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

MARINE ENGINEERS BENEFICIAL ASSOCIATION, and WASHINGTON STATE FERRIES, (Interest Arbitration, 2019-21 Licensed and Unlicensed CBA's)	:	INTEREST ARBITRATOR'S DECISION AND AWARDS PERC No. 130850-I-18 (Unlicensed) PERC No. 130851-I-18 (Licensed)

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I. INTRODUCTION

The parties selected the Arbitrator, sitting alone rather than as the Chair of a panel, to resolve issues that remained at impasse at the conclusion of their bargaining.[1] There are two 2019-21 CBA's involved, separate (but very similar) CBA's covering licensed and unlicensed engine room employees of the Washington State Ferries ("WSF"). The current proceedings are

[1] As will be described in a moment, however, the parties continued to discuss several of the items at issue, even after the hearing commenced, and they were successful in narrowing the issues to be decided by the Arbitrator.

subject to the 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 47.64.005[2] and 47.64.006[3] and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:
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> (a) The financial ability of the department to pay for the compensation and fringe benefit provisions of a collective bargaining agreement;
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> (b) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;
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> (c) The constitutional and statutory authority of the employer;
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> (d) Stipulations of the parties;
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> (e) The results of the salary survey as required in RCW 47.64.170(8);
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> (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;
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> (g) Changes in any of the foregoing circumstances during the pendency of the proceedings;
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> (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;

[2] "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.

[3] "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.

> (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.

RCW 47.64.320(3).

At a hearing held at WSF headquarters in Seattle on August 27-29, 2018, 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 record and the parties' presentations, I am now prepared to render the following interest arbitration Awards.

II. INTEREST ARBITRATOR'S DISCUSSION AND AWARDS

A. Background and General Considerations

1. The Bargaining Units

The Washington State Ferry System operates 23 vessels carrying both passengers and vehicles on scheduled runs across Puget Sound and the San Juan Islands (including an international run through the Islands to Sidney, B.C.). The Union represents the shipboard engine department employees in two separate bargaining units. One unit includes Coast Guard licensed employees, i.e. Staff Chief Engineers, Alternate Staff Chief Engineers, Chief Engineers,

[4] In light of the short statutory deadline for issuance of interest arbitration awards (30 days from the closure of the hearing but not later than September 30, 2018), rather than wait for the reporter to prepare an official transcript, I used a rough draft copy provided to me in electronic form. In the course of reading the rough transcript, I found a handful of errors, but none that affected the substance of the testimony as I recalled it.

Assistant Engineers, Relief Chief Engineers, and Relief Assistant Engineers. *See*, Exh. U-19 at 10 (2017-19 CBA, Section 6). The other unit consists of unlicensed Yard Oilers, Oilers, Relief Oilers, Yard Wipers, Wipers, Relief Yard Oilers, Wipers (temporary), and Wipers (who have worked fewer than 1,044 straight time hours with the Employer). *See*, Exh. U-20 at 21 (2017-19 CBA, Rule 19). The employees in these two units are collectively responsible for the operation and shipboard maintenance of all of the mechanical and electrical systems of the vessels.

2. Issues Certified for Interest Arbitration

The Executive Director of PERC, Mike Sellars, initially certified a total of eleven issues for interest arbitration under the Licensed CBA, and twelve additional issues under the Unlicensed Agreement. *See*, Exh. U-1 (separate letters from Director Sellars dated August 21, 2018). Shortly before the hearing, WSF filed unfair labor practice complaints with PERC that resulted in "Suspension Letters" from Director Sellars precluding interest arbitration, pending final resolution of the ulp charges, of some of the previously certified issues. *See*, Sellars Letters dated August 28, 2018. In addition, the parties continued to discuss certain certified issues notwithstanding the pendency of the interest arbitration hearing, and they successfully reached TA's on some of those.[5] The parties also decided to withdraw a few of the issues that had been certified. As a result, the issues before me at present are limited to the following:

Licensed CBA:

Section 5 – Discipline and Discharge

Section 6 – Wages and Overtime, etc.

[5] For example, as late in the process as the time set aside for oral closings, the parties were still negotiating over proposals—such as the Union's proposed changes to Rule 12 (On Call Employees). That issue actually settled during a break following the State's closing argument and before the Union had offered its final thoughts. I commend the parties for their willingness to continue to seek agreement on disputed issues well into the actual interest arbitration itself.

