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IN ARBITRATION PROCEEDINGS  
PURSUANT TO ORS 243.746 AS AMENDED

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In the matter of the interest  
arbitration between  
**WASHINGTON COUNTY,**  
Employer,  
and  
**FEDERATION OF OREGON PAROLE  
AND PROBATION OFFICERS,**  
Union.

**EMPLOYMENT  
RELATIONS BOARD**

**OPINION AND AWARD**

This interest arbitration dispute came before Catherine Harris, Esq., a neutral arbitrator mutually selected by the parties to render a final and binding decision.<sup>1</sup>

Adam S. Collier, Esq., Bullard Smith Jernstedt Wilson appeared on behalf of **WASHINGTON COUNTY** (herein "the County").

**FEDERATION OF OREGON PAROLE AND PROBATION OFFICERS** (herein "the Union") was represented by Daryl S. Garretson, Esq., of counsel to Fenrich & Gallagher.

**HISTORY OF THE DISPUTE**

The parties agree that arming of Parole and Probation Officers (herein "PPOs") has been an issue since 1994 and that the first negotiated language pertaining to arming appears in the 2008-2011 collective bargaining agreement. The County submitted a summary of arming history which reflects that the Union first proposed optional arming in 1995; that the County initially took the position that it had no duty to bargain a permissive issue; and that in 1999, the County adopted a county-wide firearms policy prohibiting employees from carrying firearms while on duty or carrying firearms on County property at any time. In 2002, the

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<sup>1</sup>The neutral arbitrator was selected in accordance with a "Memorandum of Agreement Regarding Submitting Arming Issue to Interest Arbitrator."

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1 parties bargained the issue of firearms but did not reach agreement.

2 On April 22, 2002, the County's Community Corrections Department unilaterally  
3 revised its General Employee Conduct policy by adding the following language:

4 All staff are subject to the County's 'Firearms in the Workplace Policy' with the  
5 exception: Probation Officers are allowed to handle firearms and other weapons  
6 provided by the County during the course of training, and when carrying out their  
professional responsibilities of seizing offender's weapons and transporting them to  
the Sheriff's Office.

7 In 2004, the parties bargained over various safety proposals; however, the 2004 collective  
8 bargaining agreement did not authorize the use of firearms or in any way impact the  
9 application of the County's firearms policy.

#### 10 *Bargaining for the Predecessor Agreement*

11 During bargaining for the predecessor agreement, the Union again proposed that  
12 employees be allowed to carry firearms while performing their duties. In December of 2007,  
13 the parties reached tentative agreement on all of the issues including the Union's arming  
14 proposal. On January 22, 2008, the parties executed the 2008-2011 collective bargaining  
15 agreement which contains the following Article 13.4 language:

16 Parties agree to seek a declaratory ruling from the Employment Relations Board of  
17 the State of Oregon (and possibly the court) as to whether the below language is a  
18 prohibited, permissive or mandatory subject of bargaining.<sup>2</sup> If the ERB (and possibly  
19 the court) rules that the language is prohibited permissive (sic) the language will be  
dropped by the [Union]. If the ERB (and possibly the court) rules the language is a  
mandatory subject of bargaining the following language will become part of the  
contract.<sup>3</sup>

20 When the parties were unable to agree on the facts that would be included in the petition for a  
21 declaratory ruling, ERB notified the parties that it was refusing to consider the parties'  
22 request for a declaratory ruling and denied the petition.

23  
24 <sup>2</sup> While the issue of whether arming is a mandatory, permissive or prohibited subject of  
25 bargaining is not before the arbitrator in this proceeding; the background of the dispute has assisted  
the arbitrator in placing the parties' positions in context.

26 <sup>3</sup> The language of the Union proposal, as referenced in Article 13.4 of the predecessor  
27 agreement, is identical to the LBO of the Union that is before the arbitrator in this proceeding.

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1 On July 7, 2008, Union counsel notified the County's attorney of the Union's intent  
2 to reopen the 2008-2011 contract pursuant to ORS 243.702.<sup>4</sup> The Union took the position  
3 that since ERB had declined to issue a declaratory ruling, the parties' agreement on the issue  
4 of arming could not be completed. By letter dated August 8, 2008, the County, i.e., taking  
5 the position that it had fulfilled its obligation under Article 13.4 by petitioning for a  
6 declaratory ruling, declined to reopen Article 13.4. Based upon the County's alleged failure  
7 to bargain in good faith, the Union then filed an unfair labor practice complaint. In a ruling  
8 dated March 15, 2010, ERB reached the conclusion that the County did not violate ORS.672  
9 (1) (e) by refusing to bargain under ORS 243.702 after the Board had declined to consider the  
10 petition for a declaratory ruling.

11 *The Most Recent Negotiations*

12 In bargaining for the 2011-2013 contract, the parties again reached agreement on all  
13 issues except for the arming issue. The positions of the parties are as reflected in the  
14 following Last Best Offers (herein "LBOs") submitted by each party:

15 **FOPPO Proposal:** Employees may carry a firearm while in the field, but not in the  
16 office during working hours if the employee has a valid concealed handgun permit,  
17 passes any psychological testing, notifies the director of his/her intent to carry the  
18 firearm on duty and has successfully completed a firearms training program  
19 recognized by the County. Employees so electing must continue criteria minimum  
20 firearms qualifications applicable to parole and probation officers. Implementation is  
21 subject to the adoption of a County policy, which policy shall be adopted within 90  
22 days of the effective date of this language and shall not violate the intent of this  
23 language.

24 **County Proposal:** Continue status quo of no arming.

25 The parties also agreed that, following ratification of the 2011-2013 Agreement between the  
26 Union and the County, they would submit the issue of arming PPOs to an interest arbitrator.  
27 After mutual selection of the undersigned arbitrator, this hearing followed. The parties agree  
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25 <sup>4</sup> ORS 243.702 provides that if any provision of a collective bargaining agreement becomes  
26 invalid as a result of the inability of the employer or the employees (sic) to perform the terms of the  
27 agreement, either party may request to reopen negotiations regarding the invalid words or sections  
28 of the collective bargaining agreement.

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1 that the instant dispute is properly before the interest arbitrator for selection of which LBO  
2 better meets the statutory criteria.

3 *The Interest Arbitration Hearing*

4 Hearing was held on January 5 and 6, 2012 at Hillsboro, Oregon. At the hearing,  
5 each party was given the opportunity to present testimonial<sup>5</sup> and documentary<sup>6</sup> evidence, to  
6 cross-examine the other party's witnesses and to make argument to the interest arbitrator. At  
7 the close of the hearing, the parties agreed to submit simultaneous post-hearing briefs to be  
8 filed and served by mail on or before February 10, 2012. Consistent with the stipulation, both  
9 parties' briefs had been received in the arbitrator's Sacramento office as of February 13 at  
10 which time the record was closed and the matter was taken under submission.<sup>7</sup>

11 **RELEVANT PROVISIONS OF ORS 243.746 AS AMENDED BY SB 750**

12 The parties agree that the arbitrator must select one of the parties' LBOs in  
13 accordance with the following statutory criteria:

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

21 (a) The interest and welfare of the public.

