

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, 2013-15 Masters' CBA) :
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I. INTRODUCTION

The parties selected the Arbitrator, sitting alone rather than as the Chair of a panel, to decide issues they were unable to resolve in bargaining for their 2013-15 CBA. The current proceedings are subject to the revised procedures of RCW Ch. 47.64 which specifies the following factors as the guiding principles for an interest arbitrator's award:

In making its determination, the arbitrator or arbitration panel shall be mindful of the legislative purpose under RCW 47.64.005¹ and 47.64.006² 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

¹ “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

² “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).³ In addition, effective July 1, 2013 (which will be the effective date of the CBA before me) the WSF “Masters” (or “Captains” in the language of the statute) have been severed from the former bargaining unit which encompassed all licensed deck officers (i.e. it included Mates as well as Masters). The Masters have now been organized into a “newly-formed captains-only bargaining unit.” RCW 47.64.340. The Union notes that because Mates often “bump up” to act as Masters, the statute has created potential “skimming of bargaining unit work” issues that the Arbitrator must take into account in evaluating some of the parties’ respective proposals.

At a hearing held at WSF headquarters in Seattle on August 7-9, 2012, the parties had full opportunity to present evidence and argument, including the opportunity to cross examine each other’s witnesses. 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.⁴ 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.

³ In interest arbitration proceedings under the prior statute, the Arbitrator was directed to award the “most reasonable” proposal on each discrete issue between the parties, i.e. the statute established what is commonly known as “baseball arbitration.” Under the current statute, by contrast, the Arbitrator is free to devise his or her own “best” solution to each disputed issue, applying the statutory criteria.

⁴ In light of the short statutory deadline for issuance of interest arbitration awards (30 days from the closure of the hearing but in no event later than October 1, 2012), as well as the fact I also heard another interest arbitration proceeding involving WSF and the MEBA bargaining unit (with the same deadline), rather than wait for the reporter to prepare the official transcript, I chose to utilize a rough draft copy provided to me in electronic form. In reading the draft transcript, I found few errors—mostly homonyms—and I am satisfied that my use of a rough transcript has not prejudiced the parties in any way.

II. INTEREST ARBITRATOR’S DISCUSSION AND AWARD

A. Background and General Considerations

1. The Bargaining Unit

The Washington State Ferry System operates 23 vessels carrying both passengers and vehicles on scheduled runs across Puget Sound as well as to the San Juan Islands (including an international run through the Islands to Sydney, B.C.). The Masters at issue in this proceeding are in full command of the vessels and are charged by statute (RCW 47.64.340) with operating the vessel according to WSF performance standards, including managing the other shipboard employees.⁵ Those employees include the other licensed deck officers (Mates, formerly contained in the same bargaining unit), as well as employees that have always been represented by different Unions in different units, e.g. deck hands (Able Bodied Seamen or “A/B’s” and Ordinary Seamen or “O/S’s,” represented by the Inland Boatmen’s Union or “IBU”), and licensed and unlicensed engine room employees (represented by the Marine Engineers Beneficial Association or “MEBA”). WSF Masters and Mates are licensed by the U.S. Coast Guard (“USCG”) to serve as “pilots” to navigate the vessels safely in the waters covered by the WSF system routes, and they have served in that role for approximately fifty years.⁶ It is undisputed that Masters command a multi-million dollar asset of the State which, if operated improperly, could result in potentially catastrophic liability for damage to property and/or loss of life.

⁵ The Union notes that Masters are the only marine employees of the State—and perhaps the only employees of any kind—to have their duties and responsibilities defined by statute. Should there be any deviation from those standards, the Masters fear, they face potential personal liability for the consequences which, for reasons that are not difficult to understand, could be catastrophic.

⁶ In general, each WSF vessel’s Coast Guard Certificate of Inspection (“COI”) requires, as part of the minimum manning standards applicable to vessels sailing in navigable waters, a Master with an appropriate pilot’s license (“pilotage”) for the waters served by WSF, as well as a First Mate with pilotage. *See*, e.g. Exh. U-35 (COI for the *Yakima*). In order to receive the appropriate pilotage, employees must have extensive experience sailing in the prescribed waters, and must then pass a test in which they recreate from memory a series of appropriate navigational charts, including details such as hazards, depths, the location and precise character of navigational aids like buoys and lighthouses, etc.

There are three categories of Masters in the new unit. Each vessel has one designated Staff Master, a position bid on the basis of seniority. The Staff Master is a “first among equals” who coordinates with the regular Masters on other shifts on the same vessel to ensure that maintenance and supply issues are handled appropriately (and who usually accompanies the vessel to a shipyard for repairs), while also acting as one of the regular Masters on a prescribed shift. Relief Masters bid by seniority to become part of a pool available to replace Masters who are unable to complete a scheduled run because of vacation, illness, or other kinds of absences. Relief Masters are required to be familiar with every vessel in the fleet and with every WSF run so as to be able to step in, often on short notice, to act as Master anywhere in the system. They may work any shift on a given day and often must travel long distances to begin their assignments, particularly the more junior Relief Masters who are less able to pick the more desirable available runs (and may be involuntarily assigned by reverse seniority to the runs no one else wants to take).

2. The Statutory Criteria and “Ability to Pay”

In evaluating the parties’ respective proposals, I am required to apply the statutory criteria quoted above. Those criteria, to the extent applicable to any specific issue that has been certified for interest arbitration by the Public Employment Relations Commission (“PERC”), will be discussed below. One of the criteria, however, is applicable to virtually every issue before me, at least to some extent, and thus deserves a detailed discussion at the outset, i.e. “the Department’s ability to pay for the compensation and fringe benefit provisions of a collective bargaining agreement.” RCW 47.64.320(3)(a). With respect to each Union proposal to which a cost may reasonably be attached, the State has argued here that the Department’s current financial condition, as well as the projected finances of the Department for the 2013-15

biennium, do not permit the State to agree to *any* cost items beyond the restoration (“snap-back”) of an agreed 3% across the board pay reduction the members of the unit agreed to take in FY’s 2011-12 in light of the State’s dire financial condition. *See*, Exh. J-1 § 6.03. Because of continuing deficits in projected revenue as compared to projected ferry operations expenses, the State contends it can afford no more in wages and benefits for this unit than the restoration of this temporary 3% wage reduction.

