

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

INTERNATIONAL ORGANIZATION OF :  
MASTERS, MATES & PILOTS, :  
and : INTEREST ARBITRATOR'S  
WASHINGTON STATE FERRIES, : DECISION AND AWARD  
(Interest Arbitration, 2015-17 Mates' CBA) :  
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I. INTRODUCTION

At issue in this interest arbitration proceeding are two issues the parties were unable to resolve in bargaining for their 2015-17 CBA—wages and vacation accrual rates.<sup>1</sup> The current proceedings are subject to the procedures of RCW Ch. 47.64 which specifies the following factors as the guiding principles for an interest arbitrator's award:

<sup>1</sup> The parties selected the Arbitrator, sitting alone rather than as the Chair of a panel, to decide the issues.

In making its determination, the arbitrator or arbitration panel shall be mindful of the legislative purpose under RCW 47.64.005<sup>2</sup> and 47.64.006<sup>3</sup> and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

- (a) The financial ability of the department to pay for the compensation and fringe benefit provisions of a collective bargaining agreement;
- (b) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;
- (c) The constitutional and statutory authority of the employer;
- (d) Stipulations of the parties;
- (e) The results of the salary survey as required in RCW 47.64.170(8);
- (f) Comparison of wages, hours, employee benefits, and conditions of employment of the involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved;
- (g) Changes in any of the foregoing circumstances during the pendency of the proceedings;
- (h) The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature;
- (i) The ability of the state to retain ferry employees;
- (j) The overall compensation presently received by the ferry employees, including direct wage compensation, vacations, holidays and other paid excused

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<sup>2</sup> “The state of Washington, as a public policy, declares that sound labor relations are essential to the development of a ferry and bridge system which will best serve the interests of the people of the state.” RCW 47.64.005.

<sup>3</sup> “The legislature declares that it is the public policy of the state of Washington to: (1) Provide continuous operation of the Washington state ferry system at reasonable cost to users; (2) efficiently provide levels of ferry service consistent with trends and forecasts of ferry usage; (3) promote harmonious and cooperative relationships between the ferry system and its employees by permitting ferry employees to organize and bargain collectively; (4) protect the citizens of this state by assuring effective and orderly operation of the ferry system in providing for their health, safety, and welfare; (5) prohibit and prevent all strikes or work stoppages by ferry employees; (6) protect the rights of ferry employees with respect to employee organizations; and (7) promote just and fair compensation, benefits, and working conditions for ferry system employees as compared with public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia in directly comparable but not necessarily identical positions.” RCW 47.64.006.

time, pensions, insurance benefits, and all other direct or indirect monetary benefits received; and

(k) Other factors that are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under this chapter.

RCW 47.64.320(3). Effective July 1, 2013, the WSF Mates were severed from the “Masters” (or “Captains” in the language of the statute) in the former combined bargaining unit that encompassed all licensed deck officers. RCW 47.64.340. Thus, only the Mates are before me here.

At a hearing held at WSF headquarters in Seattle on August 5-6, 2014, the parties had full opportunity to present evidence and argument, including the opportunity to cross examine each other’s witnesses.<sup>4</sup> The proceedings were transcribed by a certified court reporter, and I have carefully reviewed the transcript in the course of my analysis of the issues. Counsel chose to argue the case orally at the close of the presentation of the evidence, and having carefully considered the issues in light of the parties’ presentations, I am now prepared to render the following interest arbitration award.

## II. DISCUSSION

### A. Background Considerations

#### 1. The Bargaining Unit/Issues at Impasse

The Washington State Ferry System operates 23 vessels carrying both passengers and vehicles on scheduled runs in Puget Sound and the San Juan Islands (including an international route through the Islands to Sidney, B.C.). WSF Mates are licensed by the U.S. Coast Guard (“USCG”) and also must possess “pilotage,” i.e. demonstrated knowledge of water depths, hazards, navigational aids, etc. necessary to navigate the vessels safely in the waters covered by

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<sup>4</sup> The parties agreed that they would maintain the record of the hearing required by the statute, relieving the Arbitrator of that responsibility.