Unlicensed CBA:

Rule 7 – Crew Requirements

Rule 19 – Classification and Rates of Pay

Rule 28 – Standard Dress

B. Discussion and Interest Arbitrator's Awards

Before turning to the individual issues to be decided, I note a significant difference in the State's financial outlook as compared to interest arbitration proceedings in the past decade or so between the Ferry System and the shipboard unions. Specifically, the current state of the economy in Washington is considered by many experts to be strongest in the nation, and revenue projections seem to be expanding with every new official forecast. Gone, for the moment at least, are times when the State expected shipboard unions to accept little or nothing in the way of wage and benefit improvements—and in some years, the unions were even asked for, and yielded, "give-backs" to the State. Thus, the "ability to pay" statutory criterion,[6] which for years has been at the forefront of interest arbitrators' analyses on virtually every issue with a monetary dimension, will no longer be quite so dominant in my analysis.

[6] "Ability to pay," as I have previously observed in WSF interest arbitrations, is something of a misnomer in this context. There is little doubt the State has the ability to grant substantial wage increases to WSF employees, within reason. That is especially so in light of a robust economy that is resulting in higher revenues, both in the General Fund and Transportation Budgets. But increased revenues also lead to demands from other State stakeholders, stakeholders who have themselves deferred wishes and worthwhile projects in light of the State's financial challenges since the financial crash of 2008-09. In addition, continued efforts to implement the *McCleary* decision on the funding of schools, as well as the impact—specifically on the Transportation Budget—of responding to the "Culverts" decisions of the federal courts (requiring, as I understand it, the replacement of numerous highway culverts to aid in the restoration of salmon runs) have resulted in significant budgetary challenges. More recently, the State is also dealing with the loss of the federal certification of Western State Hospital—and thus the loss of federal funds. All of these State needs add additional pressures on State finances—and thus additional layers to the "financial responsibility" aspect of the issues before me. How these competing demands on improved State financial resources ultimately get resolved is a political question for OFM, the Governor, and the Legislature. But while severe constraints on "financial responsibility" in the dark years of the last decade were often reasonably clear in interest arbitration, the current climate allows an interest arbitrator, in executing his or her role in the process, to take greater account of the other important statutory criteria—such as the wages and working conditions of the statutory comparator ferry systems under RCW 47.64.320(3)(f), the cost of living, and similar traditional factors.

Turning to the issues, I will first consider the non-wage issues under the two CBA's, and then I will assess together the parties' respective wage proposals for both the Licensed and Unlicensed units.

1. Section 5 – Discipline and Discharge

Section 5 of the Licensed Agreement provides that video monitoring and other security equipment, such as key box devices,

> shall not be used to initiate or pursue any disciplinary action against an Engineering Officer, except in cases involving criminal activity or reportable Marine incidents, or accidents.

WSF proposes to add the words "breach of security" before "or reportable Marine incidents," i.e. to add "security breaches" to the list of exceptions to the prohibition of utilizing security data for disciplinary purposes. *See*, Employer Proposal dated July 12, 2018. In support of the proposal, Employer witnesses described incidents, for example, in which security doors had been taped open while employees were engaged in tasks requiring repeated passages through the doors—apparently it was more convenient not to have to key a passcode into the door each time. The concern, of course, is that procedures designed to protect the vessels against a possible terrorist attack—required by the Coast Guard—are not always being followed.

Members of the Licensed unit, of course, are vetted by the Coast Guard, and thus are highly unlikely, as the Union has persuasively argued, to be terrorists. But, in my view, that is not the point. The issue is whether lax compliance with security procedures could leave an opening for others who might be looking for an opportunity to engage in terrorism. While that, too, may be highly unlikely, the potentially catastrophic consequences of such an incident if it did occur warrant giving WSF tools to ensure that security procedures are being followed to the greatest extent reasonably possible.

While I recognize the concerns of the unit members about adding a basis for potential discipline, I note that the parties have expressly agreed that any discipline under the Agreement must meet just cause standards. Thus, breaches of security would be unlikely to lead to significant discipline or to discharge except in egregious or repeated instances of failure to comply with security procedures.

I will award the WSF proposal on Section 5.

AWARD:

I award the WSF proposal on Section 5 dated July 12, 2018.