The primary evidence relied upon by the State in support of its argument is the testimony of Erik Hansen, a knowledgeable budget analyst with the Office of Financial Management (“OFM”) who is assigned to WSF as well as to some other “clients.” Mr. Hansen presented a Power Point outlining the sources of Department revenue—the most salient point being that the Department receives most of its funding from federal and State gas taxes⁷ while fare revenue covers a range of 65-70% of the cost of ferry operations from year to year. Hansen also described the limitations the Department faces in moving funds between accounts, e.g. the WSF “capital” account for construction of new vessels and shoreside terminal facilities may not, as a matter of law, be utilized for daily operations of the vessels. On the other hand, the Legislature recently increased some license fees, permits, and other sources of revenue, and in the Legislature’s 2012 Financial Plan, \$3.5M of those increased funds were earmarked for the Major Transportation Accounts (including ferries) in 2011-13 as well as an additional projected \$35M out of \$183.5M⁸

⁷ One difficulty facing the Department is that gas tax revenues are projected to decrease for several reasons. As the price of gas increases, people tend to drive fewer miles—which lowers gas tax revenues because those taxes are assessed at a flat per gallon rate, not as a percentage of the cost. Moreover, increased minimum mpg standards for vehicles, scheduled to rise to 50 mpg by the middle of the next decade, will inevitably reduce the demand for fuel, as will the projected increases in the number of hybrids and plug-in electric vehicles. Even when gas prices decline after a temporary spike, commuters and others have often changed their traveling habits and do not necessarily resume their prior level of driving. As a consequence, gas tax revenues may reasonably be expected to decline over time. Exh. S-5, Slide 10.

⁸ The \$35M allocated to ferry operations for 2013-15 is the largest single allocation within the Legislature’s direction as to how the additional transportation revenue of \$183.5M should be spent. Exh. S-5, Slide 8.

expected to be brought in during the 2013-15 biennium. *See*, Exh. S-5, Slide 13.⁹ Nevertheless, the Ferry Operations Budget is projected to end the current biennium with just \$7.5M as an ending balance and to face a deficit of \$33.2M at the end the 2013-15 biennium. *Id.*

The Union counters with the argument that farebox revenues have been above projections recently, and sources of additional funds seem to be on the horizon, including revenue from selling advertising on the vessels and from various federal grants.¹⁰ But given the still uncertain state of the economy, I hesitate to put too much stock in recent gains in fare revenue. *See*, e.g. Exh. U-29 (noting a 1.2% increase over projected fare revenue for Q2 2012). That is so because the evidence established that comparing the current quarter to the equivalent quarter in the prior year is much less instructive than considering annual year-over-year trends. *See*, e.g. Exh. U-34 (June 2012 Transportation Forecast Summary) (projected revenues are up 2.8% from the prior forecast due to new Legislative fee increases, but a mixed overall economic picture results in a projection that “revenues [will be] slightly higher in the near-term [with] no change in growth rates in the long-term”). Moreover, any increases in revenue may well be inadequate to keep up with rising costs in other areas of WSF operations,¹¹ and taking those projected expenses into

⁹ In the just concluded interest arbitration hearing involving WSF and MEBA, which I conducted subsequent to the hearing in this matter, Mr. Hanson also noted that the Legislature has exempted WSF from the local sales tax on purchases of fuel for the ferries, resulting in a projected savings of \$11M in 2013-15. However, because that evidence was not presented in this hearing—and thus the Union had no opportunity to weigh in on the significance, if any, of that fact—I do not feel it would be appropriate for me to consider that testimony here.

¹⁰ I think it is fair to say, however, that the potential federal grants cited are uncertain, both in whether they will actually happen and in what amounts. Moreover, all of the potential grants identified appear to be limited to *capital* projects and would presumably not be available for operations expenses such as wages and benefits for WSF employees (although conceivably, if awarded those grants could replace unrestricted funds that the Department might have intended to transfer to the Ferry Capital Account). On the other hand, the Legislative Plan projects a deficit of more than \$100M in the Capital Construction Account at the end of 2013-15 biennium, so there is little, if any, evidence that capital grants could actually result in an increase in the operations account for improvements in wages and working conditions.

¹¹ For example, in 2011-13 fuel has accounted for 30.2% of the WSF Operations Budget as of August 2012, and I take arbitral notice of recent substantial increases in the cost of petroleum products.

account, the Legislative Plan anticipates a \$33.2M deficit at the end of the next biennium, even after the Legislature has planned to provide additional funding for transportation accounts of more than \$35M over two successive bienniums.¹²

For all of the above reasons, I take seriously the State's pleas of financial difficulty even though it is clear to me that the situation is not nearly so dire as it was two years ago when the State's General Fund faced projected multi-billion dollar deficits.¹³ When the State faced those conditions, to their credit the marine employee unions (including MMP) agreed to substantial give-backs in order to assist WSF in maintaining a level of service expected by the citizens of the State. For that reason alone, these employees deserve some consideration now in return. In any event, however, the "ability to pay" factor is not the sole factor I should take into account in determining whether disputed items should be included in the CBA. One of the foremost purposes of the statute under which I derive my authority (based on appointment as Arbitrator by the parties) is, to the extent reasonably possible, to ensure that WSF employees receive wages, benefits, and working conditions on a par with comparable employees on the West Coast of the United States and in British Columbia. RCW 47.64.006. Those comparable employers include the Alaska Marine Highway System, BC Ferries, and Black Ball Transport (Port Angeles-Victoria), as well as operators of passenger only vessels (or one small passenger/vehicle ferry), including the Golden Gate Ferry Corporation (San Francisco Bay) and the Marine Divisions of Pierce, King, Skagit, and Whatcom Counties. Taken as a whole, the evidence (discussed in

¹² In one sense, projected deficits are misleading because the Department, by law, may not spend more money than it has been allocated in the budget process. Thus, the ferry operations account cannot end the 2013-15 biennium more than \$30M in the red as projected. On the other hand, the size of the deficit indicates the enormity of the gap in ferry operations funding that must be filled, either with revenue enhancements such as fare increases or higher taxes, reduced ferry operations expenses (say, through reductions in service), and/or diversion of funds currently allocated to other State functions toward ferry operations instead.

¹³ Nevertheless, the most recent budget outlook projects a deficit of \$492M at the end of FY 2015, and that deficit would actually exceed \$1B if the State chose not to utilize the Budget Stabilization Account ("rainy day fund") to help close the gap. Exh. S-26.

greater detail later) establishes that the members of this bargaining unit trail their statutory comparables by a substantial amount in wages and benefits. Consequently, in reaching my decision here, I must take seriously the express statutory purpose of protecting these employees, where reasonably possible, from the erosion of their relative wages and benefits— even during difficult economic times for the State.

