In the Matter of the Interest Arbitration

between the International Organization of Masters, Mates & Pilots, Pacific Maritime Region, United Inland Group ("MM&P" or "Union"),

and

the State of Washington, Department of Transportation, Washington State Ferries ("Agency" or "WSF")

Findings, Discussion and Award.

Case Numbers:	Washington PERC Case No. 24903-M-12-07499. Arbitrator's M94.
Representing the Union:	Rhonda J. Fenrich and Fenrich & Gallagher, 423 Lincoln Street, Eugene, OR 97401.
Representing the Agency:	David J. Slown, Assistant Attorney General, PO Box 40145, Olympia, WA 98504-0145.
Arbitrator:	Howell L. Lankford, P.O. Box 22331, Milwaukie, OR 97269-0331.
Hearing held:	In the WSF offices in Seattle, Washington on August 1, 2, & 3, 2012. Record closed with receipt of transcript on August 14, 2012.
Witnesses for WSF:	Pete Williams, George Capacci, Jean Baker, Teri Haffie, Jeff Pelton, Theresa Greco, Deborah Driver, D. Erik Hansen, Tim Saffle, and Kelly Mitchell.
Witness for the Union:	Gregory Faust, Dan Twohig, and Lee Andersen.
Date of this award:	September 13, 2012.

This is an interest arbitration under the statutory authority of RCW Chapter 47.64, "Marine Employees–public employment relations," and particularly Sections 300, et. seq. of that Chapter. The parties stipulate that all of the preliminary procedural requirements leading up to this interest arbitration have been completed. The parties continued negotiations until the very threshold of the hearing and into the period of the hearing itself; and they agree that there are no objections to that procedure, including a substantial change in the Agency's basic pay proposal on the final day of hearing. The parties chose to use a single arbitrator as permitted by RCW 47.645.300(2). The hearing was orderly. Each party had the opportunity to present evidence, to call and to cross examine witnesses, and to argue the case. Both parties provided oral closing arguments; and the parties agreed that the transcript would be provided to the arbitrator, along with some final documents, on or around August 10, 2012; and I received the transcript when it was forwarded by WSF on August 14, at which point the record closed. The parties also agree that the Agency will be the official custodian of the record in this case and will hold the arbitrator harmless in that regard.

ARBITRATION FACTORS

RCW 47.64.320(3) first directs the interest arbitrator to pay attention to "the legislative purpose under RCW 47.64.005 and 47.64.006:"

47.64.005
Declaration of policy.

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.

47.64.006
Public Policy.

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 relationship 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 stikes 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.

After the incorporation of those public policy sections, RCW 47.64.320(3) continues: "[A]s additional standards or guidelines to aid in reaching a decision," RCW 47.64.320(3) requires me to "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);[1]

(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 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.

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1. As one of the "Collective Bargaining Procedures" set out in RCW 47.64.170, subsection (8) requires that "The office of financial management shall conduct a salary survey, for use in collective bargaining and arbitration, which must be conducted through a contract with a firm nationally recognized in the field of human resources management consulting." As in 2010, OFM contracted with Hay Group to perform the 2012 survey.

Background: the Ferry System and the Bargaining Unit

By most standards, WSF is the largest ferry system in the United States. The current collective bargaining agreement lists sixteen terminals, not including Sidney, B.C., spread out over more than a degree of latitude throughout the Puget Sound area.[2] Trip times vary from about 15 minutes for the shorter routes up to about 3.5 hours for the trip from Anacortes to Sidney, B.C. The ferry system is remarkably efficient. The 2011 legislative session established an ad hoc committee, appointed by the Governor, to address the performance of WSF and to establish performance targets. The committee's January, 2012 report found that WSF's operating costs per passenger mile were $1.29 for FY 2009, $1.19 for FY 2010, and $1.30 for FY 2011; and the Committee recommended a goal of $1.35 for 2012. It is a remarkable accomplishment of WSF that its administration had already beat the Committee's best judgment of a reasonable goal of cost efficiency, and beat it by a considerable margin. Similarly, the Committee found that overtime as a percentage of straight time had been 5.2% in FY 2009, 4.8% in FY 2010, and 4.0% in FY 2011; and it proposed the goal (based on 1% of budgeted level) of 5.0% for FY 2012, which, again, WSF has already accomplished in both of the past two years.[3]

The current, 2011-2013 collective bargaining agreement (CBA) applies to all Mates, Masters and Pilots of WSF. But the new RCW 47.64.340(2) requires the separation of the bargaining unit as of the end of the current contract on June 30, 2013; and only the Mates/Pilots are at issue in this proceeding.[4] Any such separation is somewhat artificial in an industry built around a career ladder which begins with Ordinary Seaman and extends up to Port Captain and beyond, and in which duties, training and responsibilities are substantially controlled by a well-developed system of licensing administered by both the state and the US Coast Guard. In that licensing system, Masters and Mates together comprise the category Licensed Deck Officer. Masters and Chief Mates usually divide piloting time, each taking the vessel in one direction; and both Masters and Chief Mates (aka First Mates) are required to hold a First Class Pilot endorsement for each and every individual ferry route in the WSF system. When a Master vacancy occurs it is filled by a First Mate who has already achieved the required Masters license; and conversely, a Mate vacancy will be filled by an Able bodied Seaman—from the separate bargaining unit represented by the Inland Boatman's Union (IBU)—who has a Mate's license and pilotage endorsements. Washington's ferry service expands during the summer months, which requires additional Masters and additional Mates. WSF has 60 watches during the

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2. The Alaska Marine Highway covers a larger area of about 3,500 miles, from Bellingham, Washington to Dutch Harbor, Alaska.

3. Cost per passenger mile and percentage of overtime are significant performance measures specifically mentioned in RCW 47.64.355(3).

4. RCW 47.64.340(2) provides that "Effective July 1, 2013, the public employment relations commission shall sever from the masters, mates, and pilots bargaining unit all captains. * * *"

summer of 2012, and each and every sailing absolutely requires the presence of a full crew of Licensed Deck Officers. That staffing requirement is specified in the Coast Guard's Certificate of Inspection for each vessel, and without the required Licensed Deck Officers, that vessel does not move. Keeping every one of the watches staffed 24/7 requires an additional 14 Relief Mates whose function is to replace regular Mates who are absent due to vacation, sick leave, etc.[5] Because of the shifting of assignments among this unit, the Masters unit, and the IBU unit, it is not completely simple to nail down the number of bargaining unit employees; but WSF's costing of the parties' proposals assumes a current census of 81 employees.[6]

Only a few of the vessels operated by WSF require a Second Mate. There are currently 14 Second Mates. On those vessels the Second Mate supervises the unlicensed deck hands—which the Chief or First Mate does otherwise—but does not steer the ship.

The breadth of WSF's service area causes some inescapable problems when it comes to getting employees to the vessels where they are to work . Depending on where the employee resides, it can take a long time, or a very long time, to get to the terminal where his or her shift is to begin; and shifts sometimes begin in the middle of the night and sometimes in the middle of the Seattle area's well known and extended heavy traffic hours. Those problems are more easily managed with respect to employees on long-term fixed bid assignments. Those employees are paid time and mileage from the ferry terminal closest to their residence to the terminal at which their shift begins. When such an employee is occasionally assigned to a different reporting location—for training, for example—WSF pays travel time and mileage for that temporary assignment.

But Mates on fixed bid assignments must occasionally be replaced due to training requirements, medical absences, or vacation or leave time. The problem of how to pay a Regular Relief Mate for getting to today's work—which may be at any time and at any place from Point Defiance in the south to Friday Harbor in the north—is much more difficult. There was a time, several contracts ago, when WSF assigned Relief Mates to vacancies and simply paid their travel time and mileage, much as it does for Mates with fixed bid assignments. Then the parties agreed to seniority bidding of Relief assignments, when possible, which happens roughly two weeks in advance. As far as this record shows, the change to seniority bidding did not increase travel costs. The next changes were the bargained addition of caps on travel time, first at 3.5 hours per shift and then at 3.0 hours. But even with travel time caps, some WSF relief employees—not from this bargaining unit—realized that such a system could be milked by picking assignments

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5. Mates move up to Master only when all the Relief Masters are already assigned; and Deck Hands move up to Mate only when all the Relief Mates are already assigned. The system for bumping up Second Mates or bumping up to Second Mate is not at issue in this dispute.

