to Corrections Division bargaining unit employees.

Effective January 1, 2008 with UNET

- Overall compensation paid to UNET qualified deputies will exceed that overall compensation paid by its comparators an average of 6.09% for day shift, 9.26% for swing shift and 10.32% for graveyard.
- Overall compensation paid to UNET qualified sergeants, using the classification of Senior Corrections Officer for Washington County, will exceed the overall compensation paid by its comparators an average of 10.62% for day shift, 13.88% for swing shift and 14.96% for graveyard.
- Overall compensation paid to UNET qualified sergeants, using the classification of sergeant for Washington County will exceed the overall compensation paid by its comparators an average of .56% for day shift, 3.52% for swing shifts and 4.51% for graveyard.

Even using the association's methodology for computing overall compensation, the employer's overall compensation package still compares favorably with those jurisdictions. In July 2007, Washington County corrections officers received wage increase of 3.3%; Clackamas County officers received a 3.2% increase. As a

starting point, it should be noted that the association's overall compensation spreadsheets are based on June 30, 2007 rates. The line entitled "MC [Multnomah County] Increase Needed to Achieve Average" does not include the employer's 2.7% wage increase, nor the 1.5% UNET premium. Even the association's spreadsheets reveal that the Last Best Offer proposed by the employer would maintain the employer's position as the employer paying the highest overall compensation to the employees in corrections bargaining unit within the Portland metropolitan area. I understand that the association does not want to credit the UNET premium to the cost of the increase because it is not applicable to the entire bargaining unit. It is undisputed that between 60% and 62% of the bargaining unit members would receive the premium immediately. Any other employee could receive it after 16 hours of training. Perhaps the entire 1.5% should not be credited to the cost of the proposal. But it is real money; it is a real cost to the employer. I cannot discount the entire 1.5% premium. Since the association offers no other accounting for it except 0%, I will accept the employer's figures. The UNET premium is significant; it deserves to be shown in the parties' overall compensation comparisons.

The association's summary sheet for Corrections Officers shows that the increase needed for the employer to achieve the average is 1.95%. It should further be noted that according to this data, the percentages needed for the employer to "achieve the average" for new hires is significantly higher than the percentages needed for the employer to "achieve the average" for employees at the 5, 10, 15 and 20 year benchmarks. This is because the association did not use the proper new hire classifications for the comparators. The association did not use the classification of Clackamas County Recruit Corrections Deputy

and Washington County Corrections Officer Trainee in comparing newly hired Multnomah County corrections deputies to newly hired corrections deputies in those other jurisdictions. Newly hired corrections officers in Clackamas and Washington Counties are placed in those classifications. Consequently, the association's figures showing the overall compensation for new hires in those jurisdictions is inflated.

The correction of this data would significantly reduce the 1.95% figure. The employer is offering a 2.7% increase to all employees and a 4.2% increase to the majority of employees who are UNET qualified. In fact, the increase proposed by the employer not only maintains Multnomah employer's position among its comparators, it widens the gap.

Similarly, the summary sheet for sergeants shows that a 2.2% increase is needed for Multnomah County to achieve the average. Again, the employer's proposal of an across-the-board wage increase exceeds this percentage. The UNET premium proposal would result in a total increase that significantly exceeds this "needed average" to 60% of the sergeants in the bargaining unit.

In short, aside from differences in the methodology used by the parties, it cannot be denied that the combined 2.7% wage increase and the 1.5% UNET premium proposed by the employer will increase the overall compensation paid to a majority of the bargaining unit employees by more than the association's proposal. At the same time the UNET premium will provide an incentive to employees to obtain a certification which positively impacts safe operation of the jails.

The association's data incorporates the cost of PERS benefits. The employer's data better fulfills the statutory mandate by making no entry where PERS benefits are "picked up" by the employer and subtracting the PERS contribution where PERS benefits are not paid by the employer. The statutory mandate requires a comparison of employee benefits, not a comparison of costs to the employer. Since the sergeant classification in Washington County is the only comparator classification for which PERS benefits are not "picked up," the employer's data includes a "Pension Employee Contribution" column only for the sergeant-to-sergeant comparisons.

As with retirement contributions, the employer's methodology for computing health insurance complies with the statutory mandate which requires a comparison of benefits to employees, not costs to the employer. The association's methodology does not. In the instant case, where a majority of Multnomah County's corrections bargaining unit employees participate in medical plans that are equal to or better than the plans offered by Clackamas and Washington Counties, the best measure of the benefit is how much the employees in those jurisdictions must pay for those benefits. I endorse the employer's methodology of accounting for the value of health benefits when evaluating overall compensation in comparable communities.

The overall compensation contained in the employer's Last Best Offer keeps the bargaining unit members in good standing compared to similar employees in Washington and Clackamas Counties.