the WSF system routes. Mates assist the Masters who are in full command of the vessels, including managing the other shipboard employees. Employees supervised by the Mates include deckhands, i.e. Able Bodied Seamen or “A/B’s” and Ordinary Seamen or “O/S’s,” represented by the Inland Boatmen’s Union or “IBU. The typical WSF shipboard career progression has been for an entry level employee to begin as a deckhand and then to acquire the necessary training and skills, including pilotage, that enable an employee to serve as a Temporary Mate and to seek formal promotion to the Mate classification. Consequently, the interplay between wages and benefits of the IBU represented employees and the Mates represented by the MMP here may influence individual employee choice about whether to promote.<sup>5</sup>

There are three categories of Mates—First Mates, Second Mates, and Temporary Mates, each with its own wage rate.<sup>6</sup> The Union asks for substantial raises for the First and Second Mates—approximately 24.5% for Mates and 15.8% for Second Mates. Exh. E-6.<sup>7</sup> The proposed rate increases would bring this bargaining unit up to the average of what the Union considers its only two “true comparables” among those the statute directs that they should be compared to— i.e. similar employees on the West Coast of the United States, Alaska, and British Columbia. Only mates in the Alaska Marine Highway System (“AMHS”) and Black Ball Ferries, which operates the M/V Coho between Port Angeles and Victoria B.C., possess equivalent

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<sup>5</sup> The Union argues that the current wage differential, coupled with the fact that Mates accrue vacation at a significantly lower rate than IBU employees, discourages A/B’s from seeking promotion to Mate, even though a number of IBU employees already possess Mate’s licenses. That fact contributes to a looming crisis at WSF, the Union argues, because a substantial percentage of the current MMP workforce is nearing retirement age, and new Mates are not being brought into the system at a rate sufficient to replace them. WSF notes that other factors help explain the reluctance of some IBU employees to promote, e.g. they would go to the bottom of the Mates seniority list and lose their ability to select the more desirable runs.

<sup>6</sup> In addition, Relief Mates receive a percentage premium over the base wage rates. Rule 8.6.

<sup>7</sup> The Union is not requesting a wage increase for Temporary Mates above the rate contained in an MOU to the Agreement that already applies. Tr. at 117 (Saffle).

qualifications.<sup>8</sup> In response to the Union's demands for substantial wage increases as described above, WSF has offered a 3% raise for both First and Second Mates.

The second issue before me is the vacation accrual rate for this unit. The Union asks for vacation rates that mirror those granted many years ago to the IBU unit by Arbiter Beck. I also awarded those rates to the engine room employees, represented by MEBA, in the last round of interest arbitrations for the 2013-15 CBA's. There is a long and somewhat convoluted history to the Union's vacation proposal that I will summarize in my analysis of the appropriate award on that issue. At this juncture, the most important thing to note is that a number of interest arbitrators, including me, have weighed in on the issue as it applies to the MMP units over the last decade, and they have reached varying conclusions based largely on the soundness of WSF's economic prospects at the time of the various awards. WSF contends it still cannot afford to accede to the vacation proposal, but the Union argues that I should grant it based on considerations of internal comparability as well as the necessity to incentivize IBU members to promote to Mate to fill the projected vacancies in the Mate classification over the next 5-10 years.

## 2. The Statutory Criteria and "Ability to Pay"

In the last few biennial bargaining cycles, going back at least to 2008, one of the statutory criteria has tended to dominate an interest arbitrator's analysis of any bargaining issue to which a significant cost could be attached. That is, the State's continuing dire financial projections during the recession and slow recovery, often reaching projections of multi-billion dollar biennial

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<sup>8</sup> Only these two systems, says the Union, require (as does WSF) that Mates possess First Class Pilotage for the waters they sail. Other West Coast ferry systems, e.g. the Golden Gate System on San Francisco Bay, operate smaller passenger-only ferries and do not require pilotage. Although the B.C. Ferry System shares many similarities with WSF, its Mates are not required to have First Class Pilotage. I note, however, that they are required by the governing body to demonstrate sufficient knowledge and experience on the routes they sail to be declared "exempt" from the pilotage requirement that otherwise would apply in B.C. waters. Tr. at 41 (Twohig).