In light of the current Legislative Plan’s projection of a substantial deficit in the ferry operations fund for the 2013-15 biennium (as well as deficits in most of the other transportation accounts),¹⁴ I concede that it may be very difficult for the Governor to include in the proposed 2013-15 biennial budget (and for the Legislature to fund) additional wages and/or benefits beyond the 3% snap-back, particularly if the goal is to maintain ferry service at current levels. That is, additional ferry operations revenue would either have to be transferred from other worthy programs with their own constituencies (assuming those funds were not dedicated by law to those other programs)¹⁵ and/or be generated by *additional* increases in fares, taxes, and/or license and permit fees, beyond those enacted in 2012—at a time when many citizens are staunchly opposed to such increases.¹⁶ Much of the financial difficulty of the ferry system, in

¹⁴ The Major Transportation Accounts projected to be in deficit condition at the end of the 2011-13 biennium (four accounts totaling a negative \$180.4M) overwhelm the account balances projected to be in the black (four accounts totaling \$22.8M). *See*, Exh. S-5, Slide 13. Moreover, three of the four “in the black” accounts are projected to have surpluses of \$770K or less (essentially a non-surplus position), and the ending balance in the other—the Highway Safety Account—is projected at just \$21.5M. Thus, only the Highway Safety Account appears to offer any hope of transferring available transportation funds to ferries. But simple arithmetic establishes that even if the Department shifted the *entire* Highway Safety balance to ferry operations, it would not be enough to cover the projected ferry deficit. In addition, the other transportation accounts projecting deficits that the Highway Safety Account surplus might be used to soften include highway maintenance, transit, light rail, and the Washington State Patrol—each of which reflects an important State function in its own right.

¹⁵ For example, a commission appointed by the Governor projects that at least \$3.1B in additional revenue will be required in the next decade to maintain 90% of the State’s highways in “fair or good” condition and to maintain ferry service at current levels. Revenue enhancements enacted by the Legislature in 2012 are projected to generate only \$800M of that total. Thus, other critical areas of the transportation budget will be competing for available funds as well.

¹⁶ I note that the Legislative Plan assumes annual fare increases of 2.5% for FY 2014 and beyond, coming on top of 2.5% increases in FY’s 2010 and 2011, as well as 5.5% in FY 2012. Exh S-5, Slide 12. Thus, the Legislature has not

fact, traces its origin to the voters' passage of I-695 (\$30 car tabs) a decade or so ago, a successful voter initiative that deprived the Department of a significant source of revenue.¹⁷ It may well be that the citizens of Washington, at least collectively, want to have their cake (a robust ferry service) and eat it too (with limited increases in taxes and fares to fund it), but that is the reality WSF faces even if it is unfair that State employees have to bear so much of the resulting burden.

In the end, as several WSF and OFM witnesses testified, the current fiscal climate presents difficult *policy* choices for the State—choices that are inescapably bound to politics. What level of increases of fares, taxes, licenses, etc.—or reductions in WSF service levels—are politically feasible? Which of the many worthy undertakings of the State might be cut back, deferred, or altogether abandoned so that WSF employees might bear less of the burden of keeping the system alive and fiscally healthy at current levels of service?¹⁸ Thankfully, those thorny choices are not mine to make. Instead, the statute contemplates—appropriately, in my view—that ultimately the Governor and the Legislature must determine the ferry wages and benefits that they are willing to fund.¹⁹ But because I am directed by statute to recommend an appropriate compensation level for the employees in this unit in light of the statutory

been averse to reasonable fare increases. Even with these past and assumed future fare increases, however, the ferry operations account is still projected to end the decade with a deficit of \$341.9M. *Id.*, Slide 13.

¹⁷ As a testament to the political implications of taxpayer resistance to higher fees, the Legislature adopted the major components of I-695 even though the Washington Supreme Court had invalidated the initiative on procedural grounds.

¹⁸ To illustrate the dilemma, both candidates for Governor in this election cycle want to increase education funding—certainly an important State goal—and one wants to increase K-12 and higher education funding by \$1.7B by 2015. Both candidates apparently believe they can substantially increase education funding without raising general taxes. Exh. S-26. In that context, it is safe to say that any wage or benefit increases I might award here would face stiff competition for available funds within the State's overall budget.

¹⁹ Under the statutory process, OFM must certify that any wages and benefits included in my award are “financially feasible,” the Governor must agree to include the award in the proposed budget, *see SEIU Healthcare 775NW v. Gregoire*, 229 P.3d 774, 168 Wn.2d 593 (Wash. 2010), and the Legislature must fund it. Thus, the interest arbitration procedures leave the final policy choices where they belong—in the political process.

comparables—*as well as* to take into account the Department’s ability to pay—I cannot refuse to consider at least *some* reasonable increases in wages and benefits for the Masters simply because the State has ample grounds for pleading poverty and/or political difficulty.

B. Wage Issues

Turning to the specific issues before me, then, I begin with those most directly related to wages because those are, by and large, the big ticket items.

1. General Wage Increase

The Union seeks a general wage increase of 12.5% for Staff Master and Master, citing the statutory salary survey conducted by the Hay Group that shows WSF Masters far behind the Masters employed by the statutory comparables. The State has offered only the 3% snap-back, i.e. a return to the wages contained in the 2011-13 Agreement from which the Union agreed to take a temporary 3% wage reduction.

There is no doubt in my mind that these employees deserve a wage increase, and WSF management apparently agrees (*see*, Tr. Vol. 3 at 113). The salary survey shows the Masters to be 6.6-7.3% behind their peers, whether judged by the weighted average base pay or the weighted average of base pay *and* benefits (Exh. J-1 at 20/84), and that deficit increases to 14.2-16.2% if the Alaska cost of living differential (“COLD”) is included in the analysis. *See, Id.* at 18/84.²⁰ The parties dispute whether COLD should be included, as well as the propriety of some of the comparables in terms of how well the positions and working conditions (including benefits) of the other employers match with the WSF positions at issue, but I do not find it necessary to analyze these disputes in any detail. On its face, the salary survey shows that Staff Masters and Masters lag the comparables prescribed in the statute by *at least* 3.6% and very

²⁰ It should be noted that the salary survey reflects calculations based on the wage rates in effect during the temporary 3% salary reduction for the 2011-13 Agreement. Nevertheless, the survey establishes a significant pay differential for these employees, especially if COLD is taken into account.

likely substantially more.²¹ That should come as no surprise, because like virtually all State employees, the Masters have not had a wage increase for a number of years whereas some of the comparable employers have been able to provide wage increases, at least at some level. For example, Masters at the Black Ball Ferry Line recently received a contractual cost of living increase effective April 1, 2012 of 1.7%,²² bringing the base straight time wage for Master under that CBA to \$60.13 as compared to the scheduled base wage for Master under this Agreement of \$45.85 as of June 30, 2013 (with the 3% snap-back). *Cf.* Exh. U-36 to Exh. J-1, Rule 6.01.²³ That is a huge differential, and one that will continue to grow as long as these Masters receive no wage or benefit increases.