6. The Hay Group survey (discussed below) shows a total of 64 Mates at WSF, which presents a difference in census which may be simply seasonal.

far, far away and collecting substantial amounts of travel pay on top of the pay for actual hours worked. Eventually, before the bargaining of the most recent CBA, a local TV station ran an exposé called "Waste on The Waters," and WSP tried to find an alternative system which was not susceptible to such abuse. The current contract's Assignment pay provision is the parties' current answer to this systemic problem: They agreed to replace travel time for Regular Relief employees with an Assignment pay premium of 17.5% of base pay. Several of the disputes in the case at hand involve proposals to adjust or clarify that arrangement.

ISSUE #1, WAGE RATES, AND THE FACTORS SET OUT IN RCW 47.64.320(3)

In short, MM&P proposes increases of 20.9% for First Mates and 22.1% for Second Mates; and the State proposes to end the 3% roll-back which the parties agreed to for the life of the current, 2011-2013 contract, but opposes any additional increase.[7] This interest arbitration pits an irresistible force against an immovable object. Each of those considerations is largely unrebutted, and each rests firmly on one or more of the factors set out in RCW 47.62.320(3): The irresistible force comes from the survey result—the focus of paragraph (e)—which shows the First Mates to be 20.9% behind the survey average and the Second Mates to be 22.1% behind. The Union proposes exactly those percentages of general wage rate increases. It also proposes an additional First Class Pilot pay of $24.63 per hour for each Chief Mate and an expensive substantial expansion of the vacation accrual schedule. The immovable object is WSDOT's financial condition—the focus of paragraph (a)—and particularly WSDOT's projected future financial condition. We turn, then, to the application of the statutory factors to this dispute.

(c) The constitutional and statutory authority of the employer. For purposes of the negotiations leading up to this interest arbitration and the hearing itself, the State's authority as the ultimate employer in this case has been exercised through three different agencies: WSF, the Washington State Department of Transportation (WSDOT), and the Office of Financial Management (OFM). WSF is the immediate employer; the departmental budget of WSDOT is the focus of the "ability to pay" element of RCW 47.64.320(a); and OFM exercises a degree of budgetary oversight under the statutory scheme and prepared a substantial portion of the employer's case in interest arbitration. Finally, OFM is authorized by RCW 46.64.170(9)(a)(ii) to determine whether or not the award issued here is financially feasible; and an award not certified as feasible financially is not to be submitted to the legislature for approval.

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7. WSF's position throughout the current negotiations up to interest arbitration included an elimination of the "temporary" nature of the 3% rollback in wage rates, so that that 3% reduction would have carried on into the new contract. On the final day of the interest arbitration hearing, WSF amended that proposal—without objection from the Union—and it now proposes the promised return of the 3% but no additional rate increase for the term of the contract at issue here.

(b) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts.[8] The parties went through interest arbitration in 2008 and 2010. In 2008 the bottom fell out of the Washington state and national economy. For 2009-2011, the arbitrator awarded the employer's proposal, but OFM then decided that it could not fund that award. In February, 2011 all the maritime unions went back into negotiations with the Governor's office. The result was a contract that reduced overtime from double time to time and a half and reduced overtime periods down to tenths of an hour, replaced travel time for Reliefs with Assignment pay, reduced vacation accrual (which had been won twice in interest arbitration and once before traded away) for employees hired after July 1, 2011, and rolled back the general wage rate by 3% for the biennium. The 3% rollback for this unit was not matched by hours of leave, as it was for most of the State workforce.

(I) The ability of the State to retain ferry employees. The Mates are part of an enclosed employment system: hires are almost universally at the bottom classification—in the IBU bargaining unit—of Ordinary Seaman; and those employees who are interested begin to study and to promote up from there into Able Seaman, Mate, Master/Captain, and Port Captain. Within the Mates classification, there have been an average of three departures per year, which is a turnover rate of just 3.7% from all causes. The record does not show that that rate is excessive. The only issue of retention involves WSF's ability to attract and retain Relief Mates, and that issue is addressed below (at 18).

(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..., and ***(j) the overall compensation presently received by the ferry employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefits, and all other direct or indirect monetary benefits received.*** These three statutory factors are intertwined in this case. Neither party takes issue with the survey in general (although the Union raises some challenges to particular parts of it with respect to Pilot premiums, addressed below). The Hay Group included nine other ferry operators in its survey: Alaska Marine Highway System (the State Ferry),[9] Black Ball Transport, British Columbia Ferry Corporation, Golden Gate Bridge Highway & Transportation District, King County, McNeil Island Ferry, Skagit County, and Whatcom County.[10] The compensation averages in the survey are weighted by the number of

8. Several of the disputes in this case come trailing significant bargaining history, which is discussed along with those particular issues.

9. Alaska pays a cost of living differential ("COLD") to compensate for the difference in cost of living between Alaska and Seattle. The survey notes that COLD amounts to $6.58 per hour for First Mates and $5.76 for Second Mates.

10. Other than Whatcom County, those were also the ferry operators used for the 2010 survey.

employees reported to be in each of the surveyed classifications. So, for example, the Black Ball line with a single ship has far less effect on the average than the British Columbia Ferry System has.

The 'bottom line' of the survey is shocking: WSF's base pay rate for First Mates trails the survey average by 20.9% and its base pay rate for Second Mates trails the survey average by 22.1%. That is reflected in the Hay Group's Executive Summary, which concludes (italics not in the original) that "WSFS Ferry/Terminal positions lag the market average (including and excluding benefits) this year *as opposed to leading it on both areas in previous years*. Factors contributing to this new market lag include the State's 3% salary reduction in addition to market actual average salaries increasing by approximately 8% (excluding COLD; approximately 7% including COLD)." The Agency points out that the magnitude of the pay rate lag is somewhat less excluding COLD: 13.9% for First Mates, and 13.8% for Second Mates;[11] and WSF argues that the "the best number is probably somewhere between." The only other ameliorating feature of the survey, from WSF's point of view, is that it was based on only five responding employers with a combined workforce of only 48 First Mates and 28 Second Mates.

Turning to the statute's paragraph (j)—"overall compensation"—the Hay Group survey methodology takes the statutory language at its face value and uses bargained wage rate numbers (e.g., the bargained $35.54 per hour directly from the IOM&P collective bargaining agreement). The survey does not include an attempt to adjust for differences in hours worked (based on holidays, leaves, etc.) in order to determine a net hourly or net monthly wage.[12] But neither party offers to fill that void: neither party offers a comparison in terms of adjusted net hourly wages; and neither party argues that such a comparison would produce a picture substantially different from that in the Hay Group survey. The Hay Group survey does include data on "weighted actual base pay & benefits," although it is not entirely clear what "benefits" are reflected. On that basis, the survey shows that First Mates lag the survey average by an even greater 23.0%, while the lag for Second Mates is reduced to 14.2%. Apparently on top of that lag, there is also a substantial difference in employee contributions to medical premiums: Those premiums average only $16.90 per month for employee only or full family medical, dental and vision coverage among the surveyed employers, which is far less than the cost to the WFS Mates of $495 for employee only coverage and $1,347 for full family.

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11. The survey also sets out numbers for "Pay & Benefits," which certainly conforms to the directive of paragraph (j) of the statute. But the survey numbers for average weighted hourly benefits are $6.60 for First Mates and $17.60 for Second Mates. The survey authors did not find that improbable difference to be worth an explanatory note; but I find that that improbability deprives the numbers of any substantial weight.

12. The statutory directive is to create a "salary survey," not a "compensation survey." The Hay Group survey includes data on benefits, hours and premiums, although no attempt is made to integrate that data into net hourly compensation.

Paragraph (f) of the statute requires consideration of what is usually referred to as comparability in general, as a factor separate from the salary survey (paragraph (e)). The Hay Group apparently borrows the language of paragraph (f) for the determination of proper participants in the salary survey (since the language of RCW 47.64.170(8) does not identify the employers to be surveyed): "public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia..." If paragraph (f) stood alone in the statute, one would expect disputes about the propriety of including some of the smaller and passenger-only ferry operators as comparators for WSF, and the Union points out those considerations here. In particular, the Union argues (III Tr. 561) that the survey is so heavy weighted toward much smaller employers as to balance any deformity that might be caused by the inclusion of the COLD for Alaska State Highway numbers.[13] But the record does not include the data required for me to resolve those claims; and the impact of the apparent lack of proportion is minimized by the fact that the Hay Group study is weighted in terms of number of employees in class for each employer.

