IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

TEAMSTERS LOCAL UNION 117, UNION, and WASHINGTON STATE DEPARTMENT OF CORRECTIONS, EMPLOYER.	)	INTEREST ARBITRATOR'S OPINION & AWARD 2021 INTEREST ARBITRATION PERC NO. 134405-I-21

BEFORE: JOSEPH W. DUFFY
ARBITRATOR

REPRESENTING THE UNION:

DANIELLE FRANCO-MALONE
BARNARD IGLITZIN &LAVITT, LLP

EAMON MCCLEERY
STAFF ATTORNEY
TEAMSTERS LOCAL 117

REPRESENTING THE EMPLOYER:

SUSAN SACKETT DANPULLO
DARCEY ELLIOTT
SHAWN HORLACHER
OFFICE OF THE ATTORNEY GENERAL

HEARING HELD: AUGUST 23-27, 2021
BY VIDEOCONFERENCE

WITNESSES FOR THE EMPLOYER: Tanya Aho, Mike Obenland, Todd Dowler, Tana Southerland, Patrick Bracken, Terri Parker, Nona Snell, Nicole Gottbreht, Angie Hogenson and Angie Gill.

WITNESSES FOR THE UNION: Michelle Woodrow, Suzanne Best, PhD, James Deuel, Sheryl Green, Alena Folsom, Becky Haney-Nixon, Sarah Hinkel, and Carla Pusateri.

OPINION

Introduction

In 2014, 2016 and 2018, Teamsters Local 117 ("Union") and the Washington State Department of Correction/Office of Financial Management ("Department"/"OFM") entered into a Memorandum of Understanding ("MOU") providing for interest arbitration if the Parties' negotiations failed to produce a complete collective bargaining agreement ("Agreement") (J6, p. 46). Since then, section 200 has been added to the State collective bargaining law found in RCW 41.80. New section 41.80.200 is entitled "Department of Corrections – Interest arbitration for certain employees," and the statute governs this interest arbitration. The factors that I must consider under the statute in making the determination in this case are the same eight factors that the Parties agreed to in the MOUs that governed the three prior interest arbitrations.

In 2020, the Parties began negotiations for the new 2021-2023 contract, but the pandemic disrupted the process because so many pandemic-related issues arose that required immediate discussion. The Parties agreed to focus in the negotiations for the new contract on items that needed to be refreshed because of statutory changes and to concentrate on economic bargaining. (TR103:1-14; TR386:23-TR389:11) The Parties reached some tentative agreements in negotiations, but could not reach agreement on Article 32 – Compensation.[1] (J10) On August 12, 2020, the Executive Director of the Public Employment Relations Commission ("PERC") certified Article 32 – Compensation to interest arbitration. The Parties had previously scheduled an interest arbitration hearing for August 31 through September 4. On August 5, 2020, the Union filed an Unfair Labor Practice complaint against the Employer with PERC. On August 11, 2020, PERC issued a preliminary ruling finding a cause of action, and that case remains pending. By

[1] The Tentative Agreement document in the record does not include the McNeil Island Premium, however, at the hearing the Parties agreed that the premium should be included among the tentative agreements. The premium agreed to by the Parties is $10 premium pay for each day employees permanently assigned to work on the island as their regular work assignment are physically working on the island. (J10)

letter dated August 13, 2020, the Executive Director of PERC suspended all issues in the interest arbitration proceeding and the Parties cancelled the scheduled 2020 arbitration hearing. (U18)

After suspension of the interest arbitration in 2020, the Parties continued to have some negotiations. The Employer submitted a "what if" proposal to the Union on September 25, 2020, but no agreement resulted. More discussions occurred in the first months of 2021. (E41)

In June and July 2021, the Parties exchanged some proposals without reaching agreement. In early August, the Parties both submitted Article 32 – Compensation to the PERC mediator as the sole issue for interest arbitration. (E41) The PERC mediator concluded the Parties had reached impasse and recommended certification of the issue to interest arbitration. The PERC Executive Director then certified Article 32 – Compensation on August 19, 2021. (J11)

This interest arbitration hearing took place virtually using the Zoom system on August 23 through 27, 2021. At the start of the hearing, the Parties agreed that the requirements to bring the case properly before me for a decision had been met. (TR6:9-15)

The hearing proceeded in an orderly manner. The attorneys did an excellent job of presenting the respective cases. Both Parties had a full opportunity to call witnesses, to submit documents into evidence and to make arguments. Witnesses were sworn under oath and subject to cross-examination by the opposing Party. Court reporters transcribed the hearing and made copies of the transcript available to me and to the Parties.

RCW 41.80.010(3) establishes an October 1 deadline for submission of requests for funds necessary to implement the agreement and so following the testimony the Parties closed their cases orally in consideration of that deadline.

The Prison Population

The DOC Fact Card for March 31, 2021 shows the average population in confinement as 15,067 and a confinement operating capacity of 19,024. (Mr. Obenland testified that the population now has reduced further to about 12,000 and the Department is considering closure of some units. Over 4,000 prison beds are currently vacant.) The Fact Card shows that 48.2% of the prison population has been sentenced to more than ten years, and 4.3% of the prison population has been sentenced to life without parole. 41.5% of the prison population is serving sentences for Murder 1 or 2, Manslaughter or Sex Crimes.14.3% of the population is rated high risk to recommit violent crimes. (U1, E12) The Parties stipulated to excerpts from the testimony of Ms.

Woodrow and Scott Russell from the 2018 interest arbitration hearing. (J6, J7) That testimony contains an overview of the Department and the workforce.

Department Employment and Bargaining Unit Numbers

As of August 16, 2021, the Department employed 8,682 people and this Union represents 6,040 of them. (E5) Employees represented by the Union work in more than 150 job classifications.

The Physical and Psychological Consequences of Prison Work

At this hearing, as in past interest arbitrations, Dr. Suzanne R. Best testified about research that has been done nationwide concerning the physical and psychological consequences of prison work as well as the stressors that exist within the prison environment. She also testified in the 2018 hearing about her 2013 study of Washington State prison employees. The Parties agreed to include the transcript of excerpts of her testimony from 2018 in the record and her 2018 presentation is also in the record as an exhibit. (J5, U35)

Briefly summarized, Dr. Best testified that research on the risks of prison employment shows that correctional officers have the highest rates of illness and injuries compared to other state employees. They have the highest rates of obesity, diabetes, sleep disorders, cardiovascular disease and metabolic syndrome as compared to other professions. Correctional staff also have among the highest rates of depression, post-traumatic stress disorder ("PTSD") and suicide as compared to the general population.

Dr. Best testified in this hearing about three types of workplace stress present in prison employment. Those are environmental, operational and traumatic stress/threats to safety. Environmental stress in the prison setting includes high levels of noise, poor climate control and air quality and overcrowding and understaffing. (U36)

Operational factors include shift work, mandatory overtime, work life imbalance and procedural changes. Increased overtime in particular can lead to decreased work performance, fatigue and sleep disturbances, work-family conflict and burnout. Dr. Best testified that although increased overtime produces increased income, studies have shown that the economic returns did not mitigate the negative factors. Procedural changes related to Covid have had a variety of negative impacts. Inmates have been restricted from engaging in programs and performing work they normally perform, which creates dissatisfaction among the inmates and forces the staff to pick up much of the work inmates had performed. Limits on physical contact between staff and inmates have led to suspension of pat downs and cell checks, which raise issues of safety for both inmates and staff.

Traumatic stress and threats to safety continue to be a source of stress for prison staff. Inmate on staff violence and threats to staff and their families are constant concerns. Risk of infectious disease has increased substantially with the Covid pandemic.

The following statements from Dr. Best's 2018 testimony regarding the Washington State survey of prison staff that she performed in 2013 describe the personal toll of corrections work on the staff:

> The Washington State employees in our survey reported that their overall quality of life was just lessened. And, again, controlling for age. They just enjoyed life less, and they considered their lives to be less meaningful than they used to be.
>
> They also reported decreased satisfaction in all these different areas of their lives. So it's not just about work. It's about how it impacts their daily activities, their sense of self-worth, importantly their relationships, even their sex lives, and their support from friends.
>
> So, again, the Washington State corrections employees reported that their lives—they were just less satisfied, and the quality of their lives had decreased in all these different areas since entering.,.prison employment. (J5, p. 255)

Overview of the Impact of Covid on the Department

The Covid pandemic has created unprecedented demands on the prison system. Increased absence of staff because of illness or quarantine has increased overtime work. The need to create and staff Covid hospital wards within the prison system has been a significant challenge. Procedures have changed constantly in an effort to keep the institutions running while responding to the demands created by Covid. (E37)

Prison staff are essential workers who did not have the advantage available to many in society to work from home. Each day, staff had to deal with testing and potential quarantine, as well as the constant risk of infection that could not only affect them but could be carried home to their families. In addition, the staff had to deal with the same issues as the general public concerning the lack of information, disinformation and conflicting information about Covid, about vaccines and about the appropriate safety measures.