shortfalls, often overshadowed all other considerations because under those conditions, the State usually argued—and arbitrators often found the argument persuasive—that only limited wage and benefit increases, if any, were feasible. In addition, on several occasions, the State asked for and received substantial give backs from the Unions representing State employees, including the Mates.<sup>9</sup> This round of negotiations, however, takes place in the context of a slow but substantial recovery in the State’s financial condition from the depths of the recession beginning in 2008, even if that recovery is perhaps not as robust as we all would hope. For example, the unemployment rate in Washington has recently reached its pre-recession levels. Exh. E-1 at 9.<sup>10</sup> OFM has also identified approximately \$2B of additional projected revenue over prior forecasts for the next biennium. Tr. at 48 (Hansen). Gas tax receipts are up slightly, although they had previously been forecast to decline, and WSF fare box revenue has recently climbed to cover approximately 70% of WSF operating expenses, at the high end of the historical range of 60-70%. Most importantly, in my view, are the improvements reflected in the Major Transportation Accounts Estimated Ending Balances Forecast, a starting point for considering whether available revenue will cover projected transportation expenditures under the Legislature’s transportation plan. For the first time in my recent memory in serving as interest arbitrator for WSF and the marine unions, the Estimated Ending Balances Forecast projects surpluses in the coming four biennia for the Motor Vehicle Account, the Multimodal Account, and the Highway Safety

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<sup>9</sup> The record establishes, for example, that the marine employee unions, including the Mates, made substantial wage and benefit concessions in these difficult years, particularly in 2011, that contributed significantly to the State’s ability to maintain WSF service to the public at its historic levels.

<sup>10</sup> I think it is fair to note, however, that at least at the national level, a portion of the reduced headline unemployment number has resulted from declines in the workforce participation rate to thirty year lows, i.e. many workers unable to find a job have retired, gone on disability, gone to work in the underground economy, or have simply quit looking for employment. Thus, they are not counted among the “unemployed.” See, BLS Labor Participation Rate Data at <http://data.bls.gov/timeseries/LNS11300000> (rate declined from 66.2% in January of 2008 to 62.8% in August 2014).

Account, each of which has in the past (at times) been tapped to cover some deficits in WSF's operating revenue. Exh. E-1 at 18.

Nevertheless, the State argues that even though Washington's financial condition is improving, "it is not the time to open the checkbook" and "just start spending money left and right." Tr. at 9. There are additional revenues forecast, it is true, but there are also offsetting financial "pressures" even greater than the additional revenues, e.g. the State's legal obligation to increase spending on public education by several billion dollars under the *McCleary* decision, a general fund item,<sup>11</sup> as well as to spend hundreds of millions of dollars over the next couple of decades to upgrade culverts running under roadways to improve salmon runs, a requirement resulting from litigation brought by several tribes to enforce treaty fishing rights.<sup>12</sup> A plan to upgrade the computer systems at the Department of Licensing (DOL) is also in the works, estimated to cost more than \$700M. And given that DOL collects a major portion of the fee and license revenue in the State, the importance of that project should not be underestimated. In short, says the State, there are, indeed, forecasts of substantially increased revenues, but they are overshadowed by both new and existing financial "pressures." When these are taken into account, says the State, the Estimated Ending Account Balances—at least those that might realistically be thought of as a source of additional funding for WSF—all turn red except the Multimodal Account. Exh. E-1 at 21.<sup>13</sup> In sum, argues WSF, finances are improving enough to

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<sup>11</sup> As a potential indicator of the health of the GF, agencies funded under that portion of the budget have been tasked with submitting plans to perhaps reduce agency expenditures by 15% in the 2015-17 biennium.

<sup>12</sup> A substantial portion of the cost of complying with the "culvert" decision, as I understand it, will come out of the transportation budget. Nevertheless, unlike GF agencies, agencies funded under the transportation budget, such as WSF, have not been asked to plan for a potential 15% reduction in their budget allocations.

<sup>13</sup> Two accounts dedicated to repayment of bonds for infrastructure improvements, the Transportation 2003 and Transportation Partnership Accounts, also maintain positive balances, but they are not available by law to be used for WSF operating expenses.

fund a modest 3% wage increase for these employees, but no farther. Nor can the State afford to increase the vacation accrual rates for the Mates.