Nevertheless, I cannot find that the Department possesses the financial ability to provide a general wage increase of 12.5% at this time. The State has costed that proposal at \$2.235M for the biennium, *see* Exh. S-7, and it is unrealistic to expect that the Department can find additional cuts and/or revenue increases in the current economic climate to fund an expense of that magnitude, especially when considered in light of the Union's other demands here (not to mention the demands that will appropriately be made by *other* Ferry employees in interest arbitration during this cycle). I do find, however, that WSF should provide a wage increase beyond the 3% snap-back it has offered. That proposal, as the State concedes, would merely return these employees to the status quo *before* they agreed to temporarily lower their wages in

²¹ Relief Masters appear to be faring somewhat better. *Id.*

²² As I understand it, the 1.7% wage increase was determined by calculating the percentage increase in the CPI between the first half of 2011 and the second half of the year. Exh. U-36.

²³ The current CBA provides that the wages will snap-back to the contractual rate on June 30, 2013, the day before the contract expires. The parties view the effect of this provision somewhat differently. That is, the State sees its offer to continue the June 30, 2013 rate for the 2013-15 CBA as “sort of” a wage increase—or at least an added cost as compared to 2011-13—whereas the Union contends that is not a genuine “increase” at all, but merely the end of the temporary reduction. While it may be true, as the State argues, that nothing prevented the State from seeking to continue the 3% wage reduction for the next biennium, no one disputes the reality that the temporary wage reduction was already scheduled to end June 30, 2013, and thus that the State's proposal is at best a “status quo” offer.

light of the State's severe financial difficulties. The revenue forecasts suggest, however, that the State's finances have improved somewhat, and even though there is no guarantee they will continue to do so,²⁴ it is important that these employees receive a wage increase in light of the sacrifices they have already made,²⁵ even if it is only a symbolic one to indicate the State's commitment to "just and fair compensation, benefits, and working conditions for ferry system employees." RCW 47.64.006. Therefore, I will award Staff Masters and Masters the 3% increase effective July 1, 2013 as the State has proposed *plus* an additional 1% effective July 1, 2013 and another 1% effective July 1, 2014. I calculate the cost of these increases as roughly \$185K for the biennium beyond the 3% snap-back—no small amount for the State under these fiscal conditions and certainly less than these employees deserve, but an important step in the right direction for these very important and highly skilled employees.²⁶ The cost level of the raises I will award will also leave room for me to consider some of the other compensation and benefits-related improvements requested by the Union.

Award: I award an increase in the Staff Master Basic Wage rate from \$49.16 (including the 3% snap-back) to \$49.66 effective July 1, 2013, and from \$49.66 to \$50.16 effective July 1,

²⁴ The September 6 EFRF report, issued after the close of the hearing in this matter, noted a continuation of the slow improvement in the Washington economy and slight increases over the June revenue projections, but also noted the continuing high "downside risk" from factors outside the State, such as the economic difficulties in Europe and the possibility of slipping back into recession if politicians in Washington, D.C. are unable to agree on ways to avoid the coming "fiscal cliff" in early 2013. See, <http://www.erfc.wa.gov/forecast/documents/ec20120906.pdf>.

²⁵ In addition to the "temporary" 3% wage reduction, the MMP agreed to reduce its overtime rate to 1.5x from the historic 2.0x rate and to make other changes in how overtime is calculated, generating additional savings for WSF, and also agreed to give up guaranteed travel time that had long been part of the contract. These latter give-backs were not temporary and will continue indefinitely unless and until changed in bargaining or interest arbitration. As a result of these wage concessions, although the Masters are still well compensated by ordinary standards, see Exh. S-32, the average total compensation of these employees has declined in each fiscal year from 2010 through 2012. Average Staff Master compensation has decreased by just under \$7,000 per year, whereas average annual Master compensation has decreased by more than \$9,600. *Id.*

²⁶ An additional factor supporting some wage increase beyond the 3% snap-back is that although all State employees had their pay reduced by 3%, virtually all general State employees received additional time off at a level designed to compensate for the salary reduction. The members of this bargaining unit did not. Thus, it is "just and fair" that the Masters receive something more at this point than general State employees who are scheduled to receive a snap-back of their own. Exh. S-26.

2014. I award an increase in the Master Basic Wage Rate from \$45.85 (including the 3% snap-back) to \$46.31 effective July 1, 2013, and from \$46.31 to \$46.78 effective July 1, 2014.

2. Pilot Pay

The Union has also requested a new element of premium pay, at the rate of \$23.64 per hour, in recognition of the service of Masters as Pilots in addition to their duties as Captain. If the State were required to contract with Puget Sound Pilots for this service, says the Union, the cost would be twice as great as the Union's proposal (the State costs the Union's proposal at \$9.412M for the biennium). Moreover, the Union contends, the recent Legislative changes have brought increased levels of statutorily defined responsibility—and a resulting increase in potential *personal* liability—to the Masters without a corresponding *quid-pro-quo*. The State proposes no change, noting that Masters have always been required to have pilotage in order to hold their positions.

The cost of the proposal is clearly beyond the Department's ability to pay and would have to be denied on that basis alone. It also seems to me, however, that this argument is more appropriately considered in the context of the basic wage rate than in a premium pay form, especially now that the Captains have been severed into a separate bargaining unit. That is, all Masters must have—and always have been required to have—the appropriate pilotage, and that is a factor that should bear on the level of just and fair compensation for a position requiring that kind of specialized skill. As of now, however, I find the improvements in the Basic Wage Rates awarded above are as far as I can go.

Award: The Union's proposal for Pilot Pay is not awarded.