Sgt. James Deuel testified at the hearing. He works at the Washington Correctional Center on the graveyard shift. When Covid hit, because he felt the risk to his family would be too great if he went home on a daily basis, he began to stay at the institution and continued doing so for about a month. He testified:

> Q. And so you have mentioned that during this period of time when you were just staying at work, it sounds like you were working quite a bit during that time. Can you elaborate on that?
>
> A. Yeah. I was working double shifts every day, except the one day a week that I would work a single shift and just pretty much have enough time to get done, get on my cot, take a shower and go to sleep. It wasn't—I just kind of got in the flow of it where it kind of broke you and you didn't care. I am going to be at work, that's where I'm supposed to be. (TR270:1-11)

Sgt. Deuel described the strains of short staffing that often required increased mandatory overtime resulting in staff working double shifts. Staff often missed out on important family activities because they were needed to work overtime. Short staffing also had an impact on the inmate population because adequate staff was not available at times to allow the inmates to engage in programming and other activities. Reduced staff levels also affected safety. Work ordinarily staffed by three officers and a sergeant sometimes had two officers and a sergeant. If emergencies occurred, other staff might not be available to respond. (TR273:9-TR275:9)

Sgt. Deuel summarized the experience of the eighteen months following the advent of Covid as follows: "…it was the most difficult year I have ever endured to include the time I spent in Iraq and Afghanistan." (TR282:23-TR284:15)

Registered Nurse Sherly Green testified at the hearing. For the past ten years, she has worked at the Airway Heights Corrections Center.

When the pandemic started, a number of nurses refused to care for Covid patients because the nurses had health conditions. Almost immediately, medical staff faced a shortage of PPE that required them, for example, to reuse N95 masks ordinarily used only one time. (TR309:15-TR310:11)

When the Department set up a regional care facility for Covid patients, other nurses refused to work there. Ms. Green described her response as follows: "I looked at my coworker and I told her, I am a nurse through and through, and she was too, so we stepped up and went to go to work in a totally Covid-positive environment." (TR311:18-TR312:2)

In July 2020, Ms. Green tested positive for Covid. She temporarily lost her sense of smell and had neural effects that lasted for seven or eight months. After about two weeks, she returned to work in the Covid ward.

Ms. Green described the significant challenges that arose when the gym at her facility was converted to a unit for about 140 Covid patients who were either not symptomatic or mildly symptomatic. Because of staff shortages, the Department had to hire agency nurses. Many of them were overwhelmed by the work involved and chose to leave after a short time because they did not feel safe and they had concerns that their licenses could be at risk working under the conditions present in the facility.

Alena McGowan-Folsom testified at the hearing. She works as a Cook AC at the Mission Creek Correctional Center for Women. She has been employed by the DOC for twenty years. She described the challenges of getting meals out to the inmates during Covid. Prison kitchens rely heavily on inmate workers. Ordinarily 16 to 20 inmates work in the kitchen, but during Covid the numbers have been greatly reduced, which has increased the burden on both the staff and on the inmates that are working. Ms. McGowan-Folsom summarized her reasons for continuing to work despite the challenges: "I keep showing up because I believe in my job…and I believe what I do is worthwhile." (TR356:10-25)

Becky Haney-Nixon testified at the hearing. She works as a Classification Counselor 3 at the Washington State Penitentiary in Walla Walla. Her work involves assessing inmates to determine their risk to recidivate as well as to determine the programs available to meet the inmates' needs that are to be addressed. The recently introduced Advanced Corrections program places more emphasis on the mental health and psychological conditions and needs of the inmates. Ms. Haney-Nixon testified that has made her work more challenging because the issues are more complex. The work now involves much more collaborative work one-on-one with individual inmates. Besides the additional duties related to Advanced Corrections, the counseling staff has been involved with Covid testing. In addition, County jails decided not to take DOC parole violators and so those violators from around the eastern part of the State came to WSP and had to be assessed face-to-face within 72 hours of arrival. Since the staff did not know immediately whether the new arrivals were Covid-positive, the staff had to wear full PPE to conduct the interviews.

Ms. Haney-Nixon described the counselor role, in part, as follows:

> The work that classification does is essential to corrections. If we weren't around, there wouldn't be people signing people up to get things done, there wouldn't be people talking to inmates and encouraging them to change their lives. There wouldn't be people that ensured that inmates could come to them and say, "Hey, I have this problem, can you help me out." Because like I said, before we are all-hat wearers. If there's a situation we are the ones they come to asking for that. (TR374:13-22)

The State called Mike Obenland to testify. He serves as the Deputy Director for Command West and oversees the prisons on the west side of the State. He testified that statewide the current prison population is about 12,000[2].

Mr. Obenland testified concerning the impact of the pandemic on Department operations. He testified that the Department turned to an existing pandemic plan to determine whether the plan would be adequate to deal with the circumstances created by the Covid pandemic. Initially, the Department did active screening with employees, asking employees when they reported to work if they felt sick and taking temperatures. Inmates who were symptomatic were tested and they were isolated. The Department developed a Covid 19 Screening, Testing and Infection Control Guideline document, and updated the document 27 times through July 13, 2021. (E37) The Department also in approximately April 2020 started a mask mandate for staff. The Department set up an incident command at headquarters to coordinate the Department's responses to the pandemic. Specialty teams were used to supplement staff at the institutions or to fill in for staff that were quarantined and not working.

An exhibit in the record shows that 1,526 employees tested positive for Covid 19. Four of those employees passed away. From March 2020 to August 18, 2021, 14,270 employees had been denied access to work based on enhanced screening[3]. (U13, p. 9-10)

Mr. Obenland testified that the state's mortality rate of 13 inmates who became ill with Covid and passed away is low compared with other states. (E38, p. 3; U13, p. 10) Washington also had 6,277 positive cases among the incarcerated population, which placed the state 17th among the other states.[4] (E38, p. 1)

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[2] Testimony at the 2018 hearing showed that the prison population in July 2018 was 19,802. (J7, p. 9)

[3] My understanding is that testing and enhanced screening are two different things, thus the significant difference in the numbers cited here. Testing means using the scientific test that detects Covid 19. Enhanced screening means asking individuals if they have symptoms and using temperature checks.

[4] Other exhibits in the record have slightly different numbers, but the differences are not significant. (U2-U5)

The foregoing discussion of the impact of Covid 19 on the staff, the inmates and the Department is not meant to be comprehensive but illustrates some of the challenges that the pandemic has imposed on the Parties.

Certified Issue and Protected Positions

PERC certified the issue for this interest arbitration as Article 32 – Compensation. (J11)

The Employer's protected position includes:

1.) A 3% general wage increase effective July 1, 2022.

2.) Targeted range increases for 57 job classifications.

3.) A lump sum payment on July 22, 2022 ranging in gradations from $1,000 for employees with a base salary of less than $33,252 down to $0 for employees with a base salary greater than $133,006. (J8)

The Union's protected position includes:

1.) A 5% general wage increase effective July 1, 2021.

2.) Effective July 1, 2022, an increase of 100% of the yearly percent change in the Seattle-Tacoma-Bellevue CPI-W (June 2021 to June 2022) with a three percent (3%) minimum and a five percent (5%) maximum.

3.) Modification of existing contract provision 32.1F so that all employees who have been at Step L for six years will progress to Step M.

4.) Targeted range increases for 79 job classifications.

5.) Effective July 1, 2022 a lump sum payment to each bargaining unit member of a Covid Recruitment and Retention bonus of $2,500.

6.) Effective July 1, 2021, the State will pay 100% of both the premium for family leave benefits and the premium for medical leave benefits as provided by RCW 50A.10.

7.) Emergency Declaration Reopener – When the Governor of the State of Washington declares a state of emergency and the emergency impacts Department of Corrections operations, the Union reserves the right to reopen this section of the Collective Bargaining Agreement for the sole purpose of negotiating a premium for all employees assigned to work at an impacted facility. The premium shall be effective from the date of the declaration of the emergency until the emergency is declared ended. (J9)

Exhibits in the record submitted by the State show that the 2021-2023 Biennium cost of the Employer's proposals would be $42,884,587 and the cost of the Union's proposals would be $165,987,688 for a difference of $123,103,101. (E18-E20 The Union calculated different cost figures, which are discussed below. (U43, p. 21, U44, U45, U55)

<u>Analysis</u>

When enacting RCW 41.80.200, the Legislature described its intent as follows:

> In order to maintain dedicated and uninterrupted services to the supervision of criminal offenders that are in state correctional facilities and on community supervision, it is the legislature's intent to grant certain employees of the department of corrections interest arbitration rights as an alternative means of settling disputes.

Labor arbitrators acting in interest arbitration cases often take note of the fact that interest arbitration is a conservative process. As I wrote in the previous award, the reality is that all situations cannot be addressed at once and some will have to be addressed in subsequent negotiations for the next collective bargaining agreement. Interest arbitration is an extension of the collective bargaining process that takes effect only when the parties cannot reach agreement in negotiations. The late, highly respected arbitrator Carlton Snow described the goal of interest arbitration as follows:

> [A] goal of interest arbitration is to induce a final decision that will, as nearly as possible, approximate what the parties themselves would have reached had they continued to bargain with determination and good faith. (*City of Seattle,* PERC Case No. 6502-I-86-148 (Snow, 1988))

In addition, as I stated in 2018 and Arbitrator Lankford stated before me, neither the Union nor the Department benefits from an award that OFM strikes down as not feasible financially.

RCW41.80.200(6) sets forth eight criteria that I must take into consideration in making the determination in this case. The following discussion addresses each of those eight criteria.

i. The financial ability of the Department of Corrections to pay for the compensation and benefit provisions of a collective bargaining agreement.