But the State concedes, as it must, that the transportation Ending Account Balances Forecast is just a starting point for analysis of the policy choices the Governor and the Legislature must make. That is, the projected cost of all of the worthwhile projects the State might wish to undertake for the public good is likely always to exceed forecasts of available revenues. Some of those projected expenditures, e.g. spending on public education or the culvert projects, may be “mandatory” whereas others are not necessarily so. But if the available expected revenues are insufficient to fund WSF’s operating budget, including the award I will render here, the political process must ultimately determine what combination, if any, of fare, tax, or fee increases—or reductions in WSF service—are feasible, or which State projects may be deferred or forgone completely so that other expenditures, such as wage and benefit increases for State employees, may be funded. My role in this process is to apply the statutory criteria in their entirety the best I can, and those criteria include fair and just compensation for employees, as compared to their internal and external comparators, in addition to the State’s “ability to pay.” There may have been times over the last few cycles that the State’s dire financial condition was so overwhelmingly the controlling factor in the analysis that the comparisons required by the statute simply did not require detailed attention from an interest arbiter. In my view, however, those times have now passed, and the balance has swung back toward a more traditional application of the statutory criteria.

B. Wages

Turning to the specific issues before me, then, I begin with wages. As noted, the Union asks for a substantial increase to the average of its two “true” comparables, percentage increases



of more than 25% for First Mates and more than 15% for Second Mates. WSF offers a 3% increase for both classifications.<sup>14</sup> The Hay Study comparing the Mates with “comparable” employees on the West Coast, Alaska, and British Columbia, concluded that First Mates trail their comparators by 13.0% on wages and 16.6% when benefits are included. Exh. U-3 at 19/109. The Study concluded that Second Mates trail their comparators by 11.1% on wages and 10.4% with benefits. *Id.* The Study also concluded that Relief Mates receive a wage 5.8% higher than the comparators, but that conclusion appears to have been based on the fact that none of the comparators specify a relief mate wage. Thus, Ms. Durocher, who prepared the report, simply compared the average regular wage of the comparators with the Relief Mate premium at WSF. It is entirely possible, however, that relief mates at the comparators receive overtime (or some other form of premium) when serving in that capacity. I simply cannot tell, and thus I discount the relevance of the alleged WSF Relief Mate wage advantage.

As previously noted, the Union also contends that Ms. Durocher improperly included Golden Gate Ferry System in the comparison because those passenger-only vessels do not require Mates to possess pilotage, and they also serve on much smaller (and passenger-only) vessels than WSF mates. Moreover, says the Union, B.C. Ferries should not have been included because their Mates are not required to have pilotage, either.<sup>15</sup> In addition, the Union objects to the exclusion of the “Cost of Living Differential” (“COLD”) from the wage rates utilized for the

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<sup>14</sup> The State notes that the Mates just received a 3% wage increase in the second year of the 2013-15 CBA, effective July 1, 2014, pursuant to Arbiter Lankford’s Interest Award rendered in 2012. While that is true, I note that Arbiter Lankford awarded that increase—only effective in the second contract year—as the minimum he could do in order to prevent “further erosion” of the Mates’ purchasing power. Exh. E-21 at 14.

<sup>15</sup> On the other hand, it strikes me that the B.C. system requires something roughly equivalent to pilotage, i.e. it “exempts” B.C. Ferries Mates from the pilotage requirement with respect to their runs on the basis of demonstrated knowledge and experience of precisely the kinds of things pilotage in Puget Sound takes into account. For reasons that follow, however, I need not determine whether Ms. Durocher should have included B.C. Ferries—or Golden Gate for that matter—in her analysis.

Alaska Ferries, AMHS. With COLD in the calculations, the wage/benefit deficit for WSF First Mates rises to 22.2%, and for WSF Second Mates it rises to 16.7%.<sup>16</sup>

No matter how I might resolve these disputes, however, there is no question that WSF Mates trail their statutory comparators in total compensation by a substantial amount, i.e. at the very least 10% for Second Mates and 16% for First Mates. At the same time, it is clear to me that it is far too early in this hopefully gathering economic recovery to grant wage increases at that level, let alone at the level requested by the Union. There is simply insufficient reason at this time to conclude with confidence that the State could fund a 10% increase for the Mates' unit—and equivalent increases for all of the other units that have fallen substantially behind their statutory competitors—in one fell swoop, especially given other pressing budgetary demands (and most importantly, if improvements in vacation accrual for this unit are *also* on the table).