In short, the controlling statute does not limit the evidence in these proceedings to the conclusions reached in the survey. On the contrary, the clear language of the statute invites argument and evidence challenging the survey as an accurate picture of pay comparability on an "all benefits considered" basis. In this record, the main responses to that invitation were: MM&P's observations (1) that the difference seems to get worse when "benefits" are added, (2) that WSF Mates clearly pay *much* more for health insurance, and (3) that the survey consists largely of much smaller employers, and the usual ranking of WSF among this group of employers would be not merely at the average but substantially above it, and WSF's suggestion that the "best number" is somewhere between 20.9% and 13.9% for Chief Mates and 22.1% and 13.8% for Second Mates. On the entire record, then, there is no reasonable dispute that WSP's Mates are now somewhere around 20% behind the pay for similar employees of comparable employers on the west coast.

(a) and (h): The financial ability of the department to pay for the compensation and fringe benefit provisions of a collective bargaining agreement and the limitations on ferry toll increases and operating subsidies as may be imposed by the legislature. The Union points out that RCW 47.64.320(3)(a) focuses the "ability to pay" factor usually found in interest arbitration statutory schemes on "The financial ability *of the department* to pay..." "The department" here appears to be WSDOT. So the "ability to pay" analysis must focus on WSDOT, and not broadly on the State in general or narrowly on the Marine Transportation Division of WSDOT. Most of WSDOT's budget—$7.41 billion—is on the capital side, and only $1.57 billion is for operations. Most of the $889.2 million *WSF* budget, on the other hand—$475.1 million—is for operations. Only $414.1 million of WSF's 2011-2013 budget is for capital projects, and 63.4% of that comes from the 2003 5¢ gas tax increase and the 2025 9.5¢ increase, which are limited to new vessel construction and terminal preservation. A variety of statutory restrictions forbid the transfer of

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13. In particular, MM&P represents Mates for King County, Whatcom County, and McNeil Island Ferry; and King County and McNeil Island, at least, are passenger only.

funds across the line between capital and operating expenses. On the operating side, labor accounts for about 55% of the costs, and fuel accounts for about 30%. Although RCW 47.64.320(3) directs my attention to WSDOT's ability to pay, there is no dispute that the legislature, and not the Department, carefully controls the movement of funds from one account to another within WSDOT's overall budget. Fuel costs, for example, change with the cost of diesel; and the legislature adjusts that specific account through supplemental budget processes in order to closely reflect those market changes.

Three factors lie at the heart of of WSDOT's budgetary quandary. First, WSDOT's income depends primarily on gasoline tax, and gas tax is assessed at a "per gallon" basis. Rising gas prices do not increase WSDOT's income; and rising vehicle efficiency correlates inversely with WSDOT income. The second factor is the age of Washington's transportation infrastructure and its resulting cost of maintenance. Current funding projections for the next ten years fall about $3.1 billion short of the goals of both keeping 90% of the state's roadways in good or fair condition and operating the ferry system at current levels.[14] The final factor is the political sensitivity of ferry fare increases. After seven straight years of increases—from 20% in 2001 down to 2.5% in 2007—there were no increases during the depth of the recession in 2008 or 2009. Moderate increases resumed in 2010 and 2011; and 2012 saw a 2.5% increase in October with another 3% increase for May. WSDOT's budgeting assumes no increase for 2013, followed by annual 2.5% increases through 2021.

WSDOT's most recent quarterly Gray Notebook does not explicitly address the fares component, but it brings the other two elements right up to date: "Washington State Ferries continues to show strong on-time performance, with 98.3% of trips on time in the quarter ending March 31, 2012. Ridership numbers and farebox revenue were both very close to projections." On the other hand, the Gray Notebook also noted, "WSDOT estimates that 16 percent of the value of the terminal systems and 29% of the value of the vessel systems will need preservation by the end of the 2011-2013 biennium. Further terminal and vessel preservation needs will compete against operations, maintenance, and preservation needs throughout the WSDOT transportation system. Compounding this is the continuing shortfall in ferry operating and maintenance funds."

Turning back to the specific WSF budget, the projected ending balance of the Ferry Operating Account is $7.5 million for the 2011-2013 biennium. There is no adequate reason on this record to doubt the general accuracy of that projection, even though MM&P argues that

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14. This factor predates the 2008 economic downturn. The 2007-2009 Transportation Budget required a study and Ferry Funding Recommendations. That study was based on September, *2007* data, which could not have reflected the 2008-2009 national and regional recession. Before that economic downturn and looking at the ferry system more or less in isolation from the other needs of WSDOT, the 2008 study found a long term *capital side* shortfall of about $4.2 billion, even assuming administrative transfers from other WSDOT accounts. By comparison, it found only about a $213 million long-term operations shortfall.

overall data suggest the Washington economy has turned the corner, and even though WSF points out that the February, 2012 forecast showed slightly reduced revenues from licensing, permits and gas tax.[15] $7.5 million is about 1.6% of the operating budget, which is substantially below the roughly 5% that is usually considered an acceptable minimum. Based on actual expenditures to date, including labor costs that are $4.7 million over budget and on all available underspent accounts (including $3.5 million savings in fuel which could not be used here without legislative action), WSF's ending balance may be closer to a mere $500,000.

The language of RCW 47.64.320(h) somewhat restricts one possible source for additional operational funding by requiring that I consider the "limitations on ferry toll increases and operating subsidies as may be imposed by the legislature." The Transportation Commission's 2009 Long Term Funding Survey concluded that fare increases were not a reasonable source of funding on the long-term capital side, but it recommended (at p. ES-4) "incremental fare increases above the WSF assumed 2.5 percent per year, sufficient to close the operating gap and eliminate the need for additional operating subsidy above that already provided by dedicated state sources..."[16] The record shows the legislature's prior careful adjustments of fare increases, and, unlike the Transportation Commission, an interest arbitrator is restricted in considering additional fare increases beyond those limitations which have been imposed by the legislature.

Tthis case addresses pay and benefits for the following, 2013-2015 biennium; and based on current income projections the projected ending balance for the 2013-2015 operations budget turns negative by $33.2 million unless there is additional transportation funding. (That deficit projection includes the end of the 3% rate rollback in WSF collective bargaining agreements as of the last day of the biennium.) After 2015, the projection for the operations budget falls off a cliff, down to minus $115.7 million for 2015-2017.[17] The most recent legislature planned for—but, of course, could not commit to—a $35 million increase for ferry operations from its successor as part of an overall $183.5 million budgetary wish list.

The Union points out that the June, 2012 Transportation Forecast showed an annual growth rate of Ferry income of 5.1% for 2012 and 2.9% for 2013 for a biennial increase of $19.8 million ($314.2 million compared to 2010-2011's $294.5 million). Although fuel tax revenue was lower than estimated for 2012 to date, license, permits and fees income was up by about the

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15. Ridership and farebox income, for example, were on track for the quarter ending March 31, 2012; and projected ridership and farebox revenues have actually been slightly higher than the actuals in every year since 2009.

16. The study offered examples of 4 percent fare increases over nine years or six percent over five years. The study also supported WSF's proposal of a fuel surcharge on passenger tickets.

17. After that, things get progressively worse through 2021-2023, which shows a projected $341.9 million shortfall.

same amount; and overall transportation revenue is up about 1.3% (or $54.7 million) over the prior biennium. But that forecast also pointed out that "Employment projections are essentially unchanged from the last forecast. 2012 OFM long-term personal income and employment forecasts are lower. These economic variable adjustments caused revenues to be slightly higher in the near-term and no change in growth rates in the long term."

In the recent past, the legislature has transferred funds into the WSF budget from other WSDOT accounts such as the Multimodal Account or the Motor Vehicle Account in order to fill shortfalls; but the record before me raises substantial doubt overall that WSDOT can reasonably count on available funds to meet the projected shortfall in WSF's budget for the 2013-2015 biennium.