The record includes an exhibit that shows the State's corrections expenditures as compared to the comparator states. Washington lags behind in total general fund corrections expenditures, as the following table shows. (U43, p. 10)

State	Corr Exp as % of Total Exp.	Corr. Exp. As % of Total GF Exp.	% Change in Corr. Exp FY 2019-2020
AZ	3.3%	10.7%	8.8%
CO	2.3%	6.7%	-4.8%
NV	2.3%	7.2%	1.4%
OR	2.4%	9.3%	6.4%
UT	3.4%	5.8%	28.7%
WA	2.4%	4.8%	4.5%
US Avg	2.9%	6.5%	4.1%

Sarah Hinkel, who works as a Senior Research Analyst for the International Brotherhood of Teamsters, produced a document to show that taking the State's estimate of the cost of the Union's protected position, the new percentage of general fund expenditures for corrections would be 5.4% as opposed to the 4.8% for 2020 and would remain below the national average of 6.5%. Therefore, spending at the highest level among the cost estimates would leave the State behind the national average. (TR1050:17-TR1053:7; U55)

Four times each year, the State publishes budget forecasts. The most recent forecast occurred in June 2021. The six member Economic and Revenue Forecast Council produces the forecasts based on such factors as the actual revenue received by the State, employment growth, the economy generally and other factors such as housing prices, construction, personal income, inflation rates nationally and trade. The forecast generally covers a four year period.

Ms. Hinkel noted in her testimony that the State General Fund decreased by 1.5% from 2019 to 2020 during the pandemic, but that decrease was less than the 10.7% decrease from 2018 to 2019 during a time of economic prosperity. (U43, p.6; TR976:19-TR978:4)

The forecast the Economic and Revenue Forecast Council produced in June 2020, however, projected a $9 billion drop in revenue over the four year period due primarily to the impact of the Covid-19 pandemic. (E4) Washington entered a severe recession and an unprecedented decline in employment. The forecast summarized the picture in part as follows:

> The large drops in forecasted employment and income due to the COVID-19 pandemic will mean large drops in state revenue collections that will persist for years. (E4, p. 11)

The forecast the Council produced in June 2021 differed significantly. The points raised in the Executive Summary described a more promising picture.

- The COVID-19 pandemic has severely weakened the economy. The decline of COVID-19 cases and increase in vaccinations have allowed the economy to reopen.
- Policymakers have approved trillions of dollars of fiscal and monetary support in response to the COVID-19 pandemic.
- The forecast for GDP growth in 2021 is now 6.7% up from 5.7% in the previous forecast. For 2022, real GDP growth is 4.4% up from 4.1% in the previous forecast. Our forecast for GDP growth in 2023 to 2025 is down from the March forecast.
- The Washington economy continues to recover from the recession.
- Washington personal income rose 49.0% (SAAR) in the first quarter mostly because of another round of direct payments to individuals.
- Washington real GDP was 1.7% above its pre-recession peak in the first quarter of 2021.
- The Washington forecast features higher personal income, employment, housing construction, and inflation than did the forecast adopted in March.
- General Fund-State (GF-S) revenue collections since the March forecast have come in $644 million (9.6%) above the forecasted amount.
- The GF-S forecast was increased by $808 million in the 2019-21 biennium, $1.24 billion in the 2021-23 biennium and $1.20 billion in the 2023-25 biennium.

- Legislative changes, most notably a tax on certain capital gains, have increased the forecast of revenue for funds subject to the budget outlook process by $399 million in the 2021-23 biennium and $810 million in the 2023-25 biennium.
- The forecast of total revenue for funds subject to the budget outlook process was increased by $838 million in the 2019-21 biennium, $1.80 billion in the 2021-23 biennium and $2.24 billion in the 2023-25 biennium. (E2, p. 11)

The federal American Rescue Plan provided the State with $4.25 billion to use toward State level operations. (E1, p. 10, U43, P. 18)

Ms. Hinkel testified that from the General Fund total net position, the State is in a financially stable position. (U43; TR967:1-TR969:13; TR988:25-TR990:11)

Significant risks to economic recovery remain, however. If the COVID-19 Delta variant produces increased infection rates, hospitalizations and mortality, then the positive trends could reverse. Clearly, the pandemic is not over, but at this time we can only speculate about its progression and duration.

Nona Snell who works as the Assistant Director for Budget at OFM testified at the hearing. She testified that the major revenue sources for General Fund-State spending are retail sales and use tax at 50.7% and business and occupation tax at 18.5%. (E1) If the pandemic should cause an increase in job losses and consequent personal income losses and business closings, then the revenue from the two major tax sources would be reduced accordingly.

The State emphasized another restraint on the State operating budget, which is illustrated by a chart in the record. The chart shows that 70% of the general fund budget is protected, meaning that State constitutional and federal funding requirements compel the State to make payments for K-12 basic education, debt service and pensions, mandatory Medicaid and nursing homes, developmental disabilities and courts. (E1, p. 9) Therefore, nearly three quarters of the budget is off the table for discretionary spending decisions by the Governor and the Legislature.

The testimony and documents in the record show that reasons exist to be both pessimistic and optimistic about the State's economic future. The progression of the COVID-19 Delta variant and the future course of the pandemic hovers over everything as a major unknown, however.

Even with all the limitations and uncertainties that exist, the State has nevertheless recognized that a general wage increase in 2022, targeted range increases for 57 job classifications and a lump sum payment can reasonably be made. The Union contends that greater increases for the bargaining unit can reasonably be made. I find that the State is in a position to afford fair and reasonable raises for this bargaining unit that aim toward further progress in closing the gap between current compensation and the compensation in the comparable jurisdictions as well as to provide recognition for the unprecedented challenges members of the bargaining unit have faced during the pandemic.

ii. The constitutional and statutory authority of the employer.

The one year delay in conducting this interest arbitration for the 2021-2022 biennium raises a question whether retroactive compensation can be provided for the period that starts on July 1, 2021. The State contended that providing retroactive compensation in this award potentially would violate the State Constitution.

The State relies on the "Evergreen Year" provision in RCW 41.80.010(6), which reads as follows:

> After the expiration date of a collective bargaining agreement negotiated under this chapter, all of the terms and conditions specified in the collective bargaining agreement remain in effect until the effective date of a subsequently negotiated agreement, not to exceed one year from the expiration date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

The Union contends that this provision cannot apply to interest eligible groups because those groups already are protected from unilateral implementation by the interest arbitration process. For interest arbitration eligible groups, the status quo must be maintained until either the parties reach agreement or an interest arbitration award is issued.

The Union argues that PERC has interpreted similar language to the Evergreen Year that appears in RCW 41.56.123 and determined that 41.56.123(1) does not apply to interest arbitration eligible groups because applying it would negate the protection against unilateral implementation that interest arbitration provides.

The Union also argues that PERC has ruled that contract expiration without a new contract in place does not bar wage increases later being settled upon and applied retroactively. In *Amalgamated Transit Union, Local 1576*, Decision 1267-B (PECB 2013) PERC stated the following:

> If RCW 41.56.123 had been applied to interest arbitration eligible employees, the protected period that precludes employers from unilaterally implementing a term and condition of employment after a lawful impasse would have been reduced.

The Union argues that typically funding for collective bargaining agreements occurs in even years and odd years are ordinarily when supplemental bargaining occurs. The Union argues that nevertheless, nothing in RCW 41.40.010 (3) limits the State's ability to submit a funding request that covers the retroactive period. That provision reads in part as follows:

> (3) The Governor shall submit a request for funds necessary to implement the compensation and fringe benefit provisions in the master collective bargaining agreement or for legislation necessary to implement the agreement. Requests for funds necessary to implement the provisions of bargaining agreements shall not be submitted to the legislature by the governor unless such requests:
> (a) Have been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the requests are to be considered; and
> (b) Have been certified by the director of the office of financial management as being feasible financially for the state.

The Union also argues that the Employer did not submit a proposal to modify Article 45 Term of the Agreement, which is the duration Article in the Agreement. The Union contends that the Employer would have had a heavy burden to show that a one-year contract was warranted when a two year has been the agreed upon standard.

The Union cited PERC cases and interest arbitration awards to show that retroactivity routinely is awarded in interest arbitration.

The norm for this contract has been two years at least since 2014. The Union has made persuasive arguments that retroactivity can be awarded in this proceeding. I am awarding a two year contract from July 1, 2021 to June 30, 2023 in order to preserve the continuity of the contract. As discussed below, however, I have determined that no general wage increase or targeted range increases shall be awarded for July 1, 2021. The general wage increase and the targeted range increases awarded will take effect on July 1, 2022.

iii. Stipulations of the parties.

The Parties agreed on the same five jurisdictions as they used in 2018 for comparing wages and benefits. They are: Arizona, Colorado, Nevada, Oregon and Utah.