22 <sup>5</sup> The Union presented the testimony of the following witnesses: David Bellwood, Lisa  
23 Settell, Murray Rau, Lisa Pittman, Linda Brandt, Deanna Kemper and Mike Albers. The County  
24 presented the testimony of Reed Ritchey, Bob Severe, Susan Ranger, Joe Simish, Naomi Morena,  
25 Jay Arringrton, Michael Mollahan, Steve Berger, Dennis Erickson and Brian Aalberg. The Union  
26 recalled Bellwood as a rebuttal witness.

27 <sup>6</sup> At the commencement of the hearing, the arbitrator received into evidence Joint Exhibit  
28 "1," as well as Union Exhibits "1" through "27" and Employer Exhibits "1" through "32." During  
the hearing, the arbitrator also admitted Union Exhibits "28" and "29" and Employer Exhibits "33"  
and "34."

<sup>7</sup> It was further agreed that the arbitrator would have forty-five (45) days from receipt of  
both parties' post-hearing submissions in which to issue her decision.

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

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

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

12 (e) Comparison of the overall compensation of other employees performing similar  
13 services with the same or other employees in comparable communities. As used in this  
14 paragraph, "comparable" is limited to communities of the same or nearest population range  
15 within Oregon. Notwithstanding the provisions of this paragraph, the following additional  
16 definitions of "comparable" apply in the situations described as follows:

17 (A) For any city with a population of more than 325,000, "comparable" includes  
18 comparison to out-of-state counties of the same or similar size; and

19 (B) For counties with a population of more than 400,000, "comparable" includes  
20 comparison to out-of-state counties of the same or similar size; and

21 (C) For the State of Oregon, "comparable" includes comparison to other states.

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

23 (g) The stipulations of the parties.

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

The parties agree that in choosing one of the parties' LBOs, the arbitrator is not empowered  
to make any modifications to the text of the selected proposal but must order that the contract  
include either the unmodified County's LBO or the unmodified Union's LBO as written by  
the proponent of the prevailing proposal.

## FINDINGS OF FACT

### Duties and Responsibilities of Parole and Probation Officers

The 2011-2013 Agreement covers a bargaining unit consisting of approximately 38

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1 PPOs<sup>8</sup> employed by the Community Corrections Department who supervise approximately  
2 3700 offenders. PPOs are defined by ORS 181.610 (13) as follows:

- 3 (a) Any officer who is employed full-time by the Department of Corrections, a county  
4 or a court and who is charged with and performs the duty of:  
5 (A) Community protection by controlling, investigating, supervising and providing or  
6 making referrals to reformatory services for adult parolees or probationers or  
7 offenders on post-prison supervision; or  
8 (B) Investigating adult offenders on parole or probation or being considered for parole  
9 or probation; or  
10 (b) Any officer who:  
11 (A) Is certified and has been employed as a full-time parole and probation officer for  
12 more than one year;  
13 (B) Is employed part-time by the Department of Corrections, a county or a court; and  
14 (C) Is charged with and performs the duty of:  
15 (i) Community protection by controlling, investigating, supervising and providing or  
16 making referrals to reformatory services for adult parolees or probationers or  
17 offenders on post-prison supervision; or  
18 (ii) Investigating adult offenders on parole or probation or being considered for parole  
19 or probation.

20 The class specification for PPO describes its purpose as “perform probation and parole  
21 counseling with adult offenders; conduct needs assessments and develop probation plans;  
22 monitor probation and parole compliance and maintain caseload records.” PPOs have peace  
23 officer powers in the execution of their duties but are not members of the regular police  
24 force.

25 Parolees and probationers are assigned to three different levels of supervision  
26 depending on an assessment of the risk that the offender will re-offend. Caseloads may vary  
27 from 65-75 clients per PPO (high to medium risk to re-offend) to 200 (low risk to re-offend).  
28 Approximately 46% of the offenders are classified as high or medium risk and the remaining  
54% are classified as low risk, i.e., low level supervision or what is called the case bank.  
Also included within the 54% are new cases awaiting assessment. Many of the offenders  
have mental health and addiction issues. The majority of offenders are on probation, as  
opposed to coming out of prison or jail.

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<sup>8</sup> Currently, there are 14 males and 24 females. As reflected in the testimony of Union witnesses, both male and female PPOs testified in favor of the Union’s arming proposal.

1           There is an inherent tension between the PPO's responsibilities to reintegrate an  
2 offender into the community (a role akin to social work) and the PPO's duty to monitor  
3 compliance with the conditions of parole or probation in order to protect the community (a  
4 role akin to the work of a police officer).<sup>9</sup> Supervision of an offender by a PPO may involve:  
5 1) assessment of the client's potential to re-offend; 2) development of a plan to address the  
6 client's needs and risk to the community; 3) contact with the client, his/her family, therapists,  
7 and others; 4) intervention when the client is not following the conditions of supervision; and  
8 5) recommending intervention to the court and parole board, when necessary. The level of  
9 supervision provided to a specific client depends upon the client's needs and the risk level  
10 assessment. Most of the PPOs spend no more than 4-6 hours per week making home visits in  
11 the field (when carrying a weapon would be permitted, but not required, pursuant to the  
12 Union's proposal). Home visits may be scheduled or unscheduled.

### 13 **The Stability of the County's Work Force**

14           At the hearing, the County presented evidence that 19 of the currently employed  
15 PPOs have been employed for more than 10 years and that PPOs on the average have more  
16 than 10 years of seniority. Only two PPOs have resigned to take positions with other Oregon  
17 counties and one of those PPOs went to Yamhill County at a time when carrying weapons on  
18 duty was still prohibited. The County also presented data showing that during its last  
19 recruitment, it received 214 applications for two vacant positions. Dennis Erickson,  
20 Administrative Manager of the Department for the past 25 years, testified that he is not aware  
21 that anyone left employment as a PPO for the County due to an arming issue nor has he ever  
22 heard about an applicant being disinterested on account of the policy of not arming PPOs.  
23 This is consistent with Chapter President David Bellwood's testimony, i.e., he was unable to  
24 identify any applicant for employment as a PPO for the County who declined employment

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26 \_\_\_\_\_  
27           <sup>9</sup> While the Union emphasizes community protection as the chief statutory obligation of a  
28 PPO, the statute also identifies the duty of providing "reformatory services." ORS 181.610 (13)

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1 based on the County's arming policy. The Union presented no evidence to contradict the  
2 County's recruitment and retention data.