The State's offer of 3%, however, is an inadequate move in the direction of restoring these employees' lost purchasing power and bringing them closer to their statutory competitors. Thus, I will award a 3% increase for Mates and Second Mates, effective July 1, 2015, as contained in WSF's final offer, plus an additional 3% effective July 1, 2016. Extrapolating from WSF's costing data, Exh. E-6, it appears this second year increase will cost an additional \$260,000 or so over what the State has offered—a relatively modest sum that I believe is within the State's ability to pay, and a level of wage increase that also leaves room for consideration of some or all of the improvements in vacation accrual reflected in the Union's final offer.

I find that this Award is supported by several of the statutory criteria, the first of which is “fair and just compensation” for these employees as compared to their statutory comparators.

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<sup>16</sup> The Union contends COLD should be included in the wage calculation because it is an element of overall compensation, but Ms. Durocher concluded it should be excluded because WSF Mates do not live in Alaska and therefore would be ineligible for the cost of living adjustment. This is an interesting issue, but again, one I do not find it necessary to decide.

While it does not bring the Mates to parity by any means, it hopefully will help close the gap.<sup>17</sup> In addition, “bargaining history” supports the Award in the sense that it matches the “increase” in wages this unit received in the last bargaining cycle, i.e. 2013-15 biennium, when economic conditions were indisputably more dire for the State.<sup>18</sup> Third, at a time when WSF faces a critical need to recruit and retain Mates, higher wages may well help by hopefully increasing, or at least maintaining, the wage differential between Mates and IBU members considering promotion to Mate. Also, despite the identifiable “pressures” on the GF and Transportation Budget forecasts, I believe the cost of this wage increase is within the State’s ability to pay, either out of surpluses from the Multimodal or Highway Safety accounts, from increased fare box revenue, increases in license fees, a growing economy that produces more State revenue in general, or some combination of these factors. If OFM or the political process determines otherwise, so be it. But I find the awarded wage increases to be consistent with the statutory criteria I must apply.

**Award:** I award a wage increase of 3% effective July 1, 2015 for Mates and Second Mates, and an additional 3% increase for Mates and Second Mates effective July 1, 2016.

C. Vacation Accrual

The Union proposes that vacation accrual for this unit be increased to match the accrual rates applicable to the IBU deckhands and MEBA engine room employees on the vessels, and also to eliminate the current two-tiered schedule. This proceeding is not the first time I have considered a form of the vacation accrual issue in the MMP units. In fact, when I heard the

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<sup>17</sup> There is little information available about increases that may be in the offing for the statutory comparables, but I note that Black Ball Mates recently received an increase of 2% and are scheduled for an additional 2% in April 2015. Thus, the increases I have awarded will at least tend to close the gap between WSF Mates and those who sail on the M/V Coho.

<sup>18</sup> I put “increase” in quotation marks because the 3% added to wages received in the first year of the 2013-15 CBA merely represented the “snap back” of a temporary wage *reduction* from the actual contract rate. See, Exh. E-21 at 14. Nevertheless, the effect was to increase compensation for the Mates by 3% over wages being paid just prior to July 2013.

WSF/MMP interest arbitration for the Masters CBA in 2012, I described the background of a very similar vacation proposal at issue in that proceeding:<sup>19</sup>