The Parties reached a stipulation for this interest arbitration related to the salary surveys that each Party conducted. Even though the Parties used different methodologies to conduct their surveys, they agreed that both approaches showed 23 job classifications behind market. They produced a stipulated exhibit that shows the percentage that Washington total compensation is behind the average comparator total compensation at the entry level, at the mid-point/ten years and at twenty-five years. Not all 23 jobs are behind at the entry level, but those jobs that are above the market at entry level fall behind over time. (J15 and see TR33:23-TR34:15)

On July 31, 2020, the Parties reached a number of tentative agreements for the 2021-2023 DOC CBA, as follows:

> All terms and conditions of the current CBA will remain in full force, and effect for the 2021-2023 CBA including all appendices and MOUs with the exceptions noted below. The tentative agreements reached on Article 1, Non-Discrimination, Article 22, Miscellaneous Leave, and Article 24, Family and Medical Leave will be incorporated in to the 2021-2023 CBA.
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> - Article 33 (Health Care Benefits) will be updated at the conclusion of Health Care Negotiations.
> - Garrity Rights Training MOU will be removed.
> - DOC Policy 450.300, Visits for Incarcerated Individuals will be removed.
> - SCCC CI Overtime will be maintained as it established a process for overtime assignments.
> - BFOQ will be maintained as the MOU is still in progress.
> - Article 36, Uniforms, Tools, and Equipment MOU will be incorporated into A36 of the CBA and the MOU will be removed.
> - Employees permanently assigned to work on McNeil Island as their regular work assignment will receive ten dollars ($10.00) premium pay for each day they are physically working on the Island. Days in paid status not working on the Island will not qualify for this premium pay. The premium does not apply when employees are assigned to work on a vessel.[5] (J8, p. 1; J9, p. 21; J10)

[5] Although the McNeil Island premium did not make the list of tentative agreements in the record, the Parties acknowledged at the hearing that they have agreed to this provision. (TR8:16-21; TR449:1-5)

iv. Comparison of the wages, hours and conditions of employment of personnel involved in the proceedings with the wages, hours and conditions of employment of like personnel of like state government employers of similar size in the western United States.

vi. The overall compensation presently received by Department of Corrections employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefits, and all other direct or indirect monetary benefits received.

The most efficient approach to this part of the analysis to is to discuss these two factors together.

The Parties agreed on the same five comparator states as in the last interest arbitration. They also both applied the Regional Price Parity Index to adjust for cost-of-living differences with the comparators. Washington has the highest cost-of-living relative to the comparator states. Therefore, the salaries for the comparator states have been adjusted upwards from 6.1% to 12.6%. (E28, p.8; TR895:19-TR896:4)

The Parties disagreed about when the RPPI adjustment should be applied when calculating compensation. Mr. Bracken testified that Segal applies the RPPI before adjusting for variations in the workweek among the comparators. (TR793:14-TR794:6) Ms. Pusateri explained that Segal applied the RPPI only to base wages, but in her survey she applied it to the other compensation factors. She testified a case could be made not to apply it to health insurance premiums, but she believes the RPPI should be applied to all forms of compensation. (TR742:14-TR743:11, TR897:7-TR899:10)

State	Regional Price Parity Index	WA as % of Each State's RPP Index	Adjustment to Salaries Based on RPP Index
Arizona	96.4	112.6%	12.6%
Colorado	103.2	106.4%	6.4%
Nevada	97.6	111.3%	11.3%
Oregon	99.5	106.1%	6.1%
Utah	97.0	112.3%	12.3%
Washington	108.4		
US Average	100.0		

As in the prior interest arbitrations, Segal conducted the survey for the State and Carla Pusateri conducted the Union's survey. Sarah Hinkel from the Union's headquarters in Washington, D.C. assisted the Union in choosing the positions to be surveyed and finding the matches to jobs in the comparator states. (TR696:13-TR699:11) The Parties agreed this time to avoid spending excessive time debating survey methodology and to focus on where best to spend state funds for this interest arbitration.

The State selected 24 benchmark jobs to be surveyed and the Union selected 38. (E28, p. 5 and U20) The Union also indexed or grouped other jobs with the 38 benchmarks and the subject of indexing is discussed below. (U51)

Utah and Washington are the only states that have a longevity premium and the surveys adjusted for that premium. Both Parties used January 1, 2021 compensation as the basis for comparisons. The Union survey also includes an analysis of the effect of a 5% increase retroactive to July 1, 2021. (U39, p. 1-3)

<u>The Segal Survey</u>

Segal developed an analysis of the overall compensation received by an employee per productive hour. The computation involved first determining employer annual cost. That calculation included the base pay rates adjusted for geographic differences, using minimum and maximum pay levels plus longevity. Second, the computation involved determining overall compensation received by an employee by deducting from total employer annual cost the annual employee contributions towards health benefits and the annual employee contributions toward retirement benefits. Third, the calculation involved determining total annual productive hours by deducting from the annual work year paid time off and vacation, sick leave and holidays and personal time. When the overall compensation received by the employee is divided by the total productive hours, the result is the compensation received by an employee per productive hour. (E28, p. 14)

Segal calculated health care costs by determining the blended annual weighted average. Segal based the calculation on the State of Washington's enrollment distribution for Washington's most highly populated PPO and HMO plans, meaning that Segal applied the Washington enrollment distribution to the comparator plans rather than the enrollment distribution of the individual comparators. Segal obtained enrollment counts from the comparators to identify the most populated HMO and PPO plans. The enrollment distribution used is for all Washington State employment not just the Union's bargaining unit. The next step involved calculating the total employer and employee monthly weighted average health costs for the PPO and then for the HMO. Finally, Segal blended the total employer and employee annual weighted average health costs based on HMO and PPO enrollment demographics. (TR751:24-TR754:3; E28, p.15-16)

The Segal survey also looked at retirement benefits. For ease of collecting and analyzing the information they focused on the benefits offered to new employees. Segal obtained information from the comparators on employer and employee contributions for defined benefit, defined contribution and deferred compensation plans as well as Social Security and Medicare. Segal also took into account any matching of employee contributions by employers. (TR754:5-TR755:23; E28, p.17) When computing the overall compensation, Segal included the contributions to retirement made by both employees and the employer.

To illustrate the overall compensation received by employees per productive hour, Segal highlighted five of the most highly populated benchmarked jobs, which are Corrections & Custody Officer 2, Corrections & Custody Officer 3, Registered Nurse 2, Classification Counselor 2 and Correctional Industries Supervisor Assistant. Those five jobs make up 85% of the State's benchmarked jobs (based on the employment census effective January 1, 2021). The tables developed by Segal for each of the five jobs show the total employer annual cost and the employees' contributions for health and retirement plans and finally the work year hours reduced by paid time off hours for vacation, sick leave, holidays and personal time. The last column of the table shows the overall compensation received by the employee per productive hour at one year of service. Segal produced a similar table for each of the five jobs at the pay range maximum and including longevity pay at twenty-five years of service. (Longevity only available in Utah and Washington.) (TR755:25-TR763:2; E28, p. 18-28)

Segal summarized the findings for the five highlighted jobs in a table that shows the overall compensation received by employees per productive hour as a percentage of the market average. Three of the five jobs were significantly below market both at one year and twenty-five years. (Corrections & Custody Officer 2, Corrections & Custody Officer 3 & Classification Counselor 2) The Correctional Industries Supervisor Assistant was slightly above market at one year, but significantly behind at twenty-five years. Segal considers the Registered Nurse 2 to be market competitive because the position is 96% of the market at one year and 101% at twenty-five years. (TR763:3-TR764:3; E28, p. 29-30)

Segal considers a job competitive with the market if the job is 95% to 105% of the market average. Segal applies that standard in all of its surveys and Mr. Braken testified the standard is commonly used among survey firms. (TR747:5-13) Ms. Pusateri uses a different standard to treat jobs as competitive when the compensation is close to the market average. She considers a job competitive if it is one percent above or below the market average. (TR947:6-20)

Segal also provided tables to show that when viewing jobs based on pay range only, they are more competitive with the market particularly at the entry level than when jobs are compared based on compensation per productive hour. (TR764:4-TR767:2; E28, p. 31-34)

The Union has some disagreements with Segal's methodology, including: 1.) Whether employee retirement contributions should appropriately be included in total compensation. 2.) Whether sick leave should be included in a total productive hour analysis, since sick leave is only available for illness and may not be used at all in a given year. 3.) How to compare and value health insurance appropriately. 4.) The use of a mid-point, meaning the average of the high and low ends of the scale, versus relying on the published salary schedules and ranges.

The Union agrees, however, with other aspects of the Employer's survey. Washington employees contribute more towards their insurance premiums than the average of the comparables. (E28, U39) Washington contributes less towards retirement costs than the average of the comparables. (E28, U39) Living in Washington is more expensive than any of the comparator states. Consequently, a total compensation analysis shows that the Department's compensation is less competitive than what is shown by looking at base wages alone.

<u>The Employer's Total Compensation Analysis</u>

Terri Parker, who serves as Classification and Compensation Analyst at OFM, testified at the hearing. She prepared a total compensation analysis using the State's total compensation methodology, which differs from the methodology used in both the Segal survey and the Union's survey. Her view is that Factor vi of the statute requires consideration of the value received by the employee rather than the cost of the benefits ("overall compensation presently received"). (E29) She focused primarily on two areas: 1.) What an employee actually receives under a health plan in a year, and; 2) A retirement plan lump sum present value. (TR816:16-TR817:4)

Ms. Parker obtained a report from the State actuary that provides Washington State total health plan costs for 2019 for all the plans offered by the Public Employee Benefit Board ("PEBB"). The Union's bargaining unit costs are not broken out separately. That report states that the average actual health plan cost for a PEBB health plan member was $14,116 in 2019. (TR822:1-17; E29, p. 4, E30, p. 11) The actuary calculated the 2019 average value of a PEBB member's health plan to be $12,872 or 91% of the plan costs for that member.