3. Involuntary Overtime at 2.0x Rate

As already noted, as part of the coalition bargaining between the State and the marine employees' unions which led to the temporary 3% wage reduction for 2011-13, the Union also agreed to reduce its historical 2.0x overtime rate to 1.5x and to make other changes that reduced overtime expense to WSF. The Union now proposes that the 2.0x rate be reinstated for "involuntary overtime," which the Union contends is more of a burden on the employee than pre-planned overtime, especially because the employee generally has no opportunity to leave the vessel, e.g. when the vessel is running off schedule late. The Union also contends that an increased involuntary overtime rate would provide an incentive for WSF to schedule its runs so as to avoid the necessity of paying overtime. The State counters that the Union just recently agreed to this reduction in the overtime rate and is now trying to erode the deal. The State costs this proposal at approximately \$16K for the biennium.

To the extent the Union relies on an incentive to schedule the ferries so as to avoid unanticipated overtime, I find that the statistics suggest that a very small percentage of WSF runs fail to meet the on time performance standards—recently, most are in the high nineties in terms of on-time percentage, and several reach the 100% level. In addition, the vast majority of the late runs are caused by circumstances beyond WSF control, such as passengers misplacing their car keys, having to wait for an ambulance in an emergency, construction delays, and similar causes. Consequently, it is difficult for me to find that the Union's proposal would add any significant incentive for WSF to improve its on-time performance. Rather, on-time performance is *already* an important performance standard for WSF simply as a matter of customer service.

I recognize that this proposal is a small cost item in the grand scheme of things (roughly \$16K over two years), and in a different economic climate, I might be inclined to grant it even

though the Union only recently agreed to the change Under the current circumstances, however, I prefer to reserve these funds for other improvements that I consider to be a higher priority. For those reasons, I will not award the Union’s proposal at this time.

Award: The Union’s proposal for payment of involuntary overtime at 2.0x is not awarded.

4. Friday Harbor Relief Stipend

Next, the Union proposes that the current \$50.00 per day “stipend” for Relief Masters dispatched to Friday Harbor to work the Inter-Island run be replaced by travel pay of 2.5 hours at the Relief Master hourly rate of pay.²⁷ WSF costs the proposal at \$23,314 for the biennium and proposes no change in the current language (again, noting that this language reflects a recently-bargained change).

The evidence established that it can take up to five hours round trip for a Relief Master to travel to and from Anacortes to Friday Harbor to work the Inter-Island run. Historically, Reliefs received full travel time and mileage, but in recent years travel time has been capped at lesser amounts, and eventually Relief travel time was eliminated altogether.²⁸ Reliefs traveling to Friday Harbor, however, receive a \$50.00 per day “stipend,” similar to State per diem, in

²⁷ As background for this discussion of one of the elements of Relief Master compensation, I note that Relief Masters currently receive “Assignment Pay” of 17.5% above the basic Master wage for hours “actually worked,” i.e. vacation, sick leave, and comp time are paid at the base wage rate. The Union has proposed that the Assignment Pay premium be increased to 22.5% and that the premium rate apply to all compensated hours. I will deal with those issues in turn, but overall compensation is an appropriate consideration, and consequently the other elements of Relief Master Pay must be kept in mind in evaluating this specific proposal.

²⁸ To provide additional context for the elimination of most travel pay, there was considerable testimony at the hearing about public relations difficulties for WSF stemming from a television news investigation into “abuses” of travel time by WSF employees, although the most egregious example was a member of IBU, not MMP. Apparently, although he or she lived at the far end of the system, the IBU employee regularly bid the Inter-Island run in Friday Harbor and thus received eight hours of daily travel time in addition to being paid for eight hours of work. Consequently, WSF has been very sensitive to issues of travel time in terms of potential adverse publicity that could undermine faith in the system as a “faithful steward of public funds,” and in several different situations, WSF has attempted to move away from “travel time” to different methods of compensating employees—such as the “Assignment Pay” premium for Reliefs and the added “stipend” for Reliefs assigned to the Inter-Island run.

addition to the Assignment Pay premium. The Union notes that the current system imposes a hardship on Reliefs because they are not fairly compensated for their travel time to Friday Harbor. In addition, because junior Relief Masters have no choice but to accept those Relief assignments if the more senior Reliefs have passed on the work, the system imposes a disincentive for junior Masters to bid for Relief positions.

I agree with the Union that some improvement is necessary in order to lessen the disincentive for junior Masters to bid for Relief positions. The return to the “travel pay” concept advanced by the Union, however, carries a risk of reopening issues that have plagued the system in recent years and have threatened to undermine public confidence in WSF. A more appropriate approach, in my view, is to increase the stipend. Therefore, I will award an increase in the stipend to \$100.00 per day to lessen the impact of the time and difficulty involved in getting to Friday Harbor to work a Relief shift. WSF dispatch records show that there were 118 such shifts in FY 2012, although the Union disputes that number as too high. In any event, even if WSF is correct, raising the stipend to \$100.00 should only increase costs approximately \$13,800 in 2013-15. *See*, Exh. S-10 (calculating the cost of the stipend and employer’s share of benefits as \$6,894 per year at \$50.00 per day, which would double at the rate I am awarding).

Award: I award an increase in the Friday Harbor Relief stipend to \$100.00 per day.

5. Travel Time and Mileage For Break-In Training

The Union proposes that Rule 2.01.05, defining “break-in,” be amended to provide that “Break-in will be considered training for pay purposes.” The parties agree that break-in is the procedure “by which the Employer uniformly allows all Deck Officers in a particular classification to obtain additional local knowledge of a route or routes operated by WSF, and of the vessel or vessels assigned to such route or routes.” Essentially, a Master “shadows” the

assigned deck officers of the vessel and may also tour other areas, such as the engine room, to gain sufficient familiarity with the vessel and with the run to enable the Master to serve competently as a Relief when necessary. The purpose of the proposed amendment to treat break-in as “training,” according to the Union, is to remedy a situation in which WSF has recently denied travel time and mileage to at least one Relief Master, Capt. Andersen, who wanted to break-in on a route he had not worked for some time (Pt. Defiance-Tahlequah) and on a new vessel (the 64-car *Chetzemoka*) with which he was not yet familiar. The issue only applies to Relief Masters because regular Masters receive break-in training at their home ports, and consequently there is no compensable travel involved. I also understand that a grievance is pending on this very subject, although an arbiter has not yet been selected.²⁹ WSF proposes no change in the language, even though the estimated cost of the change, based on the number of hours involved in FY 2012, would amount to less than \$1,000 for the 2013-15 biennium. *See*, Exh. S-11.