WFS estimates the costs of the Union's proposed wage rate increase at just over $2,699,000 for the biennium, measured from the current pay rates, which is just over $2,236,000 measured from the rate without the current contract's 3% rollback. Because WSF now proposes to restore that 3% as the base rate for the contract at issue here, the last number just above is the cost difference between the two parties' wage rate proposals.

By far the costliest part of the Union's proposal is the $23.64/hour premium for First Class Pilot, which WSF estimates to cost just over $8,604,000 for the biennium, which is almost four times the biennial cost of the Union's proposed wage rate increase. The other most significant cost item is the proposed return to the IBU vacation accrual schedule, which WSF estimates to cost almost $412,000 in this biennium alone, with substantial additional cost increases in down years as employees continue to climb up the accrual schedule. The proposed base wage increase comes in third most expensive, behind the Pilot premium and vacation accrual proposals.

The final traditional factor considered in these matters (under paragraph (k)) is recent changes in the cost of living. The change in CPI-W for the Seattle-Tacoma-Bremerton statistical area (Union Ex. 26) was about 3.7% for the second half of 2011 and another 2.8% through the end of July, 2012, for a real loss of purchasing power of about 6.5% during the first half of the 2011-2013 agreement.

Conclusion. The Agency's fundamental argument here is an appeal to the immovable object of WSDOT's limited ability to pay (III Tr. 556-558):

> There have been holes in the ferry's budget basically ever since the motor vehicle excise tax went away. And those holes have been plugged by grabbing money from some other place within DOT and throwing it into the ferry system. It's clear that the ferry system and the level of service it provides are very important to the Department of Transportation or they wouldn't be taking money from the motor vehicle account and the multimodal transportation account and the highway safety account to keep the ferry system floating. However, it would appear that those days are about to come to an end.

The motor vehicle account itself is looking at a negative balance for the next biennium. And the only account with any significant surplus at all is the highway safety account. That amount looks to be to me about one-ninth of the amount that would be necessary to plug all the holes elsewhere in the Department of Transportation.

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*** Frankly, the absence of money is the 600-pound gorilla in the state government now, for the last four years, and for all years into the future. It is of substantially overriding importance to everything else as far as the legislature, the governor, the budgeteers are concerned, and we ask you to give it a similar level of importance.

MM&P largely relies on the irresistible force of the compensation survey[18] and on the history showing that MM&P led the maritime unions in the emergency bargaining process that the Governor convened in the face of the 2008 fiscal emergency. And it is not unreasonable to characterize the result of those negotiations—as the Union suggests—as *more* than a 3% rollback, because the maritime unions took the same 3% wage reduction as the other State unions without receiving the balancing hours of leave that other state employees received. Similarly, the record shows, as the Union points out, a substantial unexplained delay in WSF's compliance with an instruction to reduce manning in other units; and does not include any explanation for an undisputed agreement for additional overtime pay for the MEBA employees. Finally, on the income side, WSF is the largest ferry system in the country, and there is no dispute that it will be in line for additional federal funding under legislation so new that the exact allocation is not yet determinable. Even assuming that those funds land on the capital side of the ledger, WSF did not show why their availability would not potentially free up some state funds.

On that record, I find that the language of the statute will not tolerate the Agency's proposed biennial rate freeze. The first part of the directive to an interest arbitrator is to "be mindful of the legislative purpose under RCW 47.64.005 and 47.64.006;" and that Public Policy statement ends with "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 ..." I cannot honor

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18. The Union characterizes WSF's ability to pay case as all "speculation, because...this collective bargaining agreement is not funded out of ... the '11-'13 funds. It's funded out of the '13-'15 revenue forecast. [WSF's WSDOT finance witness] testified that ... current forecasts are not utilized to make the '13-'15 budget. The first forecast that the State will even look at to start determining its budget is the November 2012 revenue forecast." But that is an inherent feature of the statutory bargaining calendar for all WSF units. Since the statute directs me to consider "The financial ability of the department to pay for the compensation and fringe benefit provisions ...," the legislature must have intended to direct interest arbitrators to consider the "financial ability of the department" as it appears in advance through the—always somewhat "speculative"—financial forecasts that are available "between August 1 and September 15," when an interest arbitration hearing is required to be scheduled under RCW 47.64.170(6)(a).

that statutory requirement while allowing a pay rate deterioration in excess of 20% over a mere two year period to go entirely unmet.

The Agency changed its initial wage proposal during the hearing, and the Mates will now revert to their prior pay rate at the end of the current contract, and that makes up 3% of the approximately 20% lag. But there is no reason at all to suspect that the 20% pay lag will improve over the course of the 2013-2015 contract. Quite the contrary. More likely than not, that gap is going to grow, not fade over that period. The projected future financial condition of WSDOT does not justify a complete freeze in pay rates for the duration of the 2013-2015 contract. It is simply not consistent with the stated public policy and legislative purpose behind the interest arbitration statutes to leave such a yawning pay gap entirely unaddressed.

On the other hand, WSDOT's ability to deal with the shortfall during the 2013-2015 biennium is very severely limited, and the award below reflects that limitation by almost, but not quite, keeping up with past purchasing value due to CPI increases already experienced by these employees. According to WSDOT's costing (which includes some personnel costs beyond the bare rate increase), a 1% pay increase costs about $154,000 for the biennium. The 3.0% award below is back-loaded, so the cost extends over only a single year and amounts to about $231,000. A 3.0% increase does not come close to accomplishing the statute's explicit policy of keeping WSF employees within the range of "just and fair compensation" as compared to similar employees of west coast ferry operators. At best, it may keep the Mates from falling *much* further behind that standard, and it will defray most of the loss to inflation over the period of the 3% roll-back. I award this increase even though I recognize the possibility that OFM may find even this modest increase to be financially infeasible. The language of the statute will not allow me to do less to address the gap; and the WSDOT budget picture and the possibility of a finding of financial infeasability prevent me from doing more.

Award: The wage rates set out in Rule 6.01 (without the 3% reduction) shall increase by 3.0% effective July 1, 2014.

ISSUE #2, PILOT PREMIUM

This is the Union's most expensive proposal by far, with a biennial cost of about $8.6 billion, according to WSF. As far as the record shows, First Mates have always been required to hold First Class Pilot endorsements for the routes they are assigned to, and they have never received any additional pay for those endorsements. The Union's primary argument for this proposal at hearing was that WSF's First Mates are required to pilot the vessels half of the time and that there are traditionally separate rates of compensation for Mates and Pilots, and therefore, WSF should pay both rates for this combined service. The Union's proposed rate is its estimate of the cost of a separate Puget Sound Pilot on every run.[19] The argument falters from the

19. Puget Sound pilots bring foreign-flagged freighters into and out of coastal waters and must hold both federal and state licenses. The great variety of ships they bring in and out

beginning, however, because the Hay Group survey sets out as a "minimum qualification" for both "First-Mate/Pilot" and "Second Mate:" "...endorsement as First Class Pilot on all routes operated..." On the face of the survey, therefore, the rates set out for First Mate should all reflect the same duties and licensure as WSF's Mates.[20]

The Union also argues that the hourly difference between First Mate and Second comes to about $3.12, while the main difference in duties and responsibilities between the two is that a First Mate pilots the boat half the time. The personal liability of anyone exercising that function is massive and, the Union argues, completely out of line with the current pay differential. The contract allows but does not require WSF to indemnify Mates for such liability. That certainly is an appealing argument, and the Union's presentation on this proposal was detailed and convincing.

But WSF points out (III Tr. 541) that piloting is "a critical part of the Mates' duties and has been during some 50 years of collective bargaining negotiations [and] is clearly reflected in the current wages."[21] That fundamental feature of the Mates' duties, now and in the past, is not seriously contested; and it appears that at least most of the Mates covered by the wage rate survey probably share that responsibility. On that record, I cannot award the Union's proposed Pilot premium.

ISSUE #3: VACATION ACCRUAL FOR MATES HIRED BEFORE JULY 1, 2011.