Ms. Parker's analysis then turned to the "metal tiers" in the health plans. Designated as gold, silver and platinum, the tiers relate to the amount of the plan costs that the plan pays and the employee pays. The following table that uses the PEBB cost figure of $14,116 illustrates the value of each of the metal tiers under this analysis. (E29, p. 6)

Health Plan Total Cost	ACA Metal Tier	%of Plan Costs Covered	Health Plan Value
$14,116	Silver	70%	$9,881
$14,116	Gold	80%	$11,293
$14,116	Platinum	90%	$12,704

Each of the five comparators was asked to provide the metal tiers for their health plans. Ms. Parker then used the Washington State value figure of $12,116 as a proxy for plan value among the comparators. (TR849:13-TR850:15) The following chart illustrates the results. (TR825:7-TR828:18; E29, p. 7)

State	PPO Metal Tier	HMO Metal Tier	HDHP Metal Tier	Health Plan Avg Value
Arizona	Gold	Gold	Platinum	$11,763
Colorado	Gold	Gold	Gold	$11,293
Nevada	Gold	Gold	Gold	$11,293
Oregon	Platinum	N/A	N/A	$12,704
Utah	Gold	N/A	Platinum	$11,999
Median Value				$11,763
Washington	Gold	Gold	Gold	$11,293

Ms. Parker then used the median health plan value of $11,763 in her calculation of total compensation. On cross examination of Ms. Parker, the Union established that the total compensation figure does not include subtracting out the amount that the employee pays for health coverage. Ms. Parker responded that the analysis does not include either the employer or the employee's costs, which I understand to mean the analysis deals with what the plans pay out and what it costs the plans to operate. (TR850:16-TR851:4)

Ms. Parker obtained information from the State actuary on calculating the lump sum present value of the lifetime retirement benefit earned by a member for a given year of service. That value is derived by taking the annual dollar value of the life annuity earned by an employee for a single year of service payable at retirement multiplied by a deferred annuity factor. The product of that calculation is the expected value of the annuity in today's dollars. The following table illustrates the results of those calculations as applied to the Corrections & Custody Officer 3. (TR828:16-TR831:1; E29, p.9)

State	Base Wage (Adjusted) Avg	Pension Plan Benefit Multiplier	Annual Earned Annuity	Cost Split ER Share	Office of State Actuary Annuity Factor	Lump-sum Present Value of Yearly Earned Benefit
Arizona	$69,278	3.0%	$2,078	50.0%	11.804918	**$12,267**
Colorado	$69,278	2.5%	$1,732	68.2%	13.810822	**$16,323**
Nevada	$69,278	2.5%	$1,732	50.0%	25.583433	**$22,155**
Oregon	$69,278	2.0%	$1,386	100%	13.435282	**$18,615**
Utah	$69,278	2.0%	$1,386	100%	11.804918	**$16,356**
Median Lump-sum Present Value of Yrly Benefit						**$16,356**
Washington	$62,586	2.0%	$1,252	50.0%	13.435282	**$8,409**

Ms. Parker then developed an analysis of a total compensation figure for the comparators and the Department for Corrections & Custody Officer 3 (TR830:4-24, TR832:14-23; E29, p. 10, E46, E47):

Benchmark	Base Wage (Adjusted) Avg	Health Care Value	Retirement Value	Total Comp
Corrections & Custody Officer 3	$69,278	$11,763	$16,356	**$97,398**
Washington	**Base Wage (Adjusted) Avg**	**Health Care Value**	**Retirement Value**	**Total Comp**
Corrections & Custody Officer 3	$62,586	$11,293	$8,409	**$82,287**

Ms. Parker testified that she did not consider Segal's total compensation per productive hour calculations incorrect. She testified she developed this information on health care value and retirement plan present value to conform to the Factor vi requirement to consider "overall compensation presently received." She intended to show the pension and healthcare benefits in terms of value received rather than cost. She acknowledged that her calculations did not include other items mentioned in Factor vi such as paid time off. (TR833:22-TR8343:17)

Ms. Parker prepared a comparison document to show the differences between the Union survey, the Segal survey and the total compensation calculations that she prepared as discussed above. Essentially, the results show that the value method shows the jobs further behind the market than the cost method used by Segal. (TR835:2-TR838:14; E31)

<u>The Union's Survey</u>

Ms. Pusateri prepared an analysis of total compensation as it compares to like positions in comparable states as well as like positions in select Washington Counties. Her analysis looked at 36[6] positions representing a cross section of the bargaining unit. (U39, p. 2-3)

For each position, Ms. Pusateri prepared an analysis of compensation at the entry level, at ten years and at twenty-five years. Some of the comparables do not use a wage scale but have instead minimum/middle/maximum wage rates. To correspond with the ten-year mark for those

[6] I think this may be a typo and the correct number would be 38.

comparables, she used the middle wage amount and for twenty-five years she used the maximum amount.

Ms. Pusateri developed three scenarios for analysis. The first involves developing a net hourly pay figure, which is similar to the Segal productive hour. The second scenario involves a proposed range adjustment for 21 of 38 positions. The third scenario involves the effect of a 5% across the board increase effective July 1, 2021. She also ran a study of County comparables.

Using the charts for Corrections Officer 2, Ms. Pusateri described the format of the chart. (U39, p. 61-63) Each position has three charts showing entry level, 10 year and 25 year compensation for Washington and for the five comparables. The first column has the base wage rate, the second column has other wages, which includes any compensation that all employees receive. Longevity is included in other wages.

Next, Ms. Pusateri lists employee health insurance, which is the employee's contribution to health insurance premiums. She described her approach to collecting health insurance information for the comparables. She was able to get demographics for the Corrections Departments of the comparables. (TR890:21-TR891:10) She took all the plans, all the tiers within the plans and the actual demographics to develop a total amount of premium paid and then dividing that number by the employees in the demographic. She characterized the result as a tiered average based on each state's plans, each state's rates and each state's demographic. (TR888:8-TR889:4) She took the tiered rates that exist and turned them into a composite rate so that composite rates could be compared. (TR889:6-TR890:13) The employer health insurance column further on in the chart is developed the same way but with high deductible reimbursement paid by the employer added. (TR892:TR893:1)

On the Correction Officer 2 chart, the next column after employee health insurance is total wages, which is the base wage plus other compensation minus the employee's insurance premium. (TR894:7-12)

The next column is other incentive pay for serving as a bilingual interpreter for example. All of the entries in this column are zero. Next is employer health insurance calculated as discussed above. Next is total compensation which is the sum of total wages, other incentives and the employer's health care premium contribution. (TR895:14-18)

Ms. Pusateri then applies the RPPI adjustment to total wages for each comparable. (TR895:19-TR899:10)

The final column deals with vacation, holiday and personal leave. Her numbers are derived from base wage hourly rate against the accrual of vacation, holiday and personal leave. (TR899:11-TR900:12)

Ms. Pusateri also developed a chart showing net hourly wages for a Corrections Officer 2. (U39, p. 179) She testified that this analysis compares with the Segal total productive hour compensation. She testified that the main difference with the Segal analysis is that she did not include sick leave in her analysis. (TR903:8-TR904:22) Ms. Pusateri did a separate analysis for sick leave accrual for all the benchmark positions that she surveyed. (U39: p. 370 ff)

Ms. Pusateri also developed a ranking of the benchmarked jobs using the net hourly compensation. The charts show whether the State position is above or below the average and where it is ranked with the other states. For example, the Chaplain/Religious Coordinator ranks 4th at entry, 4th at 10 years and 5th among the comparables at 25 years. (U39, p. 206) The Corrections Officer 2 ranks 5th at entry, 4th at 10 years and 5th at 25 years. (U39, p. 218)

Ms. Pusateri did an analysis of pension contributions for each of the surveyed positions. (U39, p. 409) Her analysis shows that Washington is paying less than the average of the comparables for pension benefits. She testified she did not include the pension contributions in the total compensation analysis because so many different factors go into determining pension contributions and benefits that valid comparisons would be difficult to construct. Also, because Washington's contribution rates are lower the total compensation figure including retirement would make the Washington comparative numbers look even worse. (TR918:1-TR920:13; TR950:25-TR952:5)

Over the objection of the State, Ms. Pusateri described the work she did to create an analysis of County comparables.(U40) The State objected on the basis that the statute provides for comparison of the wages, hours and conditions of employment of like personnel of like state government employers of similar size in the western United States and does not provide for comparing with Counties. Arbitrator Lankford and I both agreed in 2016 and 2018 respectively, however, that the local labor market fits within Factor viii. (TR927:6-9) Ms. Pusateri noted in her testimony that she does not have and did not include any information on recruitment and retention, for example how many people left the DOC to go to a County. (TR953:1-6)

The Union provided Ms. Pusateri with a list of Counties to include. They are: Clallam, Franklin, Grays Harbor, Mason, Pierce, Snohomish, Spokane, Thurston and Walla Walla. These are the same Counties surveyed in 2018.

For the Counties, the analysis is much the same as the analysis for the state comparables, except that no RPPI adjustment has been made because some of the Counties are not included in the RPPI index. (TR925:1-11)

Ms. Pusateri provided a summary analysis for the limited number of jobs that had matches in the Counties. The summary shows that the State is behind the average wages for all positions surveyed except construction maintenance supervisor maintenance mechanic 4 and corrections record technician at entry, 10 years and 25 years. (U40, p. 13) Ms. Pusateri also ranked the jobs against the comparator Counties. Corrections Officer 2, for example, ranks 10 of 10 at entry, 10 years and 25 years. (U40, p. 18, 26)

Ms. Pusateri produced the following summary chart of the net hourly rate of certain jobs and the position of the jobs against the County average[7] (U40, p. 13):

Classification	Entry Net Hourly	10 Year Net Hourly	25 Year Net Hourly
Const. Maint. Supv.	**0.7%**	**0.1%**	**0.7%**
Cook AC	-15.1%	-12.0%	-9.9%
Corrections Record Tech.	-3.4%	**0.3%**	**2.5%**
Corrections Officer 2	-22.6%	-20.7	-19.1%
Corrections Officer 3	-28.1%	-22.0%	-19.7%
Corr. Men Health Cnslr 2	-8.1%	-5.4%	-4.3%
Fiscal Assistant 1	-20.5%	-16.9%	-14.2%
LPN 4	-8.2%	-6.5%	-5.2%
Maint Mech 4	**7.7%**	**2.1%**	**1.9%**
Office Asst. 3	-31.1%	-30.0%	-29.7%

[7] Positive numbers in bold for ease of reference.