It is difficult for me to understand why break-in should not be considered “training” appropriately resulting in travel time and mileage. Indeed, the evidence established that the Master involved in the pending grievance had been paid travel time and mileage for break-in on several occasions. He complained to Port Captain Bill Michael when he was denied pay for break-in on a subsequent occasion, and Capt. Michael informed him that the failure to pay travel time had been “a mistake.” Capt. Michael then authorized the pay retroactively. Thereafter, however, WSF took the position that travel time and mileage were not required by the CBA in these situations—apparently on the basis that the Relief Master Assignment Pay differential

²⁹ Technically, that grievance, if decided, would constitute an interpretation of the CBA covering the former bargaining unit, i.e. the one that contains both Masters and Mates. But there is little reason for me to believe that a decision in the pending grievance would not be treated by the parties—or if necessary, by a future grievance arbiter—as a binding resolution of the issue.

provided appropriate compensation for travel for break-in and familiarization. Consistent with that view, WSF suggested at the hearing that it should not have to pay Relief Masters for “commuting” to work because travel is inherent in the position. In addition, argues WSF, Reliefs may obviate most of the need for break-in of this kind by utilizing their seniority to select all routes during the year, thereby remaining familiar with each of them and their usual vessels.³⁰ Be that as it may, it seems to me that a Relief Master who needs break-in—whether he or she should or not—is undertaking a form of skill enhancement that is indistinguishable from other forms of hands-on “training” for which WSF routinely pays travel time and mileage.

Given the circumstances, and the relatively insignificant cost associated with this item,³¹ I will award the Union’s proposal to change the language of Rule 2.01.05.

Award: I award that the following sentence shall be added to Rule 2.01.05: “Break-in will be considered training for pay purposes.”

6. Assignment Pay

The Union presents two proposals with respect to Assignment Pay—first, that the Assignment Pay premium for Relief Masters be increased from 17.5% to 22.5%, and second, that the Assignment Pay premium be applied to *all* compensated hours, not just hours “actually worked.” WSF proposes no change.

As noted, the parties negotiated Assignment Pay as a replacement for the travel time that had caused significant adverse publicity in early 2011.³² WSF wanted to get rid of the concept of travel time altogether, but was willing, as something of a substitute, to increase the pay rate for

³⁰ That argument does not take account of *new vessel familiarization*, however, which was involved in at least one of the incidents discussed at the hearing.

³¹ It would appear to me, in fact, that the projected biennial cost of the proposed change would in all likelihood be less than the cost of arbitrating the issue.

³² I reiterate, however, that the most egregious alleged travel pay “abuses” were confined to IBU, not MMP.

Relief Masters because of their specialized skills and knowledge, i.e. their ability to serve as a Master on short-notice on any run and on any vessel in the system. The parties agreed to specific language in Rule 8.06.01 outlining the precise nature of these additional areas of skill and knowledge beyond those of a regular Master and for which the State was willing to pay an Assignment Pay premium.

The Union now contends, however, that the 17.5% premium has proved insufficient to replace the lost travel time, i.e. it equates to just 1.4 hours of travel for those working an 8-hour shift or 1.75 hours of travel for 10-hour shifts, whereas the *actual* average travel time is 2.4 hours. Exh. U-17 (last page). Exh. U-14. Increasing the premium to 22.5% would raise the equivalencies to 1.8 to 2.25 hours travel time per day, Exh. U-14. Similar to its arguments in support of an increased stipend for Friday Harbor Reliefs, the Union argues that the inadequate compensation for travel in Assignment Pay at the 17.5% level provides a disincentive for junior Masters to bid on Relief Master positions because they anticipate they will have to do a lot of traveling for which they will not be fairly compensated. That factor, says the Union, justifies an increase in the percentage to bring Assignment Pay and actual travel time more in line. WSF is adamant that it does not pay and will not pay travel time and contends that it made clear to the Union during the coalition bargaining that it would steadfastly refuse to simply dress-up travel time in new clothes and continue business as usual. Moreover, WSF objects to the cost of the proposal to increase the percentage, which it calculates as approximately \$146K for 2013-15. Exh. S-7.

The Union's second Assignment Pay issue involves a proposal to pay the Assignment Pay premium on all compensated hours. When the parties incorporated Assignment Pay into their CBA, they expressly agreed that

Assignment pay will be paid for hours actually worked regardless of location. This assignment pay will not apply to vacation leave, sick leave, and compensatory time.

Rule 8.06. The Union now proposes that the above language be deleted and replaced with the following:

Assignment wage is based on current hourly base rates and is applicable to Vacation, Compensatory Time, Sick Leave.

Exh. U-1 at 11. WSF also opposes this proposed change, not only because of cost (estimated to be just over \$100K for 2013-15) but also because the proposal is inconsistent with its view of Assignment Pay as applicable only when an employee is actually utilizing the relevant enhanced skills and abilities. The Union counters with an internal comparability argument, i.e. that Staff Masters and Chief Engineers (MEBA) receive the premium associated with their positions for *all* compensated hours, not just for hours actually worked.

The combined cost of these two Union Assignment Pay proposals is estimated to be roughly \$250K over two years, and it is clear to me that WSF cannot afford both, however much the Relief employees might deserve improvements in compensation. I find, however, that internal comparability—as well as logic—each strongly support the second proposal and provide an opportunity to grant a reasonable increase in compensation to the Reliefs within a cost range that the Department might be able to afford. That is, most employees receive comp time, vacation, and sick leave at the same rate as if they had actually worked the hours. That is certainly true of the Staff Masters, as the Union points out. And I find that it is appropriate for Relief Masters to be treated the same in this respect as their colleagues. For one thing, Reliefs earn vacation and comp time on the basis of hours worked that *are* subject to the premium. Because these benefits are based on work that appropriately justifies the premium of Assignment Pay, it is logical and fair for *benefits* attributable to those hours to be valued the same. In my

view, despite the State's fears, that approach does not constitute paying a "premium" without receiving the employee's special expertise, it merely measures a present benefit according to the *prior exercise* of that enhanced skill and experience.

Therefore, I will deny the Union's proposal for an increase in the Assignment Pay premium from 17.5% to 22.5%, but I will award the proposal that the Assignment Pay rate apply to vacation, compensatory time, and sick leave. In recognition of the Department's limited financial resources to meet the cost of this proposal (\$100K for the biennium), however, I will delay the effective date of this change until July 1, 2014, thus reducing the projected biennial cost to just over \$50K. *See*, Exh. S-13.