This dispute has a long history. In the interest arbitration for the deck hands' 2001-2003 contract, IBU won a vacation accrual schedule which begins at 21 working days after seven years and tops out at 34 working days after 30 years. In the interest arbitration for the 2005-2007 contract, MM&P argued that it should have the same schedule as the deck hands supervised by the Mates, and arbitrator Michael Cavanaugh (NAA) awarded it. WSF and OFM convinced MM&P to sell that enhanced accrual schedule back in the 2009-2011 negotiations for a 5% wage increase and one-time payments based on seniority, ranging from $4,000 for seven year

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are always unfamiliar to the pilot, and there are sometimes language barriers. That pilot function requires training and licensure beyond WSF's Master/Pilots or Mate/Pilots.

20. The Union argued that the Alaska Marine Highway is sometimes required to carry a separate Pilot in addition to the Mates. On the record before me, more likely than not, that "pilot" is actually a Third Mate under instruction, and the requirement applies only to operation in Canadian waters and results from a special deal struck between the US and Canadian authorities.

21. MM&P also seems to argue that a pilotage premium should be the natural result of the legislature's separation of the Masters unit from the Mates unit or of the Governor vetoing legislative measures which would have made WSF itself—rather than only its employees— responsible for performance standards. (See III Tr. 570.) Those arguments are not well-developed or adequately supported in the record.

employees up to $10,000 for employees with 21 years or more seniority. The "Factual Background" section of the buy-back agreement included this:

> WSF management is very concerned that the newly-awarded vacation accrual rates will adversely affect the ability of WSF to conduct ferry operations for years to come. Specific management concerns include the need for more employees to fill in for employees due to vacation and other absences, the large disparity in vacation accrual rates between MM&P-represented employees and other state employees, including WSF employees and the effects of increasing vacation accrual upon crew cohesiveness.

The Union again proposed the return of the IBU vacation accrual schedule in negotiations for the 2009-2011 CBA, but WSF and OMB refused, pointing out that the great majority of state employee union contracts top out at about 22 working days accrual. The parties again went to interest arbitration; and arbitrator Michael Beck (NAA) again awarded the MM&P's proposed vacation accrual schedule in lieu of WSP's proposed 3.3% (1.6% and 1.7%) wage increase.

The Union's proposed return to the IBU accrual schedule (for Mates hired before June 30, 2011) would build on the existing first five year accruals, which end at 160 hours. At the top of the proposed additional accrual schedule, a thirty year employee would accrue a total of 272 vacation hours per year, which is 80 hours more than the current schedule. The Union argues that this change would be in the interest of equity in the marine services; but the IBU unit is the only part of the marine services—or of the entire state work force—that has such accrual rates.[22]

The survey conducted pursuant to RCW 47.64.170(8) shows (at p. 29) these accrual rates for WSF and eight other reporting employers (although the data points do not line up):

Years	7 employers	AK Marine Hwy.	WSF
1	9.6	10.5 (0 years)	12
5	17.8	52.5	20
15	22.7	63 (7 years)	22 (16 years)
20	25.9	(No data)	24 (21 years)

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.

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22. The Union argues (III Tr. 562) that the only proper comparison here is with other employers included in the RCW 47.64(8) survey. But, first, RCW 47.64.320(3)(f) provides that I "shall take into account" "Other factors that are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under this chapter." And, second, the Union's primary appeal here is a comparison to the accrual rates in the IBU bargaining unit, which, of course, are not those of another employer included in the survey.

WSP's primary argument against the Union's proposal here is, of course, the proposal's cost, which WSP estimates at about $412,000 over the biennium. Secondly, WSF points out that even without any increase in accrual, MM&P currently has the second most generous vacation accrual rates in state government, second only to the IBU bargaining unit. Finally, in addition to that generous vacation schedule, WSF points out that Mates have a variety of mechanisms for generating comp time, which is administered just like vacation time (after for the basic 20 days per year which Mates are required to bid as their core vacation time): holidays generate comp time, overtime can generate comp time, etc.

Conclusion: WSP's biennial cost estimate does not capture the ultimate cost of this proposal. The bill for an *accrual rate* increases does not come due until employees begin to actually take the additional vacation leave they have accrued after that increase went into effect. That focuses the costs on later years and makes proposed accrual rate increases look like good trades for a present pay rate increase. Thus, in his 2008 interest arbitration, Michael Beck (NAA) awarded the Mates a return to the IBU deckhands accrual rates in lieu of WSF's proposed 3.3% pay rate increase, which he found to be more expensive than the increased accrual rate. But in his 2010 interest arbitration Timothy Williams (NAA) declined to award their proposed return to the IBU deckhands accrual schedule because, in part, of his "substantial concerns over the financial impact of the Union's proposal" (Award at 80). I share those concerns. In the face of financial projections showing WSDOT's progressive budgetary deterioration stretching ahead through intermediate future bienniums, I cannot award a proposal with a bill that will fall due in even more difficult economic times.

ISSUES #4. #5, AND #6: ASSIGNMENT PAY / RELIEF MATE PREMIUM / PAY RATE

Regular Relief Mate is a bid assignment. The current, 2011-2013 agreement includes a rule (8.06) titled "Relief Assignments" which sets out a chart showing "Base Hourly Rates," "Assignment Pay Factor"—which was 17.5%—and the resulting "Assignment Wage" (i.e., 17.5% of the base hourly wage) and "Hourly rate of Pay for Hours Worked," which was the sum of the Base Hourly Rate and Assignment Wage.[23] The Union proposes three substantial changes here. First, MM&P would reorient this section of the agreement by including simple language that "Reliefs will be compensated **at the** ~~assignment~~ **Relief Mate hourly rate of pay for all compensable hours** ~~as outlined in the chart below~~" and would increase the stated rate for what would now be called Relief pay from the current 17.5% up to 22.5%. Second, the Union would change the Rule's special provision for dispatches from Friday Harbor, eliminating the prior contract's $50 for each day assigned and substituting, "**an additional straight time amount of pay, equal to two and one half (2.5) hours at the Relief Mate hourly rate of pay, when working the Inter Island vessel should that vessel commence out of Friday Harbor.**" Finally, the Union's proposed rewording of Rule 8.06 would extend the Relief rate not only to

23. After the imposition of the 3% rollback, the Assignment Wage continued to be 17.5% of the Base Hourly Rate *without* the 3% reduction.

hours actually worked—the current requirement—but also to vacation time, leave time, sick time, etc.

Issue #4, Assignment Pay: The proposed rate increase. The parties disagree about just how many hours of travel time, on average, were thought to be the equivalent of the 17.5% Assignment Pay premium. Mates' work schedules are determined by ferry service schedules, so the CBA allows for eight, nine, or ten-hour days in a basic 80-hour two-week work schedule. If a Relief Mate is working eight-hour shifts, it takes ten different shifts to get to 80 hours, while a Mate working ten-hour shifts gets to 80 hours in only eight shifts. So a Relief Mate's actual travel time during an 80-hour work period depends on the number of shifts he or she is assigned to cover since the Mate has to travel back and forth for each Relief shift. A Relief Mate putting in ten (eight hour) shifts has potentially a quarter more trips to and from work than a Relief Mate putting in only eight (ten hour) shifts, yet both work the same number of hours and receive the same amount of Assignment pay premium. The Union argues that the amount of travel time equivalent to the 17.5% premium works out to be about 1.39 hours per trip if the Mate works ten shifts, 1.54 hours for nine, and 1.74 for eight. The increase up to 22.5% would bring those figures up to 1.8 hours, 2.0 hours, and 2.25 hours respectively. And 2.2 hours is the overall average of travel time per shift for all Reliefs according to the Union's data. The Union's first argument for its proposed rate increase is that the 17.5% does not cover the actual travel time of the Relief workforce.

The Union's second argument alleges a problem of recruitment at the current rate. Some relief assignments are relatively long-term—an extended medical absence, for example—and some are day-to-day. Relief assignments are bid by seniority roughly two weeks in advance. Because the Assignment differential is a percentage of straight pay, it provides an incentive that is indifferent to distance of the relief openings in question. (That was the whole point of changing over to Assignment pay rather than time and mileage for Relief personnel.) The Union argues that the senior Relief Mates take the most attractive—and generally least distant—long-term assignments, leaving the least attractive—and generally most distant— assignments to be distributed by juniority among the unwilling junior Relief Mates. Therefore, about the top half of the Relief Mates are extremely senior bargaining unit members, taking the plum long-term relief assignments by seniority while those near the bottom of the list end up assigned to distant reporting terminals by juniority. The Union points out that there has been no recent change in the eight Mates in the top half of the list, but relatively junior Mates do not stay long in Relief bids that put them near the bottom (although the third from the bottom has been there since 2005).