2. Rule 7 – Crew Requirements

WSF proposes the elimination of the unlicensed Yard Oiler position and/or rate of pay as well as to add instead in Rule 19 new "shoreside maintenance" positions and/or rates of pay for "Oiler (Shoreside Maintenance)," "Wiper (Shoreside Maintenance)," and "Relief Oiler (Shoreside Maintenance)." Two other existing rates of pay would be eliminated from Rule 19—specifically, "Wiper(temporary)" and "Wiper (fewer than 1,004 straight time hours)." The justification for the proposal centered on testimony concerning two instances of employees' claiming a right to be paid under the Yard Oiler pay rate under circumstances that WSF viewed as inconsistent with the intent of the CBA.[7] The Union counters that two instances of alleged "abuse" of the Yard Oiler pay rate do not constitute a reason to eliminate it, especially because in at least two other situations, the Yard Oiler assignment was useful as an accommodation for licensed employees who had temporarily lost their Coast Guard licensure as a result of medical issues.

[7] My understanding is that in both of these instances, the Employer denied Yard Oiler pay and the Union filed grievances on behalf of the employees. On that basis, WSF also cites a need to eliminate unnecessary Employer and Union time spent processing grievances on the subject as an additional factor in support of its proposal.

I agree with the Union. If there are disputes about when the Yard Oiler rate applies, the parties' grievance and arbitration procedure is the place to work them out. While there is no doubt administrative time required on both sides in the processing of grievances, those efforts are not necessarily "wasted" as WSF suggests. Rather, in my view, the adjustment of grievances (at least those filed in good faith, as I assume the grievances at issue here to be) is an investment in the health of the parties' bargaining relationship.[8] Nor is it clear to me that the parties had truly bargained to impasse on this issue.[9]

I will not award the WSF proposal on the Yard Oiler position/rate of pay, as it would affect Rule 7, Rule 19,[10] or Appendix A of the Unlicensed Agreement. Rather, I remand the issues to the parties for further refinement in bargaining.

AWARD:

I do not award the WSF Yard Oiler proposals as set forth in Rule 7, Rule 19, and Appendix A.

[8] As something of an aside, I note that one of the underlying policies of the interest arbitration statute, as explicitly set forth by the Legislature, is 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. Similarly, the Legislature noted its intention, as part of the statute, to "promote harmonious and cooperative relationships between the ferry system and its employees by permitting ferry employees to organize and bargain collectively." RCW 47.64.006(3). In my view, when the parties utilize the grievance procedure to adjust their disputes, they are acting in pursuit of the Legislature's vision of a "harmonious and cooperative" bargaining relationship.

[9] I do not mean to imply any criticism of the parties and their representatives. It became clear to me during the hearing that the parties had faced a severely compressed time frame for bargaining, one that could not easily be extended given the statutory deadline for completing the interest arbitration hearing and the filing of the Interest Arbitrator's Award with OFM.

[10] There are portions of the Rule 19 proposal—specifically, 19.04 and 19.05—in blue, which appears to me to be part of a Union proposal. Neither party mentioned these portions of Rule 19 during testimony or in closing. Therefore, I will not award them, but the parties are free, of course, to incorporate them into their Agreement if in fact they wish to do so.

3. Rule 28 – Standard Dress

WSF proposes two changes to Rule 28. The first would require "safety-toe footwear" to be worn at all times in the engine room, and in support of that vision, provides for a reimbursement of $140.00 per employee for the purchase or repair of shoes with a "steel or composite safety-toe." *See*, Employer Rule 28 Counterproposal dated August 18, 2018. The second aspect of the WSF proposal is to require that "standard uniforms" be "fire retardant." *See*, Proposed Rule 28.07 and 28.08.[11] The Union objects to the fire-retardant standard uniform, apparently because those uniforms are customarily made of cotton that has been treated with a fire-retardant chemical that may be a carcinogen.[12] In response to the Union's concerns, WSF proposes that if an employee wishes to avoid the potential carcinogen in a treated cotton uniform, he or she could purchase an "inherently fire-retardant (e.g. nomex)" uniform and be reimbursed up to the cost of the standard uniform provided by WSF. *See*, Proposed Rule 28.08(b).[13] During closing, Union counsel stated that WSF's safety-toe shoe proposal was acceptable to the Union *if* the Employer would accept a revision to the language to allow employees to wear "heavy

[11] It seems to be undisputed that despite current CBA language requiring the wearing of the "standard uniform," that language has not been consistently enforced. That issue, in my view, is separate from the question whether the standard uniform should be fire-retardant as a matter of employee safety.