Award: The Union's proposal to increase Assignment Pay from 17.5% to 22.5% is not awarded. The Union's proposal to apply Assignment Pay to vacation, comp time, and sick leave is awarded with an effective date of July 1, 2014, i.e. I award the following language in Rule 8.06.01: "Assignment wage is based on current hourly base rates and effective July 1, 2014 will be applicable to Vacation, Compensatory Time, and Sick Leave." I also award the following parallel language in Rule 12.05: "Effective July 1, 2014, Relief Deck Officers shall receive Relief Master's hourly rate of pay for all compensable hours, including vacation, but only while actually working a relief position."

C. Benefits Issues

1. Vacation Accrual

The Union proposes a substantial increase in vacation accrual rates comparable to the rates awarded to the IBU unit years ago by Arbiter Beck. WSF opposes the proposal because it has long sought to maintain vacation accruals in the marine employee units (other than the IBU unit) that are in line with the vacation accruals applicable to general State employees. In

addition, the State notes that it cannot afford the projected cost for the 2013-15 biennium of approximately \$616.7M.³³

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. U-38 (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. S-19. 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

³³ The Union contends, however, that the State's cost projections are inaccurate because they include the cost of replacing Relief Masters on vacation, but Reliefs are not in fact replaced when they are off.

proposal. Exh. U-2 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. U3 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,³⁴ 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 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.

The Union's vacation proposal is now back before me for the 2013-15 CBA with one important change. That is, the Union suggests that the present lower rates of accrual should continue to apply to employees hired on or after June 30, 2011. Thus, the Union has responded to the State's concerns about disparities between marine employees' vacation benefits and those of general State employees by proposing a two-tiered vacation accrual that could enable the State, at some point in the future (as the current more senior employees leave the unit by resignation or retirement), to reach its goal of rough parity between this bargaining unit and other State employees. The Union also contends that its proposal is supported by the fact that the continuing difference between IBU and MMP accrual rates constitutes a disincentive for IBU members to

³⁴ Although the reason the Arbiter believed the wage increase would "never have occurred" is not apparent on the face of his award, I presume he found that the OFM's reasoning that Arbiter Beck's vacation award was financially infeasible would have applied with equal force to an equivalent wage increase.

procure licenses and pilotage in order to promote to deck officer, i.e. some employees prefer to remain in the IBU unit and to receive more paid time off.

After carefully considering the matter, I find that I cannot award the Union's vacation proposal this time. I reluctantly reach that conclusion for at least three reasons. First and foremost, like Arbiter Williams, I find that the proposal is simply too expensive given the present economic conditions. Even if the State's cost projections overstate the expense of the benefit during 2013-15, it appears to me to represent a cost of at least \$500K during the coming biennium, a cost the State can ill afford at this time. In addition, it is difficult for me to give full credit this time to the Union's internal comparability argument. That is so because I awarded a form of this vacation proposal once, it was then funded by the Legislature, and the increased accrual rates actually went into effect in 2006. Nevertheless, the membership voted to "sell" that increased vacation benefit for a 5% wage increase and one-time lump sum payments to employees. The vote may have been close, and no doubt in light of subsequent events there is now some "buyer's remorse," but the membership having made a choice to bargain away its vacation improvements for more immediate financial gain, the Union's internal comparability arguments lack the persuasive power they held in late 2005. Nor can I find that the internal comparability arguments were reinvigorated when the Union proposed to accept no wage increase before Arbiter Beck in 2008 in order to achieve increased vacation accruals, a proposal Arbiter Beck in fact accepted. That precise argument was made to Arbiter Williams in 2010, as noted above, and he found he could not accept it. In the absence of demonstrably defective reasoning or substantially changed circumstances, neither of which is present here, I am not in

the habit of second-guessing my colleagues on important matters between the parties that have previously been decided after a full and fair hearing.³⁵

For all of the foregoing reasons, I will not award the vacation accrual increase proposed by the Union.

Award: The Union's proposed vacation accrual improvements are not awarded.

2. Uniform Allowance Increase

The Union seeks an increase in the uniform allowance set forth in Rule 17.02 (a stipend for the purchase and cleaning of uniforms required to be worn at all times while on duty) from \$700 per year to \$1000 per year. The Union asserts (and the State has not disputed) that the allowance has not been increased for "many years," although the costs have increased. Exhs. U-20 and 21. The State has not made any specific arguments against the proposal other than cost, which it calculates at \$44.4K for the biennium. Exh S-7.

The evidence before me does not establish precisely how long the \$700.00 annual allowance has been in effect, nor does the record contain any detailed analysis of the actual increases in the cost over time of purchasing and maintaining the appropriate uniform. I therefore find it difficult to award the roughly 43% increase requested by the Union, while I nonetheless agree that some increase is appropriate. I will therefore award an increase in the annual allowance of \$100.00 to bring the total annual allowance to \$800.00, an increase of 14.3%. That increase is surely justified by CPI increases over the last few years. I calculate the biennial cost to the State at \$14,800, a rather minimal amount that I find the State should be able to afford. I

³⁵ 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.

also will award a corresponding increase in the accrued uniform allowance paid to deck officers ceasing employment during the year. Consequently, the accrued uniform allowance will be increased to \$30.77 for each two week period (\$800.00 divided by 26 two-week pay periods in a year), retroactively, as provided in Rule 17.03.

Award: I award an increase in the annual uniform allowance set forth in Rule 17.02 from \$700.00 to \$800.00, and an equivalent increase in the Rule 17.03 accrued uniform allowance for Masters leaving WSF employment during the year to \$30.77 for each two week period, retroactively.

3. TWIC and MMC License Renewal Increase

The Union proposes that the WSF contribution to the cost of renewing the Masters' Merchant Mariner Credential ("MMC") and Transportation Workers Identification Card ("TWIC"), renewals which are required every five years, be increased from \$185.00 to \$225.00. The biennial cost to the State of this proposal is estimated to be \$1,184. Exh. S-16.

Before Arbiter Williams in 2010, the Union proposed that WSF pay the *entire* cost of the five-year TWIC renewal (amounting to \$129.75), but he rejected that proposal on the basis that TWIC is the equivalent of a CDL or similar credential required to be employed in an industry, the cost of which is customarily borne by the employee. Exh. U-3 at 87. The proposal before me is different, however, i.e. it would not require WSF to bear the entire cost of TWIC, but rather would simply increase WSF's *share* of the cost of the renewal of the two credentials.³⁶ Given that the biennial cost to the State is extremely limited, i.e. \$1,184, I will award the Union's proposed changes to Rule 17.04.