### 3 **The County's Safety Policies**

4 The County has numerous safety policies in place that protect PPOs in the field. The  
5 extent to which these policies, or similar policies, may or may not be found in counties  
6 where PPOs are permitted to carry firearms has not been the subject of any detailed  
7 comparative survey that was presented to the arbitrator. One of these policies, the County's  
8 Probation and Parole/Search and Seizure Policy, requires that absent an emergency, all  
9 searches must be authorized by supervision. Moreover, unless otherwise authorized by the  
10 team leader/supervisor, a minimum of two probation/parole officers *and* one law  
11 enforcement officer must be present during a search.

12 In the same vein, the Use of Force Policy specifically provides for disengagement  
13 from potentially violent situations as follows:

14 If a situation escalates to the point where staff are concerned for their safety, they  
15 should disengage from the client and address the situation later with law enforcement  
16 assistance. Disengaging may mean leaving the scene if in the field, or asking the  
17 client to leave the office. In cases where staff knows in advance that a client  
18 represents a physical risk, law enforcement assistance shall be arranged prior to the  
19 client contact.

20 The Home Visits Policy similarly provides:

21 If the probation/parole officer has knowledge that potential danger or illegal activity  
22 is likely to be present during the course of a home visit, the officer should consult  
23 with his/her Supervisor/Team Leader prior to initiating any contact. Based upon the  
24 perceived danger, the Supervisor/Team Leader will authorize one of the following  
25 actions and document same in the electronic file:

- 26 A. Proceed in a routine manner.
- 27 B. Proceed with another probation/parole officer.
- 28 C. Proceed with the assistance of law enforcement.
- D. No home visit authorized.

Should the probation/parole officer perceive the existence of a dangerous situation  
during the home visit, he/she shall exit the premises immediately and report the  
situation to a Supervisor/Team Leader. Examples of dangerous situations include,

1 but are not limited to, drug labs, attack dogs, drug transactions, offender associates,  
2 gang presence, and the presence of weapons.

3 Stun devices may be checked out for home visits but they are to be used only on aggressive  
4 animals and not on humans. PPOs are also issued bulletproof vests, mace, handcuffs and  
5 police band radios and they always make home visits in pairs.

6 In general, Washington County PPOs do not make arrests in the field,<sup>10</sup> but rather  
7 they stand by while an arrest is being made by a member of law enforcement.<sup>11</sup> Per the Arrest  
8 Policy, a pre-arrest briefing must occur before all arrests whether they are made in the office  
9 or the field. The Arrest Policy also specifically provides:

10 A minimum of 3 probation/parole officers must assist in office arrests. Each officer  
11 assisting must have handcuffs during the arrest. Law enforcement must always assist  
12 in field arrests unless there is an immediate and imminent risk to the public or  
13 Probation/Parole Officers.

14 ... An employee should never affect (sic) an arrest by him/herself. The only exception  
15 would be if his/her physical safety is at risk and an arrest would clearly reduce the  
16 possibility of personal injury...

17 In making in-office arrests, PPOs are instructed to allow clients to flee (unless the client is  
18 going to compromise the safety of other officers, clients or staff) and immediately call law  
19 enforcement.

### 20 **The Reasons a Majority of PPOs Prefer Optional Arming**

21 Members of the bargaining unit provided testimony about the reasons that most  
22 PPOs prefer to be armed when making scheduled and unscheduled visits to offenders in the  
23 community. Chapter President Bellwood, based on his seven years as a PPO for the

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24 <sup>10</sup> Supervising PPO Bob Severe testified that if pre-approved by a supervisor, an arrest can  
25 be made in the field without the presence of law enforcement.

26 <sup>11</sup> Washington County Sheriff's Detective Murray Rau testified that due to the policy of not  
27 arming PPOs, he may have to wait for the arrival of a second officer to provide cover. Detective Rau  
28 likened working with PPOs in an arrest situation to working with "civilian riders."

1 County,<sup>12</sup> explained that there are three factors which support the Union's optional arming  
2 position: 1) PPOs want to feel safe while performing their duties in the field and want to go  
3 home at the end of the day; 2) PPOs have an obligation to provide for the safety of the  
4 community; and 3) PPOs must also provide for the safety of the offender. Bellwood  
5 emphasized that in this era of shrinking budgets, PPOs have less coverage from police  
6 agencies. He further testified that most offenders think PPOs are armed and that they are  
7 "pretty shocked" to learn that PPOs are unarmed as a matter of policy. In Bellwood's  
8 opinion, arming of PPOs in the field should be mandatory.<sup>13</sup>

9 PPO Lisa Pittman also testified that she would prefer to be armed when she goes into  
10 the field to visit with offenders who are part of her General Chemical Dependency caseload.  
11 Describing her assignment as "dangerous," Pittman expressed her desire to take advantage  
12 of any tools or training that might help her to get home safely at the end of her shift. While  
13 Pittman was attacked by an offender on one occasion, the attack occurred in the office and  
14 not in the field. Similarly, PPO Linda Brant testified that she would like to be armed when  
15 she goes into the field to visit offenders who are part of her Domestic Violence caseload.  
16 Brandt has never been assaulted during a home visit.

17 Like all of the other PPOs who testified in favor of the Union's proposal, PPO Donna  
18 Kemper is a proponent of the Union's arming proposal based on her exposure to dangerous  
19 situations, e.g., when she visited a home in Tigard, she noticed the occupants to be very  
20 nervous and withdrew from the situation to later learn that an armed murderer had been in the  
21 house during her visit. PPO Kemper admitted that, under the circumstances, she would have  
22

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23 <sup>12</sup> Bellwood, who formerly served as a sergeant in a sheriff's office, has received weapons  
24 training.

25 <sup>13</sup> On rebuttal Bellwood testified that he does not tell offenders that he is unarmed (he feels  
26 more comfortable with them thinking that he is armed). If asked whether or not he is armed, he  
27 answers truthfully that he is unarmed. Responding to concerns raised by the County in its  
28 presentation, Bellwood offered his personal assurances that the awarding of the Union's proposal  
would not change his approach to dealing with offenders.

1 left the house even if she had been armed. Although she stated that arrests have occurred out  
2 in the field without law enforcement, PPO Kemper has not arrested anyone in the field  
3 without law enforcement during her 14-year career with the County.

4 PPO Mike Albers testified that he, too, would like to be armed to have the tool  
5 available if he needs it (especially in rural settings where law enforcement assistance is less  
6 available); however, he, too, acknowledged that he is taught to retreat whenever he feels  
7 threatened.<sup>14</sup> None of the Union's witnesses reported having been in a field situation that  
8 would have required them to draw a weapon.