[12] The evidence in the record is insufficient for me to evaluate the competing claims on whether the standard uniforms might present a cancer risk. WSF managers testified that they were unable to find verification of the Union's claims in limited Internet research, and I do not find the Union's own evidence sufficient to form a judgment on the question. Nor have I conducted personal Internet research which, in my view, would improperly go outside the record presented at the hearing, thus depriving the parties of an opportunity to weigh in on any evidence I might have found on the question.

[13] In addition, to the extent an employee might be sensitive to the particular chemical or have some similar medical reason for needing an accommodation, the WSF proposal specifies that any such issues should be referred to WSF Human Resources for appropriate handling. *See*, WSF Proposal Rule 28.08©.

cotton" uniforms in lieu of fire-retardant gear.[14] WSF countered, without contradiction, that "heavy cotton" coveralls are not fire-retardant.

While there was little evidence of actual engine room fires at WSF over the last few years, Elizabeth Kosa, WSF Chief of Staff (and an experienced Engineer herself on deep-sea vessels), testified to a handful of close calls, e.g. "explosions" or overheating that caused smoke. She noted that even though there have been no serious fires in the past, "it only takes one" to result in significant safety risks to employees, risks that could be ameliorated by the wearing of a fire-retardant uniform.

In evaluating this dispute, it is apparent to me that the Union does not really object to the safety shoe proposal *per se*, and thus I will award the WSF proposal on that issue. Nor do I find the Union's counterproposal, i.e. that WSF drop its proposed fire-retardant uniform proposal in exchange for the Union's agreement to safety shoes, to be reasonable. For one thing, the safety of engine room employees is extremely important, not only for its own sake, which is obviously paramount, but also because of the potential for significant Jones Act liability (and the expense of Jones Act litigation)[15] in case of shipboard injuries. That factor supports not only WSF's safety shoe proposal, but also some form of its fire-retardant uniform request.

As noted, the record does not enable me to judge the extent to which, if any, treated cotton uniforms pose a cancer risk to employees. I do find, however, that engine room employee safety would be enhanced by fire-retardant uniforms. The WSF proposal, i.e. to pay the cost of

[14] It is unclear to me whether the Union's proposal had been previously shared with WSF representatives in bargaining, either pre-arbitration or during the parties' ongoing discussions during the hearing itself.

[15] In response to a question I asked during closing argument, the WSF counsel confirmed that injured shipboard employees are entitled to recovery under the Jones Act. *See*, Tr., Vol 3 at 29-30. Thus, workplace injuries for these units are adjudicated not under the streamlined workers' compensation provisions of state law, with limits to the WSF's potential liability, but rather pursuant to traditional tort litigation procedures under the Jones Act.

traditional fire-retardant uniforms—and to reimburse employees up to that amount should they prefer nomex or some other "inherently fire-retardant" material instead—strikes me as a reasonable balance here. If in the future the cost differential between nomex and treated cotton uniforms were to close, it might well be reasonable to require the State to provide nomex at its sole expense.[16] The same result might be reasonable if the evidence corroborated the Union's belief that treated uniforms present a significant cancer risk. In the meantime, however, employees who fear that treated coveralls pose a cancer risk will have the option of paying extra, above the amount subsidized by WSF, to have the peace of mind of nomex.

I will award the WSF proposal on Rule 28.

AWARD:

I award the WSF proposal on Rule 28.

4. Section 6 and Rule 19 – Wages

We come, then, to the most significant issue between the parties—wages. In the Licensed Unit, the Union proposes increases of 8%/4%[17] for Chief Engineer, and 6.5%/4% for the Assistant Engineer. *See*, Union Proposal dated August 17, 2018. For the Unlicensed unit, the Union proposes 14.9%/9% for the Oilers and 11.8%/9% for the Wipers. *See*, Union Proposal dated July 26, 2018. WSF counters with a flat 2%/2% for all classifications in both units. *See*, Employer Compensation Counter Proposal dated August 9, 2018 (Licensed Unit); Employer Compensation Counter Proposal dated August 18, 2018 (Unlicensed Unit).[18] In evaluating these

[16] Mr. Von Ruden, Director of Vessel Engineering and Maintenance, testified on behalf of WSF that the cost of treated cotton coveralls is in the range of $80.00 to $100.00, while nomex coveralls cost between $140.00 and $160.00. *See*, Tr., Vol. 1 at 204-05.