ORS 243.746(4)(f) The CPI-All Cities Index:

The CPI index supports selection of the employer's Last Best Offer. The employer proposes a 2.7% across-the-board increase

effective July 1, 2007. The Bureau of Labor Statistics reports on its web cite that the CPI-W, all cities, all items, was 2.3%, for the 12 month period prior to July, 2007.

ORS 243.746(4)(g) Stipulations of the parties:

The parties stipulated that Clackamas and Washington Counties would be used as comparator jurisdictions. The association specifically did not stipulate that the bargaining unit members should be at the average of the comparators, however; it asserted that the compensation should exceed those of nearby comparators.

ORS 243.746 (4)(h) Other Factors Traditionally Considered:

This section of the statute directs the arbitrator not to use any other factors, if the arbitrator believes that the evidence supplied through subsections (a) through (g) is sufficient for an award. I find that the evidence the parties submitted in response to the criteria listed in subsections (a) through (g) is sufficient to enable me to select between the Last Best Offers submitted by the employer and the association.

Health and Welfare

Employer proposal -

The employer proposes that dental plan contributions by employees be set at 5% across the board. The employer is also seeking reductions in prescription drug coverage.

Association proposal -

The association proposes that the dental plans be fully paid by the employer.

In addition, the association proposes that effective January 1, 2008 the employer would have discretion to increase Kaiser office co-pay charges from \$5 to \$10 for both the medical and dental plans.

Analysis of the Health and Welfare Proposals

Approximately 60% of the bargaining unit is enrolled the Kaiser medical and Kaiser dental plan. The association's proposal includes an increase for Kaiser medical and dental office visit co-pays from \$5.00 to \$10.00. Under both proposals, the employee contribution toward the premiums will remain the same for those employees on the Plus PPO plan; they will increase from 3% to 5% to employees enrolled in the Preferred PPO plan; and they will increase from 2% to 5% for employees enrolled in the Kaiser HMO plan. The association argues that these increases will cause total monthly employee contributions to go up. Even if the association was successful in eliminating employee contributions under the dental plans, the association membership as a whole would realize a net monthly increase of almost \$2,400 in bargaining unit contributions.

The Kaiser HMO options are similar among the three comparators. The dental options are nearly the same. Co-pay levels vary slightly for the comparators; but Multnomah is the only employer that requires monthly employee cost-sharing contributions to their dental plan.

Health benefits have been a priority for the association. In 1998, the parties went to interest arbitration over health benefits alone. Then, as now, the employer had a goal of having all of its bargaining units sharing costs using the same formula.

The association argues that the statute does not elevate internal comparability to the status of a primary criterion for deciding which total package is more appropriate.

The association contends its proposal would not narrow the gap with the health plans of the comparators. It argues that it is not seeking to establish parity with its comparators, but to avoid increasing any disparity. In bargaining, the association agreed to an increase in employee co-pays for plans covering the majority of the bargaining unit. It also agreed to some modest reductions in the benefits that will affect the majority of the unit. In exchange for these additional out-of-pocket costs for its members, the association asks the employer to eliminate all the co-pays in the dental insurance programs. The association argues that its concessions in both cost-sharing and plan design are adequate for now. In fact, the association contends that its offer is less favorable to the employees than the status quo.

Additionally, the association argues that its health and welfare proposal can be funded by reserves in the employer's health fund.

Under the statute, I have to select an entire package from one of the parties. In health and welfare, the association's proposal may seem reasonable. However, its positions in the three other components of the package do not balance the interest and welfare of the public and fairness to the employees as well as the employer's proposals. The employer's proposal in health and welfare is also reasonable. Its changes are modest. There is no evidence that there would be a major negative impact on bargaining unit members, nor is it substantially out of line with the comparators. The employer's proposal in health and welfare

is no where near being so onerous that it topples its entire package.

CONCLUSION

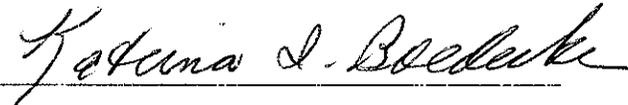
I find that the employer's Last Best Offer best balances what is reasonable to taxpayers and what is fair to the employees. The employer has established that it has a compelling need for the changes it is seeking. The employer's Last Best Offer reasonably addresses the needs.

ORDER

Based on the sworn testimony of the witnesses, the documents admitted into evidence, the arguments of the parties and the record as a whole, it is the Order of your Arbitrator that:

The parties shall incorporate the employer's Last Best Offer into their collective bargaining agreement.

Issued at Chehalis, Washington, on this 15th day of September, 2008.



Katrina I. Boedecker

Arbitrator