Clearly, the extent that bargaining unit jobs are behind the County pay rates creates a concern. Sgt. Deuel testified that Mason County provides hiring bonuses and has actively recruited DOC employees. He testified that staff have been lost to Mason, Thurston and Lewis Counties. (TR295:7-TR297:13) Nevertheless, the record does not provide any statistics to show the number of staff members that have been recruited away to Counties. Information about the number of County jobs and the frequency with which County jobs become available would be helpful in assessing the availability of hiring opportunities at the Counties. Members of the bargaining unit may also be reluctant to move to County employment and give up State benefits and possibly Union representation if the County workforce is not organized.

In 2018, I wrote that the compensation differences with the Counties are significant and would be hard to ignore. Arbitrator Lankford concluded in 2016 that: "Even if we exercise every *reasonable* doubt about the Union's method of analysis, those numbers are staggering." That observation applies particularly to CO2s and CO3s, which together constitute the largest group in the bargaining unit. Although I agree that the county numbers should be a factor in my analysis, the county information does not carry the same weight as the state comparators based on the lack of evidence in this record of actual movement to county employment. (J4, p. 19)

Ms. Pusateri also prepared an analysis of the effect of the Union's proposed pay range changes. (TR927:17-TR928:24; U41) In addition to the individual job analyses, Ms. Pusateri produced a summary that shows improvement at the 10-year mark, but the jobs fall behind again at 25 years, with three exceptions. (U41, p. 114) Ms. Pusateri also pointed out that the Union's range increases are proposed for July 1, 2022, but the comparisons in this study are based on January 2021. Therefore, the comparator information will likely change by 2022 and could make the differences even greater. (TR931:14-TR932:15) Ms. Pusateri also did a ranked analysis, similar to the ranked analyses previously discussed. (TR932:16-TR933:6; U41, p. 116)

Ms. Pusateri produced an analysis of the effect of a 5% across the board increase effective July 1, 2021 on the monthly compensation. (U42, p. 2) She also did a summary of the net hourly compensation comparison after the 5% increase on July 1, 2021. (U42, p. 158) Ms. Pusateri also prepared a ranked analysis similar in form to others that have been discussed. (U42, p. 201) Ms. Pusateri also provided a comparison with the CPI. (U42, p. 240) (TR934:8-TR941:22)

The State took issue with the fact that the Union survey did not include pension in the adjusted total compensation when comparing Washington to the comparator states. Ms. Pusateri testified that she considered pension and analyzed it separately but did not include it in take-home pay. (TR918:1-TR920:13; TR950:25-TR952:5)

Conclusions Regarding Survey Results

The short answer is that the surveys show that many jobs are well behind the market and significant raises would be needed to bring them up to market. The problem is how to get there from here.

The record contains exhibits that show the cost of the proposals advanced by the Parties. For the 2021-23 Biennium the State calculated the total cost of the State's economic proposals to be $42,884,587. The State calculated the cost of the Union's economic proposals to be $165,987,688. The difference is $123,103,101. (E18, E19) The Employer provided testimony to show that the cost of the last interest arbitration award in 2018 for the 2019-2021 contract was $67 million. (TR1104:20-23)

The Union provided substantially different cost estimates for the Parties' proposals. (TR990:14-TR994:10) Nevertheless, the gap between the two proposals remains wide. The Union estimates the cost of the State's proposal at $34, 039,945 and the cost of the Union's proposal at $120,890,953. (U44, U45)

I recognize the Union's desire not to leave anyone in the bargaining unit behind. The same as in 2018, I find that progress can be made but everything cannot be accomplished in a single interest arbitration decision.

Indexing

In the 2018 arbitration decision I wrote the following:

> The Union calculated the general wage increase on the basis of weighted averages in order to account for the diversity of classifications in the bargaining unit. The State argued that the weighted average approach did not make logical sense because many of the classifications are at or above parity based on the Segal Waters survey. (E35, p. 121) The Union seeks a basis to justify awarding a significant across the board general increase. Although I understand the approach that the Union took, the end result of that approach is that the classifications that are at or above parity will receive a significant increase, while those classifications that are below parity will remain below parity, even with a general wage increase, unless the general wage increase is much higher than can realistically be awarded in this process. (J4, p. 21)

The Parties took my observation to heart and focused this time on targeted increases for individual classifications. Because the bargaining unit includes over 150 job classifications, the Parties did not survey all 150 jobs. The Parties therefore looked for ways to group similar jobs together rather than surveying each one. The Employer grouped bench-marked jobs together with non-benchmarked jobs from the same series, e.g. Administrative Assistant 1,2,3. If, for example, the bench marked Administrative Assistant 3 is above or below market, then the assumption is that Administrative Assistant 1 & 2, because they are in the same series, will have the same position relative to the market as the surveyed job. Both Parties agree with the series approach to grouping jobs together. (TR700:2-12; TR768:2-TR769:4; TR864:5-14)

The Union took the grouping of jobs a step further. The Union also grouped or indexed jobs outside the series of the bench-marked job if the jobs outside the series had similar responsibilities and job functions. Ms. Hinkel testified that she identified the jobs with similar duties and responsibilities by consulting job descriptions and then by reviewing the list with the Union to get a more in-depth understanding of the job duties. (TR699:14-TR706:8; U22, U51)

Indexing outside the series has limitations, however. Mr. Bracken testified that adding jobs to the group that are outside the series could result in overly broad grouping. To make the assessment of whether the job outside the series belongs in the group requires looking at the knowledge, skills, abilities, duties and responsibilities of the job to determine if the job is similar. (771:12-TR772:7) The Employer provided testimony to show that the state salary survey that OFM uses for indexing treats many of the jobs that the Union indexed to benchmarked positions differently. (TR869:21-TR873:18; E60)

Adding jobs outside the series to the group requires an assumption that the job outside the series has the same above or below market situation as the benchmarked job. (TR720:2-TR724:22) The validity of those assumptions cannot simply be accepted on faith that a comparison of job duties has been made and the jobs appear to be similar so the market position of the job is also likely to be similar. (U51) More detailed, in-depth analysis is needed.

The Union argues that surveying all 150 plus jobs is not reasonable because it would take a long time and it would not be cost effective. Mr. Bracken testified, however, that all 150 would not have to be surveyed because jobs in the same series could be grouped together and only one would need to be surveyed. The fiscal analyst series, for example, includes five jobs but only one would need to be surveyed. Other series with multiple jobs would be treated similarly. (TR806:8-TR807:24)

Once a party ventures into grouping jobs that are outside the series, disagreements between the Parties about which jobs can properly be indexed to particular benchmarked jobs will arise and have arisen here. (TR864:16-TR865:19) Because of the disruption of the 2020 negotiations caused by the pandemic and then by the suspension of the process resulting from the ULP filing, the Parties did not have an opportunity to discuss indexing in any depth.(TR404:22-TR407:3, TR421:3-10) Ms. Hinkel testified that it could be helpful if the Employer and the Union collaborated in the next negotiation that starts soon in 2022 to create a way to index classifications. (TR715:18-TR716:4) Ms. Parker agreed that, if asked, it would be easy to review and assess whether the Union's benchmark and indexing decision made sense. (TR860:7-TR861:9) Clearly, the Parties would benefit from making a reasonable effort during the upcoming negotiations to collaborate on indexing classifications.

In my judgment, the information in the record on indexing of jobs that are outside the series of the benchmarked job is not sufficient to support the assumption that the jobs indexed in this way have the same market position as the benchmarked job.

Targeted Range Increases

The Union has proposed range increases for 79 jobs that account for 5,499 individual positions. The Employer has proposed range increases for 57 jobs that account for 5,278 individual positions. Targeted range increases, also known as base pay range increases, are applied by reassigning the job to a new base pay range on the salary schedule. Each range increase equals an approximate 2.5% increase. (TR1031:18-25; E18, E19)

The Parties each have provided a substantial amount of information to justify their proposals for targeted range increases. The surveys the Parties conducted differ in approach by, for example, including sick leave in the Segal total compensation calculation and in Ms. Pusateri's survey by not including pension in the total compensation calculation. The State also provided value calculations, as opposed to cost, for pension and health insurance. The Parties nevertheless reached agreement on the salary survey for 23 jobs. (J15)

The surveys provide comparisons for the entry level, 10-year or midpoint and 25-year total compensation. The decision on which of those points is best to use in analyzing the appropriate range increases for this proceeding is not obvious. In addition, awarding a range increase that matches the percentage behind market for many jobs is not realistic within the context of the limits of a single bargaining cycle and the need to be mindful of the financial feasibility decision that OFM has to make.