### 9 **The Union's Evidence Regarding Yamhill County**

10 The Union presented evidence of what has occurred in the aftermath of an interest  
11 arbitration award in Yamhill County which selected the union's optional arming proposal.  
12 PPO Lisa Settell, President of the Yamhill County Chapter and President of the Statewide  
13 Federation,<sup>15</sup> is also a member of the executive board of the Department of Public Safety  
14 Standards and Training. She explained how, if the Union's LBO is implemented in  
15 Washington County, PPOs would be required to attend the fifth week of a training, i.e., that  
16 module given to PPOs who carry firearms.<sup>16</sup> Now that she is armed in the field, she feels  
17 safer and more comfortable in some environments and she positions herself differently. She  
18 carries her firearm concealed on her person, i.e., she wears a jacket which covers it. Settell  
19 testified that she has had only one occasion to draw her weapon since the optional arming  
20 policy was implemented. On this occasion, she was providing cover to another officer who

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23 <sup>14</sup> Albers described the potential for danger in making home visits to so-called "J-houses"  
where a variety of offenders may be present who are not the focus of the home visit.

24

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<sup>15</sup> Settell was president of the Yamhill Chapter in 2006 when an interest arbitrator awarded  
the Union's optional arming proposal (*Yamhill County and Federation of Parole and Probation  
Officers*, IA-16-05 (Greer 2006)).

26

27

<sup>16</sup> PPOs in Yamhill County qualify quarterly in the use of firearms and attend at least one  
night shoot per year.

28

1 was using a taser<sup>17</sup> when an offender started to reach into his clothing. As it turned out, the  
2 offender was unarmed and was reaching for a jar of peanut butter.

3 On cross examination, Settell acknowledged that even before the Greer award, there  
4 had been a policy of allowing PPOs to request permission to be armed and one female PPO  
5 had been given temporary permission, as well as firearms training. She also noted that even  
6 before she became armed, she made arrests in the field with *and* without law enforcement.  
7 Settell further noted that in Yamhill County, PPOs are *not* specifically taught to withdraw  
8 from potentially dangerous situations. Settell's personal opinion is that it is unsafe to go out  
9 into the field as a PPO without a weapon.

#### 10 **The Union's Literature**

11 The Union presented a national study on serious assaults against officers the results of  
12 which were presented in the Fall 1993 magazine of the American Probation and Parole  
13 Association. This research was based on a survey of 955 agencies of which only 459  
14 jurisdictions responded. The survey asked each agency to respond with the total number of  
15 reported assaults against probation, parole, and pretrial services officers nationwide, by  
16 category, since 1980.<sup>18</sup> The study references two earlier studies: *Worker Safety in Probation*  
17 *and Parole* by William H. Parsonage, National Institute of Corrections, April 1990 and a  
18 *Study of Probation and Parole Workers Safety in the Middle Atlantic Region* by William H.  
19 Parsonage and Joe A. Miller, the Middle Atlantic States Correctional Association, August  
20 1990 (herein the "Parsonage studies"). The Parsonage studies, together with the 1993  
21 research, generally support the conclusion that PPOs have a dangerous job that exposes  
22 them to the risk of physical assault and other forms of intimidation and that this risk

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23  
24 <sup>17</sup> In Yamhill County PPOs are authorized to use tasers on aggressive people, as well as  
aggressive animals.

25 <sup>18</sup> Oregon agencies who responded to the survey reported 1 rape, 29 punched, kicked,  
26 choked or other use of body; 56 unspecified assaults; 1 attempted murder, 5 attempted rapes; 86  
27 attempted punching, kicking, choking or other use of body; and 10 incidents of booby traps set for  
officers but discovered prior to use.

1 increases when PPOs are in the field. Another article presented by the Union (Thornton,  
2 Robert L. 2002. *New Approaches to Staff Safety*. 2d ed. Washington, DC: US Department of  
3 Justice, National Institute of Corrections) demonstrates that for at least the last ten years, by a  
4 2-1 margin, the number of jurisdictions in which some or all of community corrections  
5 officers carry firearms outnumbers those jurisdictions in which no officers carry firearms.<sup>19</sup>  
6 The Union also presented evidence that in this era of shrinking budgets,<sup>20</sup> PPOs are being  
7 exposed to offenders who formerly would have been incarcerated.<sup>21</sup>

### 8 **The Status Quo in Washington County and Elsewhere**

9 Consistent with ORS 166.263,<sup>22</sup> the County currently has a written policy which  
10 prohibits PPOs from carrying firearms while on duty, or from carrying firearms on County  
11 property at any time. The policy contains an exception whereby the County Administrator, or  
12 his designee, may issue written authorization for an employee to carry a firearm if, in his sole  
13 discretion, the employee's job responsibilities or his personal circumstances warrant an  
14 exception. This is contrary to the prevalent approach in Oregon, in other states, and in the  
15 federal sector where most jurisdictions permit or require PPOs to carry weapons in the field.

16 It is undisputed that 32 of 36 Oregon counties have either optional or mandatory

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17  
18 <sup>19</sup> Although the Parsonage studies dealt with parole and probation officers, this study  
19 included staff involved in pre-trial services, electronic monitoring and community corrections. Thus,  
the term community corrections officer was used to embrace all of these functions.

20 <sup>20</sup> Many students of the arming issue have observed that it costs less to supervise an  
offender in the community than to house the offender in a 24-hour facility.

21 <sup>21</sup> The County cites one of the Parsonage studies for the proposition that armed PPOs are  
22 more likely to be involved in hazardous incidents; however, the study suggests that various  
23 explanations were possible. For example, the study did not address the type of individual who  
wants to be armed and/or trained in self-defense; the nature of the tasks given to those so armed and  
24 trained; or the tendency for armed officers to be parole agents who are victimized more often.

25 <sup>22</sup> ORS 166.263 provides the following with respect to the authority of parole and probation  
26 officers to carry a firearm: "When authorized by the officer's employer, a parole and probation  
officer, as defined in ORS 181. 610, may carry a firearm while engaged in official duties if the  
27 officer has completed: 1) A firearms training program recognized by the Board of Public Safety  
Standards and Training; and 2) a psychological screening (emphasis supplied)."

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1 arming with the overwhelming majority having optional arming.<sup>23</sup>All metropolitan counties  
2 except for the County herein (Multnomah, Clackamas, Marion and Lane) either require or  
3 permit arming of PPOs. No comparative evidence was presented regarding the policies of  
4 these counties as they relate to disengagement, or enlisting the aid of law enforcement. The  
5 Union also cites the only nationwide survey of PPOs that reflects that 78% of PPOs are  
6 concerned about their safety and that at least half of all PPOs will be assaulted at some point  
7 during their careers.