This is a proposal with a history, which I need only outline in brief. At the conclusion of an interest arbitration hearing between these parties in 2005, I granted the MMP's proposal for an increase in vacation accrual to a level roughly the same as had then recently been awarded to the IBU. *See*, Exh. [E-16] (Award dated November 7, 2005). In reaching that decision, I relied heavily on concepts of internal comparability, particularly the concept that MMP employees should receive vacation comparable to the IBU employees they manage. *Id.* The Legislature eventually funded my award and the new accrual rates went into effect on January 1, 2006. [Exh. E-17]. For a variety of reasons, however, WSF management was "very concerned" about the cost and effect of this increased vacation benefit, including the "large disparity in vacation accrual rates between MM&P-represented employees and other state employees," *Id.*, and thus WSF approached MMP with a proposal to "buy back" the vacation benefit improvements in exchange for a 5% across the board wage increase and one-time lump sum payments to employees (between \$4K and \$10K per employee, depending on seniority). *Id.* at 2. The members of the MMP unit voted to accept the proposal (apparently by a very slim margin), and the agreement went into effect July 1, 2006, reverting vacation accruals under the CBA to the prior levels. In the 2008 WSF-MMP interest arbitration (for the 2009-11 CBA, and heard this time by Arbiter Beck), the Union once again sought vacation accrual rates on a par with the IBU (while stating that it was willing to accept that increase in benefits in lieu of a general wage increase, which the State had proposed, of 3.3% over the life of the Agreement). Relying largely on my reasoning in the 2005 Award, Arbiter Beck awarded the vacation increase as the more reasonable proposal. Exh. [E-18] at 4-8. Arbiter Beck's Award was never implemented, however, because it was found by OFM to be financially infeasible in light of the State's projected revenues and expenses. When the parties presented their proposals in 2010 for their 2011-13 CBA, this time before Arbiter Williams, the Union once again sought increased vacation benefit accruals comparable to the IBU Agreement. This time, however, Arbiter Williams rejected the proposal, and he gave three reasons. Exh. [E-19] at 80 *et seq.* First, he was not convinced by the Union's argument that it had "traded" the State's proposed wage increase during the prior negotiations for the vacation improvements ordered by Arbiter Beck. The wage increase, said Arbiter Williams, would never have actually occurred, and thus the Union had "nothing to trade." *Id.* Second, Arbiter Williams noted that he had just awarded increased vacation benefits to a related unit (Watch Supervisors) to bring them into parity with the licensed deck officers, and he saw

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<sup>19</sup> The proposal at issue in the Masters' 2012 negotiations reflected the same accrual rates requested here, but would have applied those increased rates only to employees hired after June 30, 2011, i.e. it proposed a continuation of a "two-tiered" vacation accrual system. As I understand it, that two-tiered schedule contained in the CBA had resulted from discussions between the Union and the Governor's office during very difficult economic times in 2011 in which the Union gave up benefits in an effort to assist the State in achieving a balanced budget.

no reason to break that parity so soon. *Id.* And finally, Arbiter Williams ruled that the increased cost associated with the Union’s proposal was “difficult to award in these economic times.” *Id.* at 81.

Award (September 11, 2012). In rendering my award in 2012 for the Masters 2013-15 CBA, I agreed with Arbiter Williams’ reasoning and denied the request for IBU vacation accrual rates, even on a “two-tiered” basis. *Id.* at 26. I relied upon both the cost of the proposal and the fact that MMP had once sold the vacation accrual rates back to WSF in exchange for higher wages and lump sum payments, a factor that seemed to me to undermine, at least to some extent, the Masters’ internal comparability arguments. Similarly, in 2012 Arbiter Lankford, conducting the interest arbitration for this half of the former combined MMP unit, i.e. for the Mates’ 2013-15 contract, denied a similar vacation proposal. He relied primarily on cost considerations—particularly the unfunded future liability that would come due when WSF employees actually utilized the increased vacation they would accrue under the proposal—vacation that would be taken at a time when the State’s future finances were projected to be “even more difficult.” Exh. E-21 at 17. Thus, while various forms of the vacation proposal at issue here have been granted on several occasions in MMP interest arbitrations over the last decade, the most recent bargaining history is that the arbiters, including me, have rejected them.

Although I denied the Masters’ vacation proposal in 2012, at the same time I made clear that I did not intend to forever foreclose MMP’s ability to achieve parity with its shipmates in vacation accrual:

I do not mean to suggest that conditions will never support vacation improvements for this bargaining unit. If the State’s finances improve so that additional vacation costs can reasonably be assumed by WSF, and if those improvements are supported by the wage and benefit survey required under the statute, or if other State bargaining units—particularly marine employee units—receive additional vacation benefits, or if some combination of these factors is established in the record in the future, the fact that the bargaining unit sold its vacation improvements in the past—or that Arbiter Williams denied the Union’s

proposal in 2010—will not necessarily preclude granting vacation improvements at an appropriate time. The conditions are not ripe as of now, however.

Award at 26, fn. 35.