WSF questions the Union's characterization of the seniority distribution of Relief Mates. But the Seniority Roster in the record (Union exhibit 25) at least somewhat substantiates the picture painted by the Union's witnesses. It shows a total of 53 employees in fixed Chief Mate position bids and 16 in Regular Relief Mate bids (and 14 Second Mates). Of the 16 in Relief Chief Mate bids, the five most senior have seniority dates of 1995 or earlier, but then come six Relief Mates with 1997 dates and two from 1998. After that, there are twenty Chief Mates in non-Relief bids until we reach a 2000 Relief Chief mate. Finally, the most junior Relief Chief Mate has a 2002 seniority date. There are six Chief Mates junior to him, in permanent bid, non-

Relief positions. On the other hand, there is no dispute that as part of the 2012 summer staffing increase, the number of Relief positions was increased by two, and there were initially no bids at all for those two, junior Relief Mate positions. One fairly junior Mate eventually agreed to take one of the positions, and the other remained vacant.

WSF argues that the 17.5% Assignment pay premium is already far greater than any similar premium paid in the entire WSDOT workforce. And WSF argues that Assignment pay for the Relief Mates should be dealt with just as special assignment pay is dealt with elsewhere in WSDOT, i.e. pay for a special skill or license that applies only while that skill or license is in active use. But the real moral of that argument is that the parties picked an unfortunate term to stand in for what is really 'base pay roll-up in lieu of travel time.' It probably was not the best possible choice to call that premium "Assignment pay," since "Assignment pay" already had a quite different and well-established job to do elsewhere in WSDOT personnel and compensation administration. But WSDOT does not claim that it has any other group of employees who regularly are required to report to work at widely varying locations and hours as the Regular Relief Mates are.

WSF also argues that everybody in the original negotiations over Assignment pay understood that it would not be as much as the previous travel pay system. But that is not at all clear from a record that shows Assignment pay as the bargained solution to the public perception of *abuses* of the previous travel pay system for Relief employees. Finally, WSF suggests that most of the staffing problems the Union points to are simple consequences of the application of seniority to Relief assignments on a two-week advance basis, and that the Union certainly does not propose to abandon that benefit of seniority: "They want bidding by seniority. And inevitably the guys who don't have as much seniority are going to get the bad assignments" (III Tr. 547). But the record suggests that travel time costs overall were actually greater long ago when WSF unilaterally assigned relief work without seniority bidding.

Conclusion: The parties differ over whether or not the new Assignment Pay has led to a shortage of bids for Relief Deck Officer. But there is no dispute that *before* the changeover to Assignment pay, the bid positions of Regular Relief commonly went to the most senior members of the bargaining unit. And there is no dispute that WSF was left with one unfilled Relief Mate position in the 2012 Summer schedule because there was no bidder with the required licensing. The trouble with MM&P's proposed general rate increase as a solution to a recruitment problem is that the problem is limited to the bottom of the Relief Mate seniority list and the proposed solution would benefit all Regular Relief Mates, regardless of whether they were part of the alleged problem or not. (It might make sense to increase the rate for Regular Relief Mates assigned by juniority, but the parties did not address that possibility.)

The second basis for the Union's rate proposal here is more compelling. The overwhelming weight of the evidence shows that Assignment pay was intended to be at least roughly equivalent to travel time for Regular Relief Mates but to be immune to the sort of abuse that was spotlighted by the *Waste on the Waters* series. And the only evidence in the record shows that the 17.5% rate falls substantially short of covering the actual average travel time required to get those Mates to their relief assignments. The Union's proposed increase of 5% makes sense in light of that data on actual travel time, but WSDOT's current financial condition will not support that expense for the benefit of only a small part of the bargaining unit; and I will therefore award an increase of 2.5%—at a cost of approximately $70,800 over the biennium—bringing the rate up to 20%.

Award: The number for Assignment Pay Factor in Rule 8.06 shall be changed from 0.175 to 0.2 along with the arithmetic consequences of that change.

Issue #5: Increasing the special Friday Harbor Relief premium. There is no serious dispute on this record that getting to and from Friday Harbor commonly takes up to four or five hours. The touring assignment takes about 24 hours on ship, in addition to the extensive travel time, all for 16 hours of paid time. The Union argues convincingly that the 17.5% Assignment pay multiplier fails to come even close to covering that time requirement. The Union argues that the current $50 per shift premium for such assignments is clearly inadequate. More likely than not, on the limited record before me, openings out of Friday Harbor frequently end up being involuntarily assigned from the bottom of the seniority list. The Union proposes to eliminate the current $50 per day stipend and substitute 2.5 hours of pay to cover the travel time. WSF estimates the biennial cost of the Union's proposal at a bit over $19,000; but that cost reflects the Union's expression of the premium in terms of "the Relief Mate hourly rate of pay," which would include the proposed 5% increase in rate. The Union's case is compelling: Regular Relief Mates covering vacancies on the Friday Harbor touring assignment are currently giving WSF a substantial amount of time, over and above any that is reasonably covered by the Assignment pay premium, in order to make sure that those ferries sail on time. I award the Union's proposed changes, but base the 2.5 hours of pay on the Mate's base rate without the 20% Assignment pay premium.

Award: Rule 8.06 shall be changed as follows:

> *** When dispatched to Friday Harbor, Reliefs will receive ~~a fifty dollar ($50.00) stipend pay~~ **an additional two and one half (2.5) hours pay at base rate for each day assigned;** connected touring watches will be defined as one (1) day for the purpose of this rule....

Issue #6: Extending the Assignment pay premium beyond hours actually worked. The Union's primary argument for its proposed extension of Relief premium pay beyond hours actually worked is that the Staff Master is paid that way. Rule 20.27 incorporates into the agreement a detailed Addendum (E) delineating the "Staff Master *classification* scope of responsibility..." (emphasis not in the original).[24] Staff Masters are paid a premium of 7.2% of

24. The contract calls for one Staff Master for every vessel/route; and that individual is responsible for oversight of the safety, maintenance, record keeping and budgeting process for that vessel. The Staff Master also serves as an interface between the Port Captain and the regular crew of the vessel.

the straight time Master's rate. The Staff Master position is bid by seniority among the Masters assigned to a particular vessel/route. The term "classification" does not appear in the rule addressing Assignment pay.

There is no dispute that Assignment pay was designed to replace travel time, and travel time was never paid for time not actually worked. Moreover, as far as this record shows, when the parties set down to figure what percentage of pay would compensate Relief Mates for the elimination of travel time they addressed that question in terms of a percentage *of base pay*, and not as a percentage of total annual compensation (which would resulted in a substantially smaller percentage estimate). So the Assignment pay premium has never been applied to vacation leave, sick leave buyout, etc., and the language of the current agreement makes that limitation explicit. WSF estimates that the cost of extending the Assignment pay premium beyond actual hours worked would be over $19,000 for the biennium.

Conclusion: MM&P's basic argument here rests on its claim that Relief Mate is a "classification" although the current agreement does not use that term with respect to Assignment pay.[25] The Union's proposed redrafting of the Assignment pay provision would provide contractual evidence to support that claim: The proposed language would carve out a separate classification by eliminating the prior vocabulary of "assignment pay" for a Relief "assignment" and replacing it with "Relief Mate hourly rate of pay," which is the way we commonly refer to the bargained rate for a separate classification. And, of course, the proposed rewrite would eliminate the tables which illustrated that the net pay rate for a Relief Mate is a product of regular Mate's pay with the addition of the Assignment pay premium. If the Union had achieved the rewrite first and then argued that Relief Mate is a classification based on how the contract deals with Reliefs, there might have been some appeal to the proposal to extend the Relief premium beyond hours actually worked. But there is not much appeal to the proposal to create the evidence for that conclusion and correct the inequity disclosed by that newly created evidence both at the same time. The Relief premium—which the CBA calls Assignment pay—has always

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25. It appears that the Hay Group survey may have accepted the "classification" interpretation of Assignment pay. The survey found (page 3) that "With assignment pay, WSF's Relief Employee's actual average pay leads the market by 9.2% excluding COLD and 2.5% including COLD on average." But although the survey notes (page 22 note 2) that "there were no survey participants who report paying premiums or differentials to their Relief Employees," the survey does not address how other ferry operators deal with the problem of getting relief employees—or regular bid employees, for that matter—to shifts that begin at distant duty stations. If that systemic problem is covered under the survey's "compensation for employer directed travel," it appears that the survey misdescribes WSF, which pays no travel time for Relief Mates. If the other ferry operators are operating on a "get to the boat on your own time no matter where your shift starts" basis, that would provide a stark contrast to WSF; but that prospect seems remote in the face of the extensive area covered by both the Alaska Marine Highway System (over three thousand miles) and the British Columbia Ferry Service.

been understood to be a premium addition to actual hours worked, and there is no good reason to extend that premium beyond actual hours worked.