### 8 **The Management Perspective on Arming**

9 Reed Ritchey has been the Community Corrections Director for 1½ years and  
10 previously served as Assistant Director for 14 years. Ritchey is unequivocally opposed to  
11 optional arming because he believes that officers are safer if they are *not* armed. His  
12 philosophy is that if someone has to draw a weapon, it should be a police officer with  
13 experience in handling weapons in a crisis situation and that he prefers that PPOs withdraw  
14 from potentially dangerous situations. Ritchey also believes that dangerous situations can be  
15 avoided by carefully considering the decision whether or not to go out into the field with or  
16 without law enforcement. In support of his position that arming PPOs increases their risk of  
17 harm, he cited Dr. Linda Erwin, an emergency room physician and national speaker on  
18 violence, for the proposition that 21% of police officers killed by a handgun are shot with  
19 their own weapon that had been taken from them. Additionally, Ritchey believes that the  
20 offender community is more likely to respond in kind if they know that PPOs are armed. In  
21 response to the Union's concern about curtailing home visits (when they are considered by  
22 the Union to be necessary for community protection), Ritchey emphasized that he has never  
23 seen any data that would prove that home visits make the community safer.

24 Ritchey also cited the County's "near flawless safety record" that he believes is a  
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26 <sup>23</sup> The four counties that still prohibit arming are: Washington, Clatsop, Hood River and  
27 Polk.



1 testament to the effectiveness of the current policies and practices. He also noted that in  
2 counties where arming is optional, there have been accidents during firearms training.  
3 While he thinks that some PPOs would be able to balance carrying a firearm with  
4 maintaining a professional and positive relationship with the offender, he is concerned that  
5 other PPOs would be adversely affected by it. According to Ritchey, the only previous  
6 incident in Washington County when a PPO would have had a reason to draw a weapon  
7 involved a dog bite. In contrast, in all counties where PPOs have been armed, a supervising  
8 PPO accidentally shot herself in the leg (Multnomah County); there have been accidental  
9 discharges of weapons during training (Multnomah County and Lane County); a PPO was  
10 nearly killed when a ricochet bullet hit her in the forehead on the firing range (Jackson  
11 County) and a PPO accidentally discharged his weapon in the office (Klamath County).

12 In the same vein, Assistant Director Steve Berger testified that the County's safety  
13 policies eliminate the need for firearms and that each county should have local control of  
14 how it decides to accomplish its mission. When Berger oversaw PPOs in Klamath and Lake  
15 Counties, much of the territory covered by PPOs was rural and they were treated more like  
16 law enforcement officers, i.e., they could go out into the field and arrest and search without  
17 the assistance of law enforcement. Based on his experience in both Klamath/Lake and  
18 Washington County, he believes that Washington County's PPOs will be safer if they remain  
19 unarmed. Supervising PPO Bob Severe also shares Ritchey's concerns, i.e., that sending  
20 PPOs out into the field, some of whom are armed and some of whom are not armed,  
21 increases the risk of harm and that carrying a concealed firearm affects the relationship.  
22 Indeed, all of the current supervisors testified for the County and they were all supportive of  
23 Richey's arming philosophy.<sup>24</sup>

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<sup>24</sup> Susan Ranger, who supervises the Domestic Violence Team, testified that while she was armed as a PPO in Coos County, she was relieved to give up her weapon when she came to Washington County. She distinguishes law enforcement from PPOs saying that law enforcement does not have the luxury of disengaging and, for this reason, they need a weapon. Supervising PPO Naomi Moreno testified that in her opinion, guns give a person a sense of false confidence.

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1 In defending its current arming policy, County management emphasized that while  
2 firearms have been found in homes visited by PPOs, PPOs have never encountered an  
3 offender who was actually carrying a weapon during a PPO visit. The County also  
4 highlighted that PPOs have not been required to make a home visit alone, or to visit any  
5 offender under circumstances when he/she felt that his/her safety was at issue. According  
6 to County witnesses, there is no need to arm PPOs where, historically, they have not been  
7 placed in situations where a weapon was needed.

### 8 **The Financial Impact of the Union's Proposal**

9 The County receives funding from three revenue sources: the State, the County's  
10 general fund, and the County's local option levy and fees. In the last two years, state funding  
11 of Community Corrections has dropped from 47% to 37% such that County management  
12 had to make cuts of 1.3 million on a 14 million dollar budget.<sup>25</sup> This was addressed by  
13 cutting 4 PPO positions, 1 supervising PPO position, and a recovery mentor. Currently,  
14 treatment groups and the lowest risk offenders are being handled without face-to-face  
15 contact. Many of the PPO caseloads now have larger numbers of higher or medium risk  
16 offenders because the County no longer supervises low risk offenders. Due to budget cuts,  
17 there are now people out in the community who would have previously been in prison.  
18 Nonetheless, the most recent data for felony offenders demonstrates that the County's three-  
19 year recidivism rate (24%) was significantly lower than the statewide target of 35%.

20 It is undisputed that if the Union's proposal were awarded, the County would incur  
21 costs associated with firearms training and psychological testing. There would also be costs  
22 associated with purchasing guns, holsters, gun lockers, training time, ammunition, gun  
23 cleaning supplies and training materials. Costs were estimated by the County based on  
24 100% PPO participation (\$178, 059); 75% PPO participation (\$141, 595) and 50% PPO  
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26 <sup>25</sup> Under ORS 423.475 and 423.505, the state contributes to the financing of community  
27 corrections programs with appropriations from its General Fund.



1 participation (\$105, 130). The County also projected recurring annual costs for 100%  
2 participation (\$30, 810); 75% participation (\$23, 790) and 50% participation (\$16,770).  
3 The County's total 2011-12 budget for Parole and Probation is \$6, 290, 684. If the County is  
4 required to spend money to arm PPOs, it will be another demand on a shrinking budget.<sup>26</sup>

### 5 **The County's Audit of Employee Accident Reports**

6 In preparation for the interest arbitration hearing, Brian Aalberg, the County's  
7 Director of Risk Management, reviewed copies of all the workers' compensation and non-  
8 compensation accident reports for the years 2009, 2010 and 2011. Searching only for  
9 incidents involving PPOs and clients, he found five incidents involving slamming a metal  
10 door on the arm, tripping and falling, stack of chairs falling on toe, knees gave out and fall,  
11 and back strain associated with lifting a container of water. He also found an injury related  
12 to filing of paperwork, as well as two injuries during defensive tactics training. There were  
13 two incidents in 2001 involving injuries incurred in altercations with clients, i.e., one  
14 involving bruising from fighting with a client during a search of a "meth house" and a 2001  
15 injury involving a cut to the right index finger from handcuffs.<sup>27</sup> The County's evidence  
16 regarding Employee Accident reports was not contradicted by the Union.

### 17 **The Issue of Optional Versus Mandatory Arming**

18 From Ritchey's point of view, implementation of the Union's optional arming  
19 proposal is the worst case scenario. If arming is to occur, he believes that it should be  
20 mandatory, i.e., stating that if it really is a safety issue, then it should apply to everyone  
21 equally irrespective of an individual PPO's arming preference. On the other hand, the Union  
22 considers this issue to be a distraction, i.e., noting that research demonstrates the

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24 <sup>26</sup> The Union criticizes the County's cost projections, i.e., challenging the assumptions that  
25 employees would be backfilled on an overtime basis during firearms training and that the County  
26 would contract with Multomah County for training (when the same training is available at no cost  
27 through the Sheriff's Office).