[17] In the "_/_" figures, the first wage increase would be effective July 1, 2019 and the second on July 1, 2020.

[18] During contract negotiations for the 2019-21 biennium, the State's "protected position" in most bargaining units was limited to 2%/2%, but as described below, WSF actually agreed to higher wage increases in several bargaining units without going through interest arbitration. For example, two of the three MMP units have reached agreement

competing proposals, it seems to me there are three primary applicable statutory factors in the analysis: the State's "ability to pay," the wage and benefit comparisons with other ferry systems on the West Coast, including Alaska and British Columbia, and "internal comparability," i.e. a consideration of the wages (and scheduled wage increases) for other WSF unions, particularly shipboard unions such as the Masters, Mates, and Pilots units ("MMP") and the IBU.

a. Ability to Pay

As noted in my introductory remarks, the "ability to pay" criterion involves a consideration of "financial responsibility." On that score, the State notes that forecasted increases in General Fund revenues will not generally be available (in the absence of specific legislation) to fund wage increases paid out of the Transportation budget, such as WSF wages.[19] Moreover, according to the Director of OFM, David Schumacher:

> For the 2019-21 biennium, forecasted revenue growth is not likely to meet current demands on the state's resources, including mandatory caseload and cost growth, maintenance of the K-12 and health care systems, and spending increases for critical mental health programs, employee compensation and other services.
>
> **Resources will once again be limited and agencies should be prepared to manage with minimal or no funding increases.**

Exh. S-22 at 1 (emphasis in original). In addition, Mr. Schumacher noted that:

> Last winter, members of the Governor's Council of Economic Advisors were asked the probability of a recession by 2023. The average probability of those who responded was 88 percent.

with WSF for 3%/3% increases in their 2019-21 CBA's, *see*, Exh. S-23, with the third (Watch Center Supervisors) agreeing to 3%2%. The WSF Inland Boatmen's Union ("IBU") unit went to interest arbitration, but the arbiter's decision was unavailable as of the issuance of this Award. With respect to non-shipboard units, WSF agreed to 4%/4% with the Metal Trades Unions, also to 4%/4% with the OPEIU (largely office workers), and to 3%/3% with FASPAA (Ferry Agents, Supervisors, and Project Administrators). An interest arbitrator also awarded 4%/4% to WSF Carpenters. *See*, Exh. S-23. Thus, while the State apparently attempted to limit wage increases to 2%/2% in the various units, a number of units received larger wage increases, and many of those were by agreement between WSF and the unions involved.

[19] On the other hand, Erik Hanson, an experienced economic analyst with OFM, testified that the Legislature has in fact, on occasion, transferred appropriations from General Fund accounts to the Transportation Budget.

Id. at 2.

In sum, there are rosy revenue forecasts at present, including in the Transportation budget, but there are nevertheless cautionary signals—such as the likelihood of a recession following the biennium at issue here, and the substantial (and mandatory) projected expenditures necessary to deal with compliance with the State Supreme Court's *McCleary* decision, the federal courts' Culverts case, and the loss of federal funds for Western State Hospital. Finally, even in the absence of these specific delineated needs, I would repeat here what I have often said before:

> the projected cost of all of the worthwhile projects the State might wish to undertake for the public good is likely always to exceed forecasts of available revenues.

WSF and MM&P Interest Arbitration Award (Mates' 2015-2017 CBA) at 8 (Cavanaugh, 2014). The statute prescribes a method for resolving disputes over the allocation of State resources in this context, i.e. OFM is required to certify that an interest arbitrator's award is financially feasible, the Governor decides whether to include funding for the award in his or her proposed budget, and the Legislature decides whether to make an appropriation sufficient to fund the Award. Thus, while an interest arbitrator must take financial responsibility into account, as well as the other statutory factors, the political process provides the final answer as to what is deemed a "financially responsible" level of wages and benefits for WSF employees.

b. Wages and Benefits of Comparable Employees

Turning next to the wages and benefits of comparable employees of other ferry systems, a consideration required by RCW 47.64.320(3)(e) and (f), the Union notes that the formal salary survey conducted by WSF demonstrates that Licensed engine room employees trail their statutory comparators by an average of 15.9%. *See*, Exh. S-6 at 20. Specifically, the Chief