ISSUE #7: TRAVEL TIME FOR BREAK-INS

Non-Relief Mates, holding a *fixed* assignment, are occasionally assigned to shifts—called "Break-Ins—on a different vessel or route in order to bring them current on recent changes to that vessel or to refamiliarize them with the route. Non-Relief Mates on such assignments are paid travel time from their home terminal, just as they are for their usual, bid assignment. Relief Mates, on the other hand, are not paid for travel time or mileage for reporting to Break-In shifts, just as they are not paid travel time or mileage for regular assignments. Relief Mates, by the nature of that bid duty, may be assigned to any route traveled by a WSF ferry. The Union therefore proposes to add a final sentence to the contract's definition of "Break-In:"

> The term "Break-In" is the procedure, if any, by which the Employer uniformly requires all Deck Officers in a particular classification to obtain additional local knowledge of a route or routes operated by the WSF, and of the vessel or vessels assigned to such route or routes. **Break-in will be considered training for pay purposes.**

And the Union would amend Rule 8.04, Removal from Regular Assignment to the same effect:

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> Travel time for training purposes, **including Break-in for all LDOs,** will be computed using Schedule A, and compensated from the terminal closest to the employee's home to the terminal closest to the training location. ***

Break-in is not the only available method for familiarization with a vessel or route. WSF requires Mates to refamiliarize themselves with a vessel that has been changed by showing up early and being paid for the additional time.

WSF estimates the cost of this proposal at just over $24,000 for the biennium; and the Union argues convincingly (III Tr. At 564) that that is a modest price for the State "to make sure that their reliefs, who are required to understand every vessel and every route, can jump in at a minute's notice in order to operate those vessels, [and] can actually do so safety."

There is currently a grievance working its way toward arbitration addressing the parties' dispute over whether or not the *current* language of the contract allows WSF to withhold travel pay for Relief Mates on break-ins; and the arguments from that grievance leak over into the record here: WSF argues that travel time for break-ins is properly included in the Assignment pay premium of the existing contract; and the Union argues that Rule 8.04 does not exempt Relief Mates from the provision that "travel time for training purposes will be computed using Schedule A..." But the issue here is whether or not Break-in pay *should be* included in the Assignment pay premium, regardless of whether or not it has been in the past or should be under the language of the prior agreement.

Conclusion: WSF does not suggest that it has any concern over possible abuse if break-in travel time is extended to the Relief Mates. And in the absence of that sort of consideration, it is difficult to see how the central policy of RCW 47.64.006(4), "...effective and orderly operation of the ferry system in providing for [the citizens'] health, safety, and welfare," does not tip the scale toward removing an impediment from the optimal training of the Relief Mates who may be assigned to any vessel and any route. I award MM&P's proposal on this issue.

Award: Rule 2.01.05 shall be altered to include the final sentence, "Break-in will be considered training for pay purposes;" and the final paragraph of Rule 8.04 shall be altered to read, "Travel time for training purposes, **including Break-in for all LDOs,** will be computed using Schedule A, and compensated from the terminal closest to the employee's home to the terminal closest to the training location."

ISSUE #8: DOUBLE TIME FOR INVOLUNTARY OVERTIME

MM&P had won double time overtime and then lost it in the coalition negotiations with the Governor's office after the 2008 economic downturn. The Union argues that *voluntary* overtime is properly paid at time and a half (if a Mate chooses to take a shift on his or her day off, for example), but that *involuntary* overtime is outside the control of the employee and should be paid at double time. The Union claims that the double time overtime provision it once had in the contract was originally added as an incentive to assure that WSF staffed adequately rather than running up the Mates' overtime costs. The Union also suggests that this change would discourage WSF from intentionally holding a Mate over at the end of shift until his or her hours approach the work hours cap established by the Coast Guard. But the double time premium would also apply to holdover situations in which the oncoming Mate fails to show up on time, which is—at least sometimes—not the fault of dispatch.

Missed ferry schedules are often not within the managerial powers of WSF, even when we include WSF's discretion to schedule longer periods between arrival and departure. The Performance Committee's January, 2012 included these examples: stopping the vessel to assist another boat in distress, waiting for an ambulance, weather, WSP security activities, vehicle stalls or keys locked in a car, etc. The Committee reported the average sail delays to have been 3.4 minutes in FY 2009 and FY 2010 and a mere 2.8 minutes in FY 2011.[26] The record does not support the Union's suggestion that increasing the involuntary overtime rate from 150% to 200% of straight time would provide a practical incentive for on-time performance.

Conclusion: WSF points out that the Union gave up double time for overtime in the give-back negotiations with the Governor and that the Union got at least part of the resulting savings back when the state agreed to three hours of callout pay for voluntary overtime. I agree with WSF that this record simply does not show convincingly that this proposal has any real

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26. On-time performance has a potential cost: catching up to the schedule commonly burns more fuel.

prospect of encouraging on-time ferry performance.[27] Assuming that double time overtime was originally added to the contract as a way of discouraging short-staffing, which necessarily involved involuntary overtime, the record here does not suggest that there is any similar problem at present, and I cannot award the proposed reversion to double time even for only involuntary overtime.

ISSUE #9: SCHEDULING COMP TIME

A maximum of four Mates at a time may be off for scheduled vacation or compensatory time. The current scheduling system allows a Mate to schedule comp time off up to a year in advance, frequently in conjunction with the vacation slot that he or she aspires to, regardless of whether or not that Mate has the comp time when the vacation slot is reserved (as long as the Mate cancels the scheduled day before the two-week bids). Both parties agree that there have been some abuses of that system; and WSP proposes to allow Mates to schedule comp time only if they have it on the books at the time the reservation is made. WSP concedes that the perceived problems in scheduling comp time have been caused by only a few employees. The record does not specify exactly what those problems have been, but I assume that they have including instances of employees shotgunning far future slots with no serious prospect of having the comp time to use them all. MM&P's counter proposal is that the scheduled day off would vanish if the employee does not have the comp time credit at the beginning of the two-week Relief Mate scheduling process.

WSP argues that its dispatchers already have a full plate and should not be required to check comp time balances in addition to their other responsibilities for the two-week bidding. As far as this record shows, it is not uncommon for a single vacancy to require 10-15 calls, and a recent day with 40 openings required a total of 95 calls, with the MM&P bargaining unit accounting for only about 2% of that dispatch activity. WSP (III Tr. 548) characterizes the Union's proposal as "about the worst way to resolve" the problem. On the other hand, WSP does not deny the Union's observation that dispatchers would have to check a Mate's comp time account in advance of its usage in any event, although probably at the point of the seasonal bids—four times per year rather than fortnightly—which take about four work hours each time. Union witnesses also addressed the alleged strain on the dispatchers, and the record as a whole does not show convincingly that the additional work load would be substantial. WSF failed to determine a cost for either its own proposal or the Union's, and it appears that the only potential financial loss from an unused comp time reservation would be the occasional necessity of paying a minimum guarantee to a Relief Mate who had no work for that shift.

27. The legislative mandate of reports of efficiency measures—including both on-time performance and overtime as a percentage of work hours—probably render any such additional financial encouragement unnecessary.