Today, I find that the record is quite different from the context in which I considered the issue in 2012. For one thing, the licensed and unlicensed MEBA units now enjoy the IBU accrual rates as a result of my 2012 Award.<sup>20</sup> *See*, Award at 14 (September 18, 2012). In granting the Union’s proposal, I noted that IBU had been receiving the increased accrual rates retroactive to 2001 and the MMP Masters and Mates had received a negotiated equivalent, i.e. the “buy-back,” covering that same period. Thus, the Award to MEBA was strongly supported by internal comparability.<sup>21</sup> In any event, following my award to the MEBA units in 2012, the MMP units are now the only shipboard employees not receiving vacation accrual at the rate IBU has received since 2006 (retroactive to 2001), i.e. “other marine employee units” have “receive[d] additional vacation benefits.” As a result, I find that internal comparability overwhelmingly supports the Union’s present proposal.

Moreover, Mates in this unit supervise IBU deckhands, and it presents something of an anomaly that a supervisor should receive less in vacation than the employees he or she supervises. In addition, the normal job progression on the vessels is for IBU deckhands to gain a Mate’s license and ultimately promote to Mate and beyond. The current discrepancy between vacation accrual as a deckhand as compared to the accrual for a Mate, however, potentially presents a structural disincentive for deckhands to promote. Two IBU members who were reluctant to promote, in fact, testified at the hearing that they would seek promotion if they could

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<sup>20</sup> In that award, I also accepted the MEBA proposal to eliminate a two-tiered accrual system and to give all members of the unit, regardless of date of hire, vacation accruals on a par with the IBU.

<sup>21</sup> As an aside, the value to the MMP unit of that “buy back” has eroded substantially in the interim because of lagging pay increases that have left MMP well behind their comparators and behind increases in the cost of living indices. Thus, I no longer find the sell-back to be as significant in the internal comparability analysis.

maintain their IBU vacation accrual rates as Mates. As the State argues, there are no doubt other factors at work here, too—e.g. WSF’s reduction in recent years in its contribution toward the cost of acquiring the necessary training, the fact that a promoted Mate starts at the bottom of the Mates’ seniority list in terms of picking desirable runs, and similar issues. But I do not believe the State seriously disputes the notion that the difference in vacation accrual is at least one of the factors IBU members take into account as they consider whether to become Mates. *Cf.* Arbitrator Lankford’s observation in the 2012 Mates’ interest arbitration award that “WSF does not strenuously contest the Union’s claim that some deckhands who have the required licensing are reluctant to bid into Mate openings because of the sharp fall-off in the vacation accrual.” Exh. E-21 at 16. Nor is there any dispute that there is a present shortage of Mates. While recent additions to the Mate classification (and those currently in process) may ease the shortage to some extent, the rate of promotions over the last few years seems insufficient to cover projected retirements, whether voluntary or for health reasons, of approximately 50 Mates and Masters in the next five years.<sup>22</sup> In sum, I find that additional vacation accruals are supported not only by considerations of internal comparability, but also as one element of a policy designed to improve recruitment and retention—one of the explicit statutory criteria I am called upon to apply in evaluating the parties’ contract proposals.

The critical remaining consideration, then, is the State’s ability to pay. The biennial cost of the proposal has been estimated by the State to be \$210,748 in the first year of the contract and \$216,947 in the second, Exh. E-6, but WSF also calculates a potential future liability of approximately \$1.9M for “Leave Cash Out,” Exh. E-7, a future potential liability that is not dealt

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<sup>22</sup> That estimate came from an informal survey conducted by the Union. WSF did not challenge the accuracy of that projection, and I have insufficient reason to doubt it.

with as part of the biennial budget and must be accounted for in some other way.<sup>23</sup> Arbitrator Lankford denied the Mates' vacation accrual during the last round of bargaining precisely because of this future liability, observing "I cannot award a proposal with a bill that will fall due in even more difficult economic times." Exh. E-21 at 17. I note, however, that Arbitrator Lankford's 2012 conclusion quoted above was based directly on dire projections for ending balances in the transportation accounts, which he described as reflecting "progressive budgetary deterioration stretching ahead through intermediate future bienniums." *Id.* Concededly, however, that outlook has now changed, with several of the major transportation accounts, including the Multimodal Account, in substantially better financial condition than had been forecast in 2012—in fact, the Multimodal Account is projected to be comfortably in the black for each of the bienniums covered in the projections, i.e. out to 2021-23, even taking the additional budgetary "pressures" into account. Exh. E-1 at 21.