Engineer position trails the market by 8.2%, while the Assistant Engineer position trails by 23.5%. *Id*. Similarly, Unlicensed engine room employees trail the market by an average of 24.5%—Oilers by 28.1%, and Wipers by 20.9%. *Id*. This official Marine Employees Compensation Survey ("MECS"), notes the Union, excludes the Alaska "Cost of Living Differential" ("COLD") from the analysis. If COLD were included, the gaps set forth in MECS would be even greater for some positions. For example, the Union, using a slightly different set of comparables, even without COLD, arrives at deficits of 22.15% for Chief Engineer, 25.90% for Assistant Engineer, 19.98% for Oilers, and 13.76% for Wipers. *See*, Exh. U-4. With COLD as part of the Union's analysis, each of these wage and benefit differentials increases by about 5%. *See*, Exh. U-3.[20]

c. Internal Comparability

Finally, I must consider internal comparability, a factor under the catch-all "other factors that are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under this chapter." I find the scheduled wage increases for other shipboard units in the 2019-21 biennium to be particularly important in this analysis. As previously noted,

[20] With respect to the COLD issue, I note that prior interest arbitrators between the parties have split on whether it should be included in the comparative wage analysis. In her Award on the 2011-13 CBA's, Arbiter Ford held that COLD should be *excluded* because it applies only to work performed *in Alaska*. Exh. S-8 at 5. Arbiter Wilkinson reached a contrary result in her Award on the parties' 2013-15 CBA's, holding that COLD should be *included* because most of the employees in the comparable Alaska Marine Highway System ("AMHS") unit receive that benefit. *See*, Exh. 9 at 16. The issue is somewhat academic here, in my view, because even without COLD, the wage and benefit deficits in MECS exceed the Union's wage demands. In any event, and for what it is worth, I lean toward the view that COLD is appropriately excluded from the calculations because it is not actually a cost of living differential. Rather, it is paid on the basis that the employee is a *resident of Alaska*, and there is no evidence before me as to how many WSF employees, if any, are Alaska residents. It is clear to me that COLD is actually a residency premium because the Unlicensed version of the benefit—which the parties have treated as an equivalent of COLD—is expressly labeled as a "resident premium." Thus, the fact that there may be little, if any, actual current differential in the cost of living between Alaska and the Puget Sound region, as the Union persuasively argues, is immaterial. WSF employees would be ineligible to receive the premium unless they resided in Alaska. In other words, COLD is a factor "peculiar to the area and the classifications involved" under subparagraph (f) of the statute. Nevertheless, with or without COLD, substantial wage and benefit deficits persist for Licensed and Unlicensed engine room employees, as compared to their peers in other ferry systems, a fact indisputably demonstrated by MECS.

the two shipboard MMP units, both Masters and Mates, each reached agreement with WSF for 3%/3% increases in their 2019-21 CBA's. *See*, Exh. S-23. The other shipboard unit, IBU, is the subject of a pending interest arbitration proceeding, but the arbiter's decision was unavailable as of the issuance of this Award.

Frankly, I find it difficult to imagine how I could appropriately award WSF's wage proposal of 2%/2% when the Ferry System has already agreed with two other shipboard units, consisting of Coast Guard licensed employees, to grant wage increases of 3%/3%. It is true, of course, that the record before me does not establish what, if anything, MMP gave up in bargaining that might offset the cost to WSF of these higher wages, but I must assume that if there were such offsets, I would have heard about them at the hearing. Consequently, it seems to me that 3%/3% is the floor of any wage increase to be included in this Award.[21]

d. Miscellaneous Considerations

1) Labor Budget Overruns

Mr. Von Ruden testified to a history of substantial labor cost overruns in this unit as compared to budgeted labor expenses. For example, from January 2017 through June 30, 2018, the MEBA unit had exceeded budgeted labor costs by $1.74M. *See*, Exh. S-12 at 1. As I understood Mr. Von Ruden's testimony, this labor cost variance is largely traceable to overtime and other expenses resulting from "unforeseen" events such as vessel breakdowns. Repair of vessels with breakdowns, it is reasonable to assume, would be more likely to require overtime from the MEBA units than the other shipboard units, thus the higher labor overruns for these

[21] At the same time, this "floor" may also be relevant to the upper limit of my wage awards. That is, for the same reasons that employee unrest might result in *these units* if I were to award a lower wage increase than other shipboard units have already received, substantially greater wage increases awarded here might result in the same sorts of employee unrest in *those units*. Put in a slightly different way, internal comparability, at least under these circumstances, is a sword with two edges.

units. But because WSF cannot increase the labor budget during the biennium, Mr. Von Ruden has been required to transfer funds from other WSF budget categories, such as proactive vessel maintenance,[22] to cover the labor shortfalls.