Comp time is scheduled and administered along with vacation time, the difference being that an employee cannot schedule vacation time that he or she does not actually have on the books but can reserve days for comp time without having that time on the books. And, apparently, an employee who comes up to the scheduled off time and still has no comp time in his or her account may still take the scheduled off time by using vacation time instead of comp time.

Conclusion: The Union points out that many travel reservations must be made many months in advance; but the parties agree that there has occasionally been a problem of abuse in the current, wide open scheduling system. I therefore award an advance comp time credit check that comes between WSF's proposed 'at the time of the reservation' and MM&P's proposed 'at the time of the overtime scheduling." The record suggests that it would not be as much of a burden for the dispatchers to check Comp time accounts at the time of the four seasonal bids; and the awarded language is intended to open up scheduled dates far enough in advance to be useful to alternate bidders. (The check period, therefore, is not the seasonal bid which the reserved date falls into, but the next seasonal bidding procedure before that.)

Award: The following language shall be added as Rule 9.12.C.4:

> If a Deck Officer does not have the compensatory time credit in his or her account as of the seasonal bidding process before the seasonal bidding period that includes the date in question, the Deck Officer will be given the option to change the reservation to accrued vacation leave. If the Deck Officer does not have the accrued vacation leave or chooses not to replace the reserved compensation time leave with vacation leave, that reservation shall be extinguished.

ISSUE #10: UNIFORM ALLOWANCE AND LICENSE RENEWAL COSTS

Mates are required to wear uniforms while on duty, and WSF's drive to improve image and customer service has led to greater emphasis on neatness and appearance. The prior agreement provided for a $700 annual allowance for uniform purchase, maintenance and cleaning. The Union proposes to raise that allowance to $1,000 (and to raise the monthly alternative—for employees leaving mid-year—from its current $23.08 up to $38.46). There is no dispute that the $700 figure has been in place for a considerable time while costs, particularly dry cleaning costs, have risen substantially. Employees are not required to submit receipts for the uniform allowance. 66 Mates took the full allowance last year. WSF estimates the biennial cost of the proposed increase to be about $1,200.

There is no dispute about the general policy of paying for uniform purchase and maintenance; and there is no dispute that WSF's recent emphasis on customer service includes more attention to appearance. In light of the modest cost involved here, the record of cost increases over the years supports the Union's proposal.

For the 2009-2011 contract, the Union proposed to increase this benefit from $185 "at five year intervals" years up to $205 and to add on "the cost of TWIC[28] credential renewal." Interest arbitrator Michael Beck turned down both of those proposals. The Union now proposes an increase form $185 up to $225. But again the record fails to show that license renewals, including TWIC, exceed the current allowance, and I cannot award an increase in license renewal costs.

Conclusion: I award the Union's proposed increase in uniform allowance; but there shall be no change in the license renewal cost provision.

Award: Rule 17.02 shall be altered by replacing "seven hundred dollars ($700.00)" with "one thousand dollars ($1,000)."

ISSUE #11: BARGAINING OVER THE SIZE OF THE RELIEF MATE POOL

Some ferry service frequencies change with the seasons, and the size of the required Relief pool changes with the size of the workforce and with the anticipated upcoming training schedule. The exact number of Relief Mates appropriate for a given period has been a subject for periodic negotiations between the parties as memorialized by the definition of "Regular Relief Deck Officer" set out at 2.01.23 of the prior agreement: "*** The number of Regular Relief Deck Officers shall be limited to a specific number to be determined by negotiations and agreement between the Union and the Employer, and subject to review from time to time."

But the 2011 legislature amended RCW 47.64.120(3) to provide that WSF "shall not bargain over the rights of management as identified in RCW 41.80.040" and paragraph (2) of that statute lists as management rights "The employer's budget and the size of the agency workforce...." WSF now argues that the sentence set out just above addresses a prohibited—not merely permissive—matter for bargaining.

Conclusion: The Union contests WSF's characterization of the language of the prior Rule 2.01.23 as a prohibited bargain over the size of the workforce. And the dispute seems to me to require a more careful statement of just what it is that the parties have bargained in the past, rather than an abandonment of this provision. Despite the infelicitous language of the current agreement, the record shows that the parties have never struck a deal about some number of Relief Mates to be included in the workforce come hell or high water. What they have bargained over is the proper *proportion* of Relief Mates to the total size of the bargaining unit in light of the probably personnel needs of the coming season. I therefore award the following alternative language which, I submit, expresses the same bargain without potentially transgressing the legislature's prohibition of bargaining workforce size.

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28. Transportation Worker Identification Credential, required by TSA and the Coast Guard for unescorted access to secured areas of port facilities and vessels.

Award: The second sentence of Rule 20.10.23 shall be changed as follows:

*** ~~The number of Regular Relief Deck Officers~~ **The proportion of Regular Relief Deck Officers to Deck Officers in permanent non-Relief positions** shall be limited to a specific number to be determined by negotiations and agreement between the Union and the Employer, and subject to review from time to time.

Summary

This is not the award that would most assist WSDOT with its chronic and acute budgetary problems. But the total cost of the award—about $346,000 according to WSF's estimates—should be within WSDOT's financial ability. It is also not the award that the Mates deserve in light of the deterioration of their total compensation as compared with similar employees of other west coast ferry operators. But the award honors the policy set out in RCW 47.64.006, which the Agency's proposed flat pay freeze would not; and it at least keeps the Mates up with the real purchasing power of their current compensation and at least slows down the rate of the Agency's falling behind the compensation goal set out as the public policy of the state of Washington.

Respectfully submitted,

Howell L. Lankford
Arbitrator

AWARD SUMMARY

None of the disputed language shall be changed or added to the contract except the following:

- The wage rates set out in Rule 6.01 (without the 3% reduction) shall increase by 3.0% effective July 1, 2014.

- The number for Assignment Pay Factor in Rule 8.06 shall be changed from 0.175 to 0.2 along with the arithmetic consequences of that change.

- Rule 8.06 shall be changed as follows: "*** When dispatched to Friday Harbor, Reliefs will receive ~~a fifty dollar ($50.00) stipend pay~~ **an additional two and one half (2.5) hours pay at base rate** for each day assigned; connected touring watches will be defined as one (1) day for the purpose of this rule...."

- Rule 2.01.05 shall be altered to include the final sentence, "Break-in will be considered training for pay purposes;" and the final paragraph of Rule 8.04 shall be altered to read, "Travel time for training purposes**, including Break-in for all LDOs,** will be computed using Schedule A, and compensated from the terminal closest to the employee's home to the terminal closest to the training location."

- The following language shall be added as Rule 9.12.C.4: "If a Deck Officer does not have the compensatory time credit in his or her account as of the seasonal bidding process before the seasonal bidding period that includes the date in question, the Deck Officer will be given the option to change the reservation to accrued vacation leave. If the Deck Officer does not have the accrued vacation leave or chooses not to replace the reserved compensation time leave with vacation leave, that reservation shall be extinguished."

- Rule 17.02 shall be altered by replacing "seven hundred dollars ($700.00)" with "one thousand dollars ($1,000)."

- The second sentence sentence of Rule 20.10.23 shall be changed as follows: "*** ~~The number of Regular Relief Deck Officers~~ **The proportion of Regular Relief Deck Officers to Deck Officers in permanent non-Relief positions** shall be limited to a specific number to be determined by negotiations and agreement between the Union and the Employer, and subject to review from time to time."

25017-I-12-599

Boudia, Majel (PERC)

From:	hll30@msn.com on behalf of Howell Lankford [howell@naarb.org]
Sent:	Thursday, September 13, 2012 2:02 PM
To:	Rhonda Fenrich; davids1@atg.wa.gov
Cc:	PERC, info - filing (PERC)
Subject:	IOMM&P v. WSF (Mates 2013-2015 IA). PERC Case No. 24903-M-12-07499. Arbitrator's M94.
Attachments:	M94.pdf; M94$.pdf; W9.pdf

Here is the award, my friends (and an invoice and a W-9). Sorry it took until the 30th day, but it's a lot to cover. I would very much like to know whether OFM finds it financially feasible, if either of you remembers to drop me a line. Let me know if either of you needs a hard copy.

Thanks for the opportunity; it was a pleasure working with the pair of you.

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OLYMPIA, WA
SEP 13 2012
PUBLIC EMPLOYMENT
RELATIONS COMMISSION

HL

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