Moreover, this "future liability" concern, even if it has been accurately projected in the State's costing data, must certainly have applied with equal vigor in 2012 when I awarded MEBA the IBU accrual rates. Yet despite a more difficult economic climate than the State's transportation budget faces today, OFM found my MEBA award to be financially feasible and the Legislature funded it. Given that the MEBA proposal was projected by the State to be considerably more expensive in the near term than the Mates' proposal here,<sup>24</sup> and also that the State has somehow found a way to pay for this level of vacation accrual to IBU for a decade or

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<sup>23</sup> The analyst who prepared Exh. E-7 testified that agencies often delay filling vacancies until enough unused wages have accrued to cover the cash out liabilities. Tr. at 156-57. That approach might well be difficult for WSF, at least in the marine units, because the system periodically seems to have difficulty keeping the boats sailing on time because of staffing issues. Leaving Mate positions unfilled would no doubt increase the difficulty of maintaining reliable service to WSF customers.

<sup>24</sup> The cost of the MEBA vacation accrual proposal to WSF for the licensed and unlicensed MEBA units for the 2013-15 biennium was projected to be \$1.5M, more than three times the projected cost here. *See*, 2012 MEBA Award at 14.



more (presumably including projected future cash-out payments), I do not find the “future cash out liability” argument sufficiently convincing to overcome the Mates’ highly persuasive internal comparability contentions.

In sum, at least two of the central conditions for MMP vacation improvements that I identified in the Masters’ interest arbitration award in 2012 have now come to pass, i.e. other marine units have received increased vacation accrual rates, and the State’s finances, particularly in the transportation budget, have improved sufficiently to be able to afford a vacation increase for MMP. There is at least one additional important consideration here, however—what I described as a “chicken and egg problem” during closing arguments. Tr. at 179. That is, there are currently too few qualified Mates to fill the available slots, at least during the peak summer season, and vacancies and absences must be covered on overtime or by short-term returns of retired Mates. An increase in vacation accrual for the existing Mates would no doubt create a need for even more Mates in the future to fill in when that additional accrued vacation is actually taken by employees. Even assuming (as seems reasonable to me) that higher vacation accrual rates will eventually contribute to an increase in the number of IBU members interested in promoting to Mate, it may nevertheless take many months for those deckhands to complete their licensure and to become qualified to step in as Temporary Mates or to promote.<sup>25</sup> Consequently, a measure ultimately designed, at least in part, to address the long term problem of encouraging IBU members to promote to Mate could exacerbate an existing Mate shortage in the near term.

It is clear to me, however, that WSF must take steps to increase the number of Mates one way or another over the next few years in order to meet the challenge of expected high rates of

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<sup>25</sup> The Union contends that there are some IBU members already qualified who would choose to promote immediately if the Mates’ vacation accrual rate matched the current IBU rate, but the evidence does not permit me to form a confident conclusion about how many. *See*, e.g. the closing argument of Union counsel, Tr. at 180 (“Mr. Saffle just whispered in my ear at least ten, but we don’t know exact numbers”).

turnover in the aging MMP workforce, and removing the vacation accrual disincentive can be one important element of that effort. Therefore, I will award the Mates' proposal to remove the two-tiered vacation accrual schedule and to increase the accrual rates to match the IBU and MEBA contracts, but I will provide that this aspect of the award should not be implemented until the second year of the 2015-17 contract, i.e. effective July 1, 2016. A deferred implementation will give WSF time to respond in a holistic way to the challenge of encouraging more IBU members to promote, and it will also reduce the near term cost to WSF of this benefits change, assisting in keeping the award within the State's current ability to pay.

**Award**: I award the Union's proposal on vacation accrual, effective July 1, 2016.

### III. CONCLUSION

With respect to the issues certified for interest arbitration in the Mates' 2015-17 Collective Bargaining Agreement, I hereby render an award on each such issue as set forth above. I will reserve jurisdiction to assist the parties in the unlikely event there are any disputes about the specific CBA language necessary to incorporate this Award into the parties' 2015-17 Agreement that the parties are unable to resolve on their own.

Dated this 15<sup>th</sup> day of September, 2014.



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Michael E. Cavanaugh, J.D.  
Interest Arbitrator