On the one hand, as I pointed out at the hearing, this situation seems to me to reflect a defect in the budgeting process. That is, WSF is apparently required to budget labor costs as if there will be no vessel breakdowns (or vessel damage from a hard landing, for example) even though, based on history, such events are reasonably foreseeable. Therefore, it would be prudent to budget for them, in my view, and apparently there has been some movement in that direction (Mr. Von Ruden testified about a $500k "emergency fund"). That movement, however, is insufficient to cover a shortfall approaching $2M as of the end of June of this year. In any event, the fact that these are large bargaining units—consisting of more than 400 employees—as well as that it is likely substantial unbudgeted overtime will continue to be necessary during the course of 2019-21 biennium—are factors that must be considered in determining an appropriate level of wage increases here.

2) Relief Assistant/Chief Engineer Wage Inversion

The Union has raised an anomaly in the current wage structure. Specifically, as of July 1, 2018, i.e. the second year of the current CBA, Relief Assistant Engineers received a 2.5% increase in the wage premium they receive above the regular Assistant Chief rate. Although the bargaining history with respect to this increase is not clear to me, my understanding is that the premium is designed to provide an incentive for Assistant Engineers to work relief—which, for example, requires them to maintain qualification on three different classes of vessels within the fleet to which they might be assigned as necessary. The problem, however, is that with the recent

[22] The downside of that approach, of course, is that deferring maintenance in an aging fleet, with five vessels more than 50 years old, can create problems of its own and lead to earlier borrowing by the State to construct new ferries.

2.5% increase in the premium, the Relief Assistant wage is now $0.52 per hour *above* the wage rate of the Chief Engineer working on the same vessel. *See*, 2017-19 CBA, Section 6 (Wage and Overtime Table). Partly for that reason, as I understand it, the Union has proposed greater wage increases for the Chief Engineer than for the Assistant Engineers to eliminate the inversion.

e. Interest Arbitrator's Decision on Wage Increases

As noted, in light of WSF's agreed wage increases of 3%/3% to the MMP shipboard units, I view that level of wage increase as the floor of my Award here. If WSF can afford those increases to licensed MMP officers working on the same vessels as MEBA employees, many of whom are also licensed by the Coast Guard, it is difficult for me to conclude that the same increases cannot be afforded here. That conclusion is also bolstered by the potential effect on morale when employees working on the same vessel—all of whom are underpaid relative to their peers according to MECS[23]—receive disparate wage increases. The remaining question before me, then, is whether some or all of the MEBA employees should receive more.

I note that it is already established that some WSF bargaining units will receive greater than 3%/3%—specifically, Metal Trades, Carpenters, and OPEIU who will each receive 4%/4%. In addition, SEIU (a small unit of mostly janitorial staff as I understand it) will receive 9%/3%. For their part, the Metal Trades and Carpenters are employed in the WSF yard at Eagle Harbor on Bainbridge Island. The record does not contain evidence of the size of the Metal Trades unit, but the Carpenters unit is just 21 employees. *See*, Exh. S-24, *WSF and Pacific Northwest Regional Council of Carpenters* Award at 6 (Whalen, August 22, 2018). I assume that the Metal Trades unit is also substantially smaller than the more than 400 employees in the MEBA units.

[23] For example, the MECS (without COLD) shows that Masters are 15.6% below average, First Mates are 19.8% below, and Second Mates are 17.6% below. Exh. S-6 at 19. These deficits compare to 8.2% for Chief Engineer, 23.5% for Assistant Engineer, 28.1% for Oilers, and 20.9% for Wipers. *Id* at 20.

Given the size of these units, the cost of 4%/4% here would have significantly greater budget implications for WSF as compared to these Eagle Harbor units.[24] I also note WSF testimony that the Metal Trades unit exhibited a substantial retention issue (in addition to being even farther behind the market in the MECS survey than these units), whereas in the MEBA units, the evidence establishes remarkably little turnover. It is true that none of these units with higher increases than 3%/3% are shipboard units. Thus, the consideration of the adverse potential of differential wage increases from one unit to the next aboard the vessel do not carry as much weight. Nevertheless, several WSF units have received wage increases exceeding 3%/3%.