I have considered the stipulations on salary surveys, the Segal survey, Ms. Pusateri's survey and the analysis of value provided by Ms. Parker. The following awards on range increases provide progress toward the ultimate goal of market parity but necessarily fall short of that goal in most cases. The jobs that are receiving targeted wage increases make up approximately 78% of the bargaining unit. (TR524:20-23)

Job Class Title	Union Proposed Range Increase	Employer Proposed Range Increase	Number of Range Increases Awarded
100I Office Assistant 2 - Teamsters	10	4	5
100J Office Assistant 3 - Teamsters	10	4	5
100K Office Assistant Lead - Teamsters	10	4	5
100T Secretary Senior - Teamsters	10	2	4
100U Secretary Lead - Teamsters	10	2	4
100M Office Support Supervisor 2	10	3	5
100V Secretary Supervisor	10	2	4
105E Administrative Assistant 1 - Teamsters	10	2	2
105F Administrative Assistant 2- Teamsters	10	2	2
105G Administrative Assistant 3 - Teamsters	10	2	2
143I Fiscal Analyst 1	8	3	4
143J Fiscal Analyst 2	8	3	4
143KFiscal Analyst 3	8	3	4
143LFiscal Analyst 4	8	3	4
148M Fiscal Technician 2 - Teamsters	8	3	4
284E Patient Services Representative	10	6	6
354E Classification Counselor 1 - Teamsters	8	2	4

354G Classification Counselor 2 - Teamsters	8	4	6
354I Classification Counselor 3 - Teamsters	8	4	6
384B Corrections & Custody Office 2	6	2	3
384C Corrections & Custody Officer 3	6	2	3
384D Corrections & Custody Officer 4	6	2	3
427P Investigator 1	6	3	3
427Q Investigator 2	6	3	3
427R Investigator 3	6	3	3
674J Cook AC	10	5	6
677E Food Service Manager 1	10	5	6
114E Procurement & Supply Specialist 1	8	4	4
114F Procurement & Supply Specialist 2	8	4	4
114G Procurement & Supply Specialist 3	8	4	4
114H Procurement & Supply Specialist 4	8	4	4
115G Procurement & Supply Support Specialist 3	8	4	4
117J Warehouse Operator 2	6	2	2
117K Warehouse Operator 3	6	2	2
117L Warehouse Operator 4	6	2	2
261A Library & Archival Professional 1	4	1	2
261B Library & Archival Professional 2	4	1	2
592N Electronics Technician Supervisor	4	2	2
596K Maintenance Specialist 4	4	2	2
600L Equipment Technician Lead	4	2	2
602N Chief Engineer	4	2	2
605G Carpenter Supervisor 1	4	2	2
605I Shipwright Supervisor	4	2	2
618S Equipment Operator 2	4	2	2
619J Painter Supervisor	4	2	2

621H Plumber/Pipefitter/Steamfitter Supervisor	4	2	2
626J Maintenance Mechanic 1	4	2	2
626K Maintenance Mechanic 2	4	2	2
626L Maintenance Mechanic 3	4	2	2
626M Maintenance Mechanic 4	4	2	2
631A Correctional Industries Supervisor Assistant	4	2	2
631B Correctional Industries Supervisor 2	4	2	2
631D Correctional Industries Supervisor 4	4	2	2
678J Custodian 2	6	2	2
678L Custodian 4	6	2	2
678M Custodian 5	6	2	2
262J Library & Archival Paraprofessional 2	4	1	2

The General Wage Increase ("GWI")

July 1, 2021 – The Union proposed a 5% GWI retroactive to July 1, 2021. The Employer has proposed no GWI for July 1, 2021. Ms. Aho testified that all the other State collective bargaining negotiations settled for 0 increase for July 1, 2021 with very limited reopeners. (TR418:14-25; TR497:6-20 also TR1202.19-23)

I am not awarding a GWI for July 1, 2021 primarily to be consistent with other collective bargaining agreements within State employment. Factor viii provides for considering other collective bargaining settlements in this analysis. (Such other factors which are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under RCW 41.80.020(1))

July 1. 2022 – The Employer proposed a 3% GWI effective July 1, 2022 and the Union proposed the following:

> Effective July 1, 2022, all salary ranges and steps of the Teamsters Salary Schedule will be increased by the percent equal to 100% of the yearly percent change in the Seattle-Tacoma-Bellevue CPI-W (June 2021 to June 2022) with a three percent (3%) minimum and a five percent (5%) maximum. (J9, p. 1)

One factor to take into account when considering a GWI is the Consumer Price Index. The following chart compares the CPI-W All Cities annual change June to June to the annual GWIs received under this contract. The chart illustrates the fact that the GWIs under this contract have generally kept ahead of the CPI. (For clarity, the CPI figure is June to June at the end of the fiscal year. For example, for FY17-18 the CPI figure listed is calculated June 2017 to June 2018. The GWI for the FY17-18 took effect on July 1, 2017.) (See U42, p. 239 for CPI)

Year	FY13-14	FY14-15	FY15-16	FY16-17	FY17-18	FY18-19	FY19-20	FY20-21
GWI	0.00%	0.00%	5.50%	4.30%	4.50%	6.00%	4.00%	4.00%
CPI-W	2.0%	-0.4%	0.6%	1.5%	3.1%	1.4%	0.5%	6.0%[8]

Experts differ about whether the recent increase in the CPI is the beginning of a sustained inflationary trend or only a temporary rise caused by disruption of the economy by the pandemic. Ms. Hinkel estimated that inflation in Seattle is expected to average 2.0% per year in 2022-2025. (U43 p. 16)

The Employer provided testimony to show that basing the increase on the June 2021 to June 2022 CPI would make it impossible to know the amount of the GWI by October 1, 2021 when OFM has to submit the cost of the Agreement to the legislature. The legislature would act on the Agreement in the March 2022 session and the information on the June CPI would still not be available. In addition, the Bureau of Labor Statistics typically does not release the June to June numbers until mid-July, which would be past the date when the GWI takes effect on July 1, 2022. (TR1195:6-TR1109:14; E59)

Based on the evidence in the record, I am awarding a four percent (4%) GWI effective July 1, 2022.

<u>Other Proposals</u>

<u>a. One-time Bonus</u>

[8] The CPI figure for June 2020 to June 2021 is taken from the website of the US Department of Labor Bureau of Labor Statistics.

Both Parties have proposed a one-time bonus for the bargaining unit, but they each characterized their proposal differently. Therefore, some form of one-time bonus is acceptable to both Parties.

The Union sees the proposed $2,500 bonus effective July 1, 2022 as a Covid Retention Bonus to give the bargaining unit both recognition for the work performed during the pandemic and an incentive to remain employed during the pandemic. (TR148:17-TR152:7; TR293:14-TR294:11; TR295:3-19; TR330:17-TR331:17; TR355:12-TR356:6; TR372:25-TR374:2)

The State sees the proposed bonus as recognition for the fact that employees did not receive a general wage increase on July 1, 2021. (TR433:8-TR434:16) The State also sees the bonus as promoting equity by scaling the bonus higher for low wage employees and lower for the higher paid:

	Base Salary Less than $33,252	Base Salary $33,252 to $66,503	Base Salary $66,503 to $99,755	Base Salary $99,755 to $133,006	Base Salary Greater than $133,006
Lump Sum Amount	$1,000.00	$750.00	$500.00	$250.00	$0

> 1. Hourly employees' annual base salary shall be the base hourly rate multiplied by two thousand eighty-eight (2,088).
> 2. Base Salary excludes overtime, shift differential and all other premiums or payments. (J8, p. 3)

Concerning the equity issue, I did not find the equity argument persuasive. Equity for the lower paid employees would improve if pay rates increased, which would have a lasting effect as compared with a one-time bonus.

The State projected the cost of its bonus proposal at $5,142,899 and the cost of the Union's proposed bonus at $19,445,979 for a difference of $14,303,080[9]. (E18, E19) The Union,

[9] Because the Parties disagree on the cost of the bonuses, I did some basic arithmetic on the Employer's cost estimate for the Union's proposed $2,500 bonus. E19 shows that 6,718 would receive the bonus. 6718 x $2500 = $16,795,000 rather than $19,445,979. I have limited faith in my math skills, so I could be missing something. In any event, the sizable cost gap between the proposals remains even if the numbers are not totally accurate.

using June 2020 employment and wage figures, came up with lower numbers as the cost of the bonus proposals, but the difference between the two proposals remained substantial. (U44, U45)

Scaling the bonus based on income levels has the potential to create morale problems in the workforce. Employees found the bonus amounts offered by the State inadequate considering the challenges the employees faced because of the pandemic. (TR294:12-23; TR326:10-TR328:2; TR434:17-TR435:4) After reviewing the evidence, I am not awarding a graduated bonus tied to income level as the State has proposed.

No formula is available to determine the appropriate bonus amount. The Union's proposed bonus amount would cost in excess of $19 million according to the State's estimate and in excess of $15 million in the Union's estimate. Both amounts are too expensive under current economic conditions. Based on the evidence in the record, I have determined that the appropriate bonus amount for each member of the bargaining unit effective July 1, 2022 is a lump sum payment of $1,500.00. Taking the State's estimate of the cost of the $2,500 bonus at $19,445,979, the cost of a $1,500 bonus would be approximately 60% of that amount or $11,667,587.

b. Revising Step M

The Union proposes to revise current contract provision 32.1.F so that all employees who have been at Step L for six years or more will progress to Step M. Currently, if an employee has five years at Step L and changes classifications, then the employee does not progress to Step M until the employee spends six more years at Step L in the new classification. (J1, p. 97; J9, p. 2) The Union contends that under the current provision, an employee could go their entire career without achieving Step M even if the employee worked for the Department for twenty years or more. The Union also points out that the medical staff employees are treated differently and are not limited by working in the same classification for six or more years before progressing to Step U, which is the equivalent of Step M. (TR159:25-TR161:20)

The Employer argues that the Parties negotiated Step M so that people who had reached the top of their pay range and have been at that level for years would receive a raise since they were not eligible for additional raises, other than general wage increases. The Employer argues that changing classifications through upward mobility means that the employee receives increased pay.