³⁶ The amount currently paid by WSF toward TWIC and MMC (\$185.00) exceeds the cost of MMC alone (\$140.00). Exh. S-16. Thus, WSF already contributes to the cost of TWIC renewal.

Award: I award an increase in the WSF contribution toward the cost of license and document renewal as set forth in Rule 17.04 from \$185.00 to \$225.00.

D. Working Conditions Issues

1. Scheduling of Compensatory Time Off

WSF has proposed that Masters not be allowed to schedule comp time, scheduling which occurs up to one year in advance, unless they already have sufficient comp time on the books to cover the request. The State points to difficulties and extra expense if an employee's requested comp time must be canceled at the last minute. That is so because WSF will have already scheduled a Relief Master to cover the shift and will consequently need to pay two Masters even if only one turned out to be necessary. WSF concedes, however, that this issue has only been a problem in the past with one employee, and management has handled the problem with that employee individually. Nevertheless, the Union has advanced a counterproposal, namely that "compensatory time must be accrued *prior to the relief selection process*" (emphasis supplied), which generally occurs two weeks or more prior to the shift. Under that approach, says the Union, the State would incur no loss because if the employee did not have sufficient accrued leave time at that point, WSF could deny the leave without having to schedule a Relief unnecessarily. The State objects to the administrative burden of the Union's proposed procedure.

I will award the Union's proposal with respect to Rule 9.12(C)(4). I do not find the State's "administrative burden" argument to be persuasive. Under the State's own proposal, management (or more likely, perhaps, an administrative designee) would have to check the employee's leave bank when the comp time was scheduled, up to a year in advance. There is no guarantee, however, that the employee will *still* have that leave time available when the actual leave day(s) approached. It seems to me, then, that under the State's proposal, leave balances

would have to be checked *twice*, whereas under the Union’s proposal, balances would only need to be checked *once*.³⁷ Moreover, the extra cost to the State, if any, would be minimal at best. That is so because if an employee failed to accrue sufficient time off to take a scheduled day of comp time (or used up his or her time in the interim), the leave would be canceled, and another employee on the waiting list could be scheduled for a day off instead. If no one on the waiting list wanted the day, on the other hand, no Relief Master would need to be scheduled. I also note that the Union’s proposal dovetails with the parties’ agreement that scheduled comp time must be canceled no later than the initial selection of Reliefs for the work period in question. Rule 9.12(D). That same deadline makes sense for accruing sufficient comp time to cover scheduled time off. For these reasons, I award the Union’s proposal.

Award: I award a change in the Rule 9.12(C)(4) language to read as follows:

“Compensatory time must be accrued prior to the relief selection process.”

2. Negotiating the Number of Relief Masters

The current language of Rule 2.01.23 (which apparently will become Rule 2.01.25 in the new CBA) requires that WSF negotiate with the Union over the number of Regular Relief Deck Officers, a requirement the State seeks to eliminate as inconsistent with the statutory prohibition of bargaining over the “management rights” set forth in RCW 41.80.040. *See*, RCW 47.64.120. According to the Union, maintaining this provision is particularly important now in light of the Legislature’s severing of the Masters from the Mates into separate bargaining units. That is so, says the Union, because of interchange between the Mate and Master classifications, i.e. Mates regularly step up to serve as Masters, particularly at the height of the summer season, and

³⁷ There was some suggestion in the testimony that management knows who the employees are who tend to run out of comp time, and thus not every request requires that leave balances be checked at the time of the request. Assuming that is so, however, I presume that the same would be true under the procedure proposed by the Union, i.e. there would be no need to check the balances of employees known to have accrued substantial time off.

therefore the number of Regular Relief Masters impacts the extent to which Mates may perform the work of this now-separate Masters bargaining unit. The issue presented is one of “deployment,” not the size or structure of the workforce, argues the Union, and thus the statutory prohibitions on bargaining do not apply. WSF counters that any change in the number of Relief Masters necessarily impacts the size of the WSF workforce—an increase in the number, even by promotion, would require adding to the workforce, says WSF, while decreasing the number inevitably means that someone down the line will lose a job. *See*, Tr. Vol. 3 at 103-04. If the parties were unable to agree on the number, the State points out, the issue would presumably go to interest arbitration, and “that is not what should happen with a management right in determining what the size of the agency workforce is, even if it’s only for a particular classification.” *Id.*

The issue, as framed by the State, encompasses delicate questions of the relationship between management rights and the protection of bargaining unit members from unilateral agency decisions that result in the “skimming” of bargaining unit work—matters that fall squarely within the specialized jurisdiction and expertise of the Public Employment Relations Commission (“PERC”). *See*, e.g. *University of Washington*, Decision 11075 (PSRA, 2011) (available online at <http://www.perc.wa.gov/databases/ulp/11075.htm>). For several reasons, these are legal issues over which an interest arbitrator should be very wary of asserting jurisdiction. For example, if I were to interpret the scope of the statutory management rights—one way or the other in this particular case—I run the risk of usurping PERC’s authority and/or creating a decision inconsistent with the law as understood and applied by the agency designated by the Legislature as the primary forum in which those issues should be determined. In any event, evaluated purely as a matter of “harmonious and cooperative relationships between the ferry

system and its employees,” RCW 47.64.006, I would be inclined to deny the State’s proposal,³⁸ and because that is the nature of my authority as interest arbitrator, that is what I will do here.³⁹

Award: The State’s proposed modification of Rule 2.01.23 (Rule 2.01.25 in the new CBA) is not awarded.

III. CONCLUSION

With respect to the issues certified for interest arbitration, I hereby adopt the parties’ stipulations as stated on the record at the outset of the hearing, and with respect to the issues that were still matters of dispute, 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 2013-15 Agreement that the parties are unable to resolve on their own.

Dated this 11th day of September, 2012



Michael E. Cavanaugh, J.D.
Interest Arbitrator

³⁸ For one thing, MMP Regional Representative Tim Saffle testified that management and the Union have always cooperated in determining the “right” number of Reliefs, and he sees no reason that will not continue in the future, even if the ferry system faces difficult times such as reductions in service. The State presented no evidence suggesting any reason to doubt Capt. Saffle’s commitment on that score.

³⁹ By leaving the contract language as is, I express no opinion on WSF’s statutory arguments, whatever they might be, as WSF may choose to present them in an appropriate forum should the occasion arise.