Another important cautionary factor here, as noted, is the difficulty of predicting precisely how much emergency MEBA overtime will be required during the course of the next biennium. True, WSF should do a better job of accounting for the near-certainty that *some* emergency overtime will be required because of vessel breakdowns—and thus not have to rob Peter quite so much to pay Paul in order to cover the cost of MEBA emergency overtime, such as by deferring desirable proactive maintenance to extend the useful lives of the fleet. But, even budgeting for at least *some* of that additional labor cost, over and above whatever wage increase I might otherwise award, while at the same time maintaining a realistic vessel maintenance budget, would likely substantially increase the cost to WSF of my award.

One way to deal with that potential, of course, might be to look at increasing the wage rates for some classifications more than others, rather than awarding across the board increases. The Union proposes to do just that—e.g. to increase Chief's wages more than Assistants (8% to 6.5%) in the first year. One problem with that specific approach from my perspective is that the Chiefs are already closer to the MECS market rate than the Assistants (-8.2% as compared to -

[24] The same could be said of the SEIU unit, which in addition to being smaller than the MEBA units, was apparently near minimum wage prior to the agreed 9% increase in the first year of the next biennium. *See,* e.g. Tr., Vol. 2 at 58.

23.5%).[25] The Union also proposes a larger wage increase for Oilers than for Wipers (14.9% to 11.8%) in the first year. I note that unlike the Chiefs and Relief Assistants, the Oilers are substantially farther behind the market than the Wipers (28.1% to 20.9%). Thus, a slightly larger increase for Oilers might be justified subject to concerns about disparate wage increases for classes of employees working on the same vessel.

After carefully considering the matter in light of the statutory criteria, however, I find that across-the-board wage increases for the MEBA units are appropriate. I will award 3.5%/3.5%. This award is justified by the MECS survey, the fact that prior wage increases have not kept up with the cost of living,[26] and factors of internal comparability, i.e. other WSF units have received 4%/4%, whether through agreement with WSF or through interest arbitration. I recognize that some tinkering with increases for individual classifications might have been desirable, e.g. to address the Relief Assistant/Chief Engineer wage inversion, or to address the fact that Oilers are farther behind their peers than Wipers. On the other hand, I find that those issues are more appropriately addressed by the parties in future negotiations, rather than awarded by an interest arbitrator with a less than complete understanding of all the consequences—intended and unintended (for example, what may have been the unintended inversion caused by the latest increase in the Relief Assistant premium).

[25] I sympathize with the Union's desire to deal with the Relief Assistant Engineer/Chief Engineer wage inversion, but it would be unfair and unwise, in my view, to grant the Chiefs a higher wage increase than Assistants when the Chiefs are already substantially closer to parity with the comparables—in fact, roughly *three times* closer than the Assistants. Moreover, the wage inversion just recently went into effect, and although I do not doubt that it has some potential to sow discord, I must assume the parties were aware of that potential and thought the additional requirements for Relief Assistant—such as qualifying on three separate vessel classes and being prepared to serve on them at a moment's notice—justified the increase in the Relief Assistant wage rate. If in practice, that turns out not to be so, the parties can rectify it later.

[26] *See*, e.g. Exh. U-6 (all classifications have failed to keep up with the cost of living, with several approaching a deficit of nearly 40% since 1983).

AWARD:

With respect to Section 6 and Rule 19 of the Licensed and Unlicensed CBA's respectively, I award across the board wage increases of 3.5% effective July 1, 2019, and an additional 3.5% effective July 1, 2020.

AWARD

For the reasons described in the preceding discussion, I hereby render the following Awards on issues before me in this matter:

AWARD:

I award the WSF proposal on Section 5 dated July 12, 2018.

AWARD:

I do not award the WSF Yard Oiler proposals as set forth in Rule 7, Rule 19, and Appendix A, nor the apparent Union proposals in Rule 19.04 and 19.05.

AWARD:

I award the WSF proposal on Rule 28.

AWARD:

With respect to Section 6 and Rule 19 of the Licensed and Unlicensed CBA's respectively, I award across the board wage increases of 3.5% effective July 1, 2019, and an additional 3.5% effective July 1, 2020.

Dated this 24th day of September, 2018

Michael E. Cavanaugh, J.D.
Interest Arbitrator