28 <sup>27</sup> Assistant Director Berger also recalled that about 15 years ago, when he was making a  
home visit with a female PPO, the offender kicked the female PPO after he was already handcuffed.

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1 dangerousness of making home visits. Moreover, the Union posits that if arming were  
2 mandatory, some PPOs would be afraid that if they failed to pass the psychological test, they  
3 would lose their employment and that some PPOs simply do not want to carry a firearm.

#### 4 POSITION OF THE UNION

5 In 2007, the County was willing to agree to optional arming if arming was found to  
6 be a mandatory subject of bargaining. To the extent that the County now argues that the  
7 Union's proposal is a prohibited subject of bargaining, the issue of whether a proposal is a  
8 mandatory subject of bargaining is not one to be decided by the parties' interest arbitrator.  
9 To the extent that the County acknowledges arming to be a mandatory subject of bargaining  
10 but has shifted its focus to oppose the proposal based on the fact that the proposal seeks *to*  
11 *permit rather than require arming*, this is a red herring. The arbitrator is not presented with  
12 a choice between optional and mandatory arming but rather must select which of the two  
13 LBOs better serves the interest and welfare of the public.

14 There is no statutory authority for the proposition that the party seeking to change the  
15 status quo should bear the burden of proof. Imposing such a burden exceeds the arbitrator's  
16 authority. The LBOs should be judged by the first criterion in the statute (interest and  
17 welfare of the public). Oregon statutes clearly provide that the chief function of a PPO is to  
18 protect the community by monitoring offenders to assure compliance with the conditions of  
19 parole and/or probation. It is in the interest and welfare of the public that PPOs be provided  
20 with the tools necessary to perform their jobs.

21 To deny arming to a majority of the PPOs because a minority don't want to be armed  
22 does not advance the interest and welfare of the public. There is no dispute that the field  
23 duties of the PPOs place them in harm's way, as evidenced by the County's issuance of  
24 bulletproof vests, mace, stun guns and police band radios. It is not in the interest and  
25 welfare of the public for PPOs to be put in positions of peril, to be afraid to do their jobs,  
26 and thereby lessen the protection of the public. Withdrawing from contact in high-risk areas  
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1 may decrease the risk to the PPOs but it provides sanctuary to offenders who live in certain  
2 neighborhoods or who are particularly dangerous.

3 To the extent that the County's proposal of continuing to not arm the PPOs can be  
4 considered an economic or compensation issue, the County's practice is inconsistent with  
5 the practice in comparable counties. Given the total budget for Parole and Probation, it is  
6 difficult to see that even the County's inflated numbers would be a significant impact,  
7 especially when weighed against the safety and security of PPOs who protect the  
8 community. The financial burden of providing firearms and firearms training to PPOS, when  
9 weighed against the total budget, demonstrates that financial considerations are not a  
10 significant barrier to providing a higher level of safety and security to PPOs.

#### 11 POSITION OF THE COUNTY

12 The Union is proposing a significant change from the status quo and carries the  
13 burden of proof. The Union has not presented sufficient evidence to justify a change in the  
14 status quo.

15 The interest and welfare of the public, i.e., the consideration which must be given the  
16 first priority, favors the County's LBO. The Union has failed to identify a single incident  
17 that has occurred where its members would have benefitted from carrying a firearm in the  
18 field. There have been no assaults on PPOs in the field or other incidents where a PPO  
19 would have needed a firearm.

20 The Union's LBO calling for *optional* arming cuts against any claim that arming is  
21 necessary for the safety and protection of the PPOs or the public at large. The Union's  
22 position would be stronger if it was advocating for *mandatory* arming but that is not the  
23 case. There simply is no evidence establishing that *optional* arming is necessary for the  
24 safety of the PPOs or that it is in the interest and welfare of the public. Moreover, state law  
25 promotes local control and management of community corrections programs. ORS 166.263  
26 additionally provides that a PPO may carry a firearm *when authorized by the officer's*

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1 *employer* and if the officer has completed firearms training and psychological screening.

2 To the extent that the Union's proposal would require the County to supply weapons  
3 and training, the secondary factors may be implicated. Due to declining revenue from the  
4 State, the County has been forced to make cuts, including the elimination of four PPO  
5 positions and one supervising PPO position. If the State's funding declines again next year  
6 as expected, the Department would be forced to make deeper cuts if the Union's LBO were  
7 to be awarded. The evidence supports a finding that the Union's LBO would significantly  
8 affect the County's reasonable financial ability to meet the costs of arming PPOs while  
9 maintaining balance with other competing demands.

10 The Union presented no evidence of any recruitment or retention problems caused by  
11 the County's policy of prohibiting PPOs from carrying a firearm.

#### 12 OPINION

13 In its presentation, the Union argues that optional arming is critical to the fulfillment  
14 of the PPO's statutory function of protecting civilians from the criminal acts of offenders  
15 who have been released to the community and that PPOs should not be required to make  
16 field trips into dangerous areas without the option of carrying a weapon for protection. The  
17 Union reasons that, notwithstanding the County's safety policies, there are situations from  
18 which a PPO would be unable to retreat without endangering himself or others and that  
19 PPOs can work more effectively with an enhanced sense of personal security if they are  
20 permitted to carry weapons into the field, if they so desire. From the Union's perspective,  
21 offenders are less likely to attack a PPO, to flee an arresting officer, or to threaten members  
22 of the community when monitored in the field by PPOs who are permitted to carry weapons.  
23 On the other hand, the County, citing its excellent safety record, argues that there is no  
24 convincing evidence that optional arming would decrease the risk of injury to PPOs in the  
25 field, or members of the community, stemming from the actions of offenders and that  
26 arming would create additional, and possibly more serious, safety issues. In support of its

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1 view, the County notes that, based on experience in other counties with arming, there is a  
2 risk of accidental discharges of weapons in training and that weapons assigned to PPOs may  
3 be taken from the PPO and used against the PPO, or an innocent third party. The County is  
4 also concerned about allegations of excessive use of force and liability issues that may go  
5 hand-in-hand with arming.<sup>28</sup>

6 There is considerable logic to both parties' arguments. The Union is right that a  
7 weapon *may* enable a PPO to defend himself/herself in a crisis. The County is right that  
8 carrying a weapon *may* be dangerous in and of itself. Notwithstanding the logic on both  
9 sides of this dispute, the arbitrator must select one of the parties' LBOs through the process  
10 of applying the statutory criteria. As required by ORS 243.746, the arbitrator will resolve  
11 the issue by determining which of the parties' LBOs better meets the interest and welfare of  
12 the public based on the testimonial and documentary evidence contained in the record.

13 *The arbitrator has considered all of the statutory criteria.*

14 By the express terms of the statute, the interest and welfare of the public is to be  
15 given "first priority." Interest arbitrators who have applied the criteria of the statute to  
16 contract disputes generally agree that the public's best interest and welfare is best determined  
17 by application of the so-called secondary criteria; however, where certain of these factors  
18 have little or no relevance to an issue such as arming, the arbitrator must revert to the  
19 criterion of first priority, as reflected in ORS 243.746 (4) (a), i.e., the interest and welfare of  
20 the public.

21 *In seeking a change in the status quo concerning arming of PPOs, the Union bears the*  
22 *burden of proof.*

23 Although the Union asserts that selection of its proposal would not require the County  
24 to change its safety policies or its philosophy, there is no doubt that optional arming of PPOs

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25 <sup>28</sup> For example, had Lisa Settell discharged her weapon (even if justified) when a client was  
26 reaching for a jar of peanut butter, this may have resulted in allegations of excessive force, putting  
27 Settell on paid administrative leave, an investigation, a further review of arming policies, and civil  
28 litigation.

1 would represent a significant departure from the status quo in Washington County. The  
2 burden of proof in interest arbitration generally rests with the party that is seeking some  
3 change in the status quo and, absent evidence of some significant change in circumstances or  
4 compelling need, the status quo proposal will be favored. This principle is based on the idea  
5 that the status quo represents stability and that changes to the status quo are more  
6 appropriately made by the parties themselves through the mechanism of collective bargaining  
7 rather than through adjudication by third-party neutrals. While Oregon's interest arbitration  
8 law makes no direct reference to burden of proof, this does not preclude the arbitrator from  
9 applying traditional principles of allocating proof requirements and weighing evidence so  
10 long as the statutory criteria are fully considered.

11 The status quo principle may, of course, be trumped by a party who can show a  
12 compelling need for immediate change in accordance with the statutory criteria. If the Union  
13 cannot meet its burden of showing a compelling need to change the arming policy, then the  
14 County's proposal to continue the status quo (no arming) must be preferred by the arbitrator.  
15 *The Yamhill Award was not based on the same circumstances.*

16 In 2006, Arbitrator William Greer issued an award in which he selected the union's  
17 optional arming proposal to be part of the contract.<sup>29</sup> In determining the interest and welfare  
18 of the public, Arbitrator Greer made the following statements:

19 The public interest is served by the arrest and incarceration of offenders who violate  
20 the terms of parole or probation; such arrests increase the safety and security of the  
21 community. Accordingly, the public has an interest in PPOs being armed on duty  
22 particularly when 1) a law enforcement officer is not available to assist a PPO who is  
23 arresting a dangerous offender; 2) the PPO is not in a position to be able to withdraw  
24 from the situation; and 3) a PPO is able to provide lethal cover for a law enforcement

25 <sup>29</sup> In the *Yamhill* case, Arbitrator Greer explained that of the 31 counties (as of the date of  
26 Arbitrator's Greer's deliberations) who require or permit PPOs to be armed on duty, those counties  
27 granted that authorization at various times between 1990 and 2004, generally through County  
28 policies. Authorization in Clackamas County was the result of a rights arbitration in which  
29 Arbitrator Erickson concluded that the employer, by refusing to allow PPOs to carry firearms on  
30 duty, had not made "every reasonable effort to provide and maintain a safe place of employment" as  
31 required by the contract. Arbitrator Erickson ordered that PPOs be allowed to be armed on duty at  
32 their individual discretion.

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1 officer who is making such an arrest. When a PPO is not armed and a law  
2 enforcement officer is not available, the County expects the PPO to withdraw from  
the scene, that approach allows the offender to remain in the community and possibly  
re-offend.

3 Arbitrator Greer concluded that based primarily upon the public's interest in having County  
4 PPOs be armed in the same manner that PPOs are armed in 10 of 11 comparable counties,  
5 the welfare and interest of the public was better served by the union's last best offer.

6 In the *Yamhill* case, the parties stipulated that "neither side is required to carry a  
7 burden of proof to establish its case given the nature of interest arbitration." This probably  
8 explains why Arbitrator Greer decided the case without reference to any "burden to show a  
9 compelling reason for the proposal" on the part of the party seeking to change the status quo  
10 (a concept which Arbitrator Greer subsequently applied in *City v. Sutherlin and Sutherlin*  
11 *Police Officers Assn*, 1A-04-09 (2009)). Moreover, as explained by Lisa Settell, Yamhill  
12 County does not have the same policies as Washington County, i.e., policies which prohibit  
13 PPOs from searching, arresting or pursuing clients when law enforcement officers are not  
14 present. Under these circumstances, the arbitrator does not find the reasoning of the *Yamhill*  
15 decision to be dispositive of the arming issue that is before her in this proceeding.

16 ***The reasonable financial ability of the County to meet the proposal, as defined by ORS***  
17 ***243.746 (4) (b), does not impact the outcome of this proceeding.***

18 While the arming proposal does have cost implications, the costs, as projected by the  
19 County, are not sufficient to influence the outcome of the arbitrator's decision. Here, the  
20 arbitrator's decision turns on non-economic considerations. In reaching this conclusion, the  
21 arbitrator acknowledges that while implementation of the Union's proposal might force a re-  
22 ordering of priorities, especially during the first year of implementation, there is no  
23 persuasive evidence that implementation of the Union's proposal would force the County to  
24 spend more than it receives in available revenues, or to fail to accomplish its statutory  
25 objectives. Under the circumstances presented here, examination of the secondary factor of  
26 ORS 243.746 (4) (b) does not favor either party's proposal and has no influence on the

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1 arbitrator's decision.

2 *The County's ability to attract and retain qualified personnel at the wage and benefit levels*  
3 *provided within the meaning of ORS 243.746 (4) (c) favors the County's proposal.*

4 In the instant case, there is no evidence of recruitment and retention problems caused  
5 by prohibiting PPOs from carrying a firearm while on duty. No one has resigned or declined  
6 a job offer based on the current policy. The County has a stable work force, i.e., 19 of the  
7 PPOs have worked for the County for more than 10 years and the average tenure of all PPOs  
8 is more than 10 years. Nor is there any shortage of applications to fill vacancies caused by  
9 retirements, job transfers, and other separations from employment. Finally there is no  
10 evidence that PPOs have left employment by the County due to the prohibition against  
11 carrying a weapon on duty. The Union more or less concedes the issue when it states in post-  
12 hearing brief that "[J]ust because there currently is no recruitment and retention issue does  
13 not mean there won't be one in the future." The record, as it pertains to the issue of  
14 recruitment and retention, favors the County's LBO.<sup>30</sup>

15 *The overall compensation of employees is not at issue in this proceeding.*

16 ORS 243.746 (4) (d) mandates consideration of the overall compensation of  
17 employees represented by the Union, including direct wage compensation, vacations,  
18 holidays and other excused time, pensions, insurance, benefits and all other direct or indirect  
19 monetary benefits. ORS 243.746 (4) (e) directs the interest arbitrator to compare overall  
20 compensation of employees performing similar services in other comparable jurisdictions  
21 with the same or other employees in comparable communities. In the instant case, the  
22 dispute does not concern the wages and benefits of PPOs so as to implicate sections ORS  
23 243.746 (4) (d) and (e). Thus, these statutory factors have no relevance to the arbitrator's  
24 deliberations. Accordingly, examination of the statutory criteria, as reflected in ORS

25 \_\_\_\_\_  
26 <sup>30</sup> Where, as here, there is no evidence of a recruitment and retention problem of any  
27 magnitude, it is unnecessary to examine the question of whether optional arming should be part of  
28 any assessment of "the wage and benefits levels provided" within the meaning of the statute, i.e.,  
ORS 243.746 (4) (c).

1 243.746 (4) (d) and (e), does not favor either of the party's proposals and has played no part  
2 in the arbitrator's decision.<sup>31</sup>

3 *An examination of the arming policies of comparable counties does not favor the Union's*  
4 *proposal.*

5 Like Arbitrator Greer, this arbitrator has considered whether comparable  
6 jurisdictions allow or require PPOs to carry weapons while on duty. In this arbitrator's  
7 judgment, the fact that there is a discernable trend among comparable counties in the state of  
8 Oregon towards permitting or requiring that PPOs carry weapons is a factor traditionally  
9 taken into consideration in determining *terms and conditions of employment* within the  
10 meaning of ORS 243.746 (4) (h). Accordingly, this arbitrator has considered the Union's  
11 evidence that 32 of 36 Oregon counties have either optional or mandatory arming (with the  
12 overwhelming majority having optional arming) and that all metropolitan counties  
13 (Multnomah, Clackamas, Marion and Lane) except for Washington County either require or  
14 permit arming of PPOs.<sup>32</sup> The next step in the analysis requires the arbitrator to consider  
15 what weight to give this evidence.

16 While it is clear that the Union's proposal represents a statewide and national trend in  
17 Parole and Probation, there is no evidence that the counties identified as comparators have  
18 the same policy of disengagement with regard to arrests, searches, and pursuit as the policies  
19 promulgated by the County. This arbitrator considers the County's disengagement policy to  
20 be a significant distinguishing factor in making comparisons. Moreover, there is no  
21 explanation contained in the record as to what factors caused the management of these other  
22 counties to unilaterally formulate their existing arming policies and/or practices. Under

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23  
24 <sup>31</sup> Neither party presented any evidence referring to the CPI so as to implicate ORS 243.746  
25 (4) (f). Nor did the parties present any stipulations that would implicate ORS 243.746 (4) (g).  
26 Consistent with the parties' presentations, the arbitrator agrees that the statutory criteria referring to  
27 the CPI and the parties' stipulations have no relevance to the resolution of this controversy.

28 <sup>32</sup> Since the arbitrator does not find this evidence to be persuasive, it is unnecessary to  
further examine the Union's identification of comparable counties.

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1 these circumstances, the fact that “comparable” counties have arming policies that allow or  
2 require PPOs to carry a weapon is not persuasive.

3           ORS166.263 authorizes a PPO to carry a firearm *when authorized by the PPO’s*  
4 *employer* upon completion of a firearms training program and psychological screening. The  
5 circumstances under which each of the 31 counties has authorized or required arming is  
6 unknown to this arbitrator. The record only reflects that in Clackamas County the arming  
7 policy was changed due to a rights arbitration invoking contract language which is not  
8 contained in the parties’ 20011-2013 Agreement and that in Yamhill County, optional arming  
9 came about as a result of an interest arbitrator’s decision (in a county where PPOs are not  
10 taught to withdraw from dangerous situations per Lisa Settell). In this arbitrator’s judgment,  
11 the manner in which the County has chosen to deploy its PPOs illustrates why, in conferring  
12 authority on the PPO’s employer to authorize arming under ORS 166.263, the Oregon  
13 legislature was acting in the best interest and welfare of the public. Under these  
14 circumstances, an examination of whether PPOs are permitted or required to carry weapons  
15 in other jurisdictions considered comparable by the Union does not favor the selection of the  
16 Union’s proposal.

17 *The interest and welfare of the public, as reflected in ORS 243.746 (4) (a), favors the*  
18 *County’s proposal.*

19           The County has a number of safety policies that are designed to provide protection to  
20 PPOs while in the field making home visits, e.g., policies that require law enforcement  
21 assistance during arrests and searches, policies requiring PPOs to disengage from the client  
22 any time that the situation escalates to the point where staff are concerned for their safety and  
23 policies requiring that home visits be made in pairs. There is no dispute that the County  
24 herein, when compared to other Oregon counties, has chosen to enhance the rehabilitative  
25 focus of PPOs and to de-emphasize their law enforcement functions. Based on its recidivism  
26 rates as well as its safety record, the County’s current approach, which includes a prohibition  
27 against carrying a firearm on duty without special authorization, is providing quality service

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1 while managing the risk of harm to PPOs. Moreover, there is no evidence that the County's  
2 policies have resulted in injury to members of the public by dangerous offenders after PPO  
3 disengagement and withdrawal. In the arbitrator's view, the fact that a majority of PPOs  
4 may feel safer carrying a weapon into the field is not sufficient to justify the award of the  
5 Union's proposal where PPOs are not required to engage in field arrests, searches and  
6 pursuits of fleeing offenders without the assistance of law enforcement and there is no  
7 recruitment and retention problem associated with the "no arming" policy.

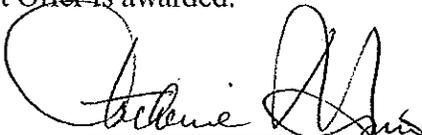
8 In seeking to effect a significant change in the status quo, the Union has not  
9 demonstrated a compelling need to change the County's "no arming" policy. Absent a  
10 showing that the County's current policy has placed PPOs or the community at greater risk,  
11 or that arming them would significantly decrease the risk of harm to PPOs or members of  
12 the community, the Union has not met its burden of demonstrating a significant change in  
13 circumstances that would justify selection of its proposal. On the other hand, the County's  
14 proposal continues a policy whereby law enforcement officers, trained in confrontation and  
15 pursuit, will be using weapons in crisis situations involving offenders under PPO  
16 supervision. For all of the above-stated reasons, the County's LBO is preferred in order to  
17 effectuate the criterion of first priority, i.e., the interest and welfare of the public.

18 Based on the foregoing findings and conclusions, the following award is made:

19 **AWARD**

20 The County's Last Best Offer is awarded.

21 March 29, 2012

22   
23 \_\_\_\_\_  
24 **CATHERINE HARRIS, Arbitrator**