The Union argues that longevity and advancement through promotion are two different things and a pay increase resulting from a promotion is not a substitute for longevity recognition.

The Employer argues that the movement for Nurses from Step T to Step U recognizes experience as a Nurse. (TR442:8-22) By contrast, changing classifications from a Corrections Officer to a Classification Counselor, for example, involves moving into a job with different skills and responsibilities, as compared to Nurses who are continuously working in the same occupation.

Ms. Aho testified that the method for progressing to Step M contained in Article 32.1.F is identical to the Step M provisions in other State collective bargaining agreements. (TR444:7-15)

Ms. Aho testified that the current Step M provision in Article 32.1.F has been in the Agreement since at least 2014 and has not been changed. (TR439:9-22) Generally in interest arbitration, the party seeking to change existing language has the burden to provide a substantial need for the change. The record before me does not establish a substantial need for change and I am not awarding the proposed change in Article 32.1.F.

c. Emergency reopener

The Union proposed adding an emergency reopener to the Agreement. The goal of the proposal is to engage the State to appropriately compensate the staff during an emergency like the pandemic. (TR163:1-17) The State contends that the Union's proposal is too open-ended and could lead to disputes about whether, how and how long the emergency affects the Department. (TR450:25-TR456:20)

The Union proposed the following:

> 32.X: Emergency Declaration Reopener
>
> When the Governor of the State of Washington declares a state emergency and the emergency impacts Department of Corrections operations, the Union reserves the right to reopen this section of the Collective Bargaining Agreement for the sole purpose of negotiating a premium for all employees assigned to work at an impacted facility. The premium shall be effective from the date of the declaration of the emergency until the emergency is declared ended. (J9)

The State proposes the following:

> When the Governor of the State of Washington declares a state of emergency and the Secretary or their designee determines the emergency impacts the Department of Corrections operations, the Employer and the Union may agree to open this

> section to bargain the impacts. Any agreement that requires funding will be subject to the provisions in RCW 41.80.010. (E36)

Including a provision in a collective bargaining agreement to allow for impact bargaining related to unanticipated major events such as the pandemic has merit. I am not convinced that either of the proposals provides a satisfactory method for dealing with the impact of unanticipated major events that disrupt Department operations and place significant burdens on employees. Therefore, I am not awarding an emergency reopener. The parties are encouraged to engage in further collective bargaining on this subject in future negotiations.

d. Paid Family Medical Leave Benefit ("PFML")

In 2017, the State enacted a family and medical leave insurance program. RCW 50A.05.005 describes the purpose of the statute in part as follows:

> The legislature declares it to be in the public interest to create a family and medical leave insurance program to provide reasonable paid family leave for the birth or placement of a child with the employee, for the care of a family member who has a serious health condition, and for a qualifying exigency under the federal family and medical leave act, and reasonable paid medical leave for an employee's own serious health condition and to reasonably assist businesses in implementing and maintaining a program to support their employees and families. (E34)

Sections 3 & 4 of RCW 50A-10-030 read as follows:

> (3)(a) Beginning January 1, 2019, and ending December 31, 2020, the total premium rate shall be four-tenths of one percent of the individual's wages subject to subsection (4) of this section.
> (b) For family leave premiums, an employer may deduct from the wages of each employee up to the full amount of the premium required.
> (c) For medical leave premiums, an employer may deduct from the wages of each employee up to forty-five percent of the full amount of the premium required.
> (d) An employer may elect to pay all or any portion of the employee's share of the premium for family leave or medical leave benefits, or both.
> (4) The commissioners must annually set a maximum limit on the amount of wages that is subject to a premium assessment under this section that is equal to the maximum wages subject to taxation for social security as determined by the social security administration. (U31, E34)

The premium rate for this benefit is described in Section 3(a) of the statute as four-tenths of one percent of an individual's wages for the period from January 1, 2019 through December 31, 2020.

Beginning in 2018, the Department deducted the premiums for the PFML benefit from the employees' wages. The Union filed an Unfair Labor Practice charge and the Parties reached a settlement. The State agreed to a refund of employees' premiums from July 1, 2019 through December 10, 2020. The settlement agreement also includes the following:

> c. The DEPARTMENT OF CORRECTIONS will continue to deduct PFML premium from the wages of employees in Teamsters bargaining unit positions at the maximum rate permitted under RCW 50A.10.030 until such time as the amount of DEPARTMENT OF CORRECTIONS' PFML premium contribution is determined for the 2021-2023 CBA either by agreement of the parties or through interest arbitration. (U33, p. 2; E35, p. 2) (All caps in original.)

As noted above, the Parties agreed to address the issue of how much of the premium the State would pay and how much the employees would pay in the next round of collective bargaining or in interest arbitration. (TR152:8-TR153:16; TR1062:13-24U33) Ms. Woodrow testified that requiring the employees to pay the PFML premiums results in a reduction in pay. (TR155:13-25)

Ms. Aho testified that the State is not willing to pay 100% of the employee's portion of the premium. She testified that, other than the contract covering the University of Washington Police Department, collective bargaining agreements that the State has negotiated do not contain any premium language related to the Paid Family Medical Leave program. She testified that including the premium benefit in the University Police contract may have resulted from an error or misunderstanding. (TR446:4-TR447:17; U32, p. 18)

The PFML benefit was enacted fairly recently and so it is not surprising that the benefit has not yet made its way into collective bargaining agreements. The Union contends that requiring employees to pay the premium reduces their income. Another way to look at the payment, however, is a diversion of income to a benefit rather than loss of income. Loss suggests nothing replaces it. The PFML insurance, however, provides protection for employees when the needs covered by the statute arise.

The Employer described the burden of reprogramming the State HMRS to accommodate a change in the deductions for PFML, which could take a year to accomplish and would be a change that applies only to this bargaining unit in all of State employment, with the exception of the single contract at the University of Washington. (TR1205:12-TR1207:2)

Based on the record, I find that the Union has not made a convincing case for shifting the entire cost of this benefit to the Employer.

v. The ability of the Department of Corrections to retain employees.

Ms. Hinkel testified concerning her analysis of recruitment and retention in the Department. She discussed some key points from a staffing model review conducted by an outside agency in 2019. The study identified the need for a substantial number of additional staff. The staffing model, however, is outside the realm of this interest arbitration. Ms. Southerland testified, however, that the report stated that the shift relief factor should be 1.8 rather than 1.67 and to apply the higher factor would require adding 250 additional custody staff. (TR684:23-TR685:19)

Ms. Hinkel's research showed that from January 2020 to June 2021 on 465 occasions 30-45 days were required to fill open positions. For CO1 positions the date range was 60-89 days to fill an open position. She also provided a chart to show that open benchmarked positions in the bargaining unit required a significant amount of time to fill.

Bargaining unit wide, Ms. Hinkel's study shows that 8.9% of positions were unoccupied in January to June 2021 and 7.8% in 2020. In the benchmarked positions, the average percent unoccupied from January to June 2021 was 13% and in 2020 the average percent unoccupied rate was 11.6%. She provided a chart to show the trend of vacancy rates over time. For example, since 2017 the vacancy rate for CO2s has increased about 6% from approximately 24% to approximately 30%. In terms of separations from employment, 176 CO2s left in 2020 and 196 in 2019. In 2020 81 CO1s left and 40 left in 2019.(U38, TR539-TR565:2)

Another chart provided by Ms. Hinkel shows that number of hires and the number of separations for CO1s and CO2s in 2019 through January to April 2021. In those first four months of 2021, for example, 108 were hired and 159 left.

Ms. Hinkel also looked at bargaining unit overtime. Her chart shows that the bargaining unit worked 812,749 overtime hours in 2019 and in 2020 the number increased to a little over 1 million. Ms. Hinkel testified that she computed an average overtime per member taking the 2020 total overtime and dividing it by the number of employees in each classification. She concluded that employees in the bargaining unit each worked an average of 167 hours of overtime. However, that average does not reflect what each member actually worked because any of them could have worked more or less than those average hours. She also provided the total overtime cost of $446,587,869 for 2019 and $61,165,178 for 2020.

The Department paid contractors $2.2 million in 2019, but that amount increased to $11.8 million in 2020.

Ms. Hinkel provided a chart that showed that the jobs for which 100% of the new hires came in at a pay rate above Step A. The Employer, however, showed that certain jobs never are hired at Step A because of the requirements coming into the job. For example, some positions in the medical field. In addition, if an individual is promoted into a higher level job, the individual would likely start at a level above Step A for the new job. The Employer provided an exhibit that shows the hires made above Step A for 2020. (E61)

The Employer also argued that the length of time to fill a position can be affected by a number of factors, including the new hire's need to give notice to the current employer and the time that some new hires spend in training before they start work. Also, recruiting may be more difficult with some jobs that require specific skills or background.

Without question, the pandemic caused a substantial increase in overtime work because of increased absences or quarantining for custody staff and because of additional Covid-related posts that were created for such things as screening and contact tracing. Ms. Southerland testified that overtime can increase based on the need for special assignments to cover hospital watches, dry cell watches, close observation and transportation. She testified that the Legislature has approved some requests from the Department for special funding to cover some of those needs. (E50, E51)

Ms. Southerland testified that the planned closing of some facilities will help to reduce overtime and will allow staff from those closed facilities to move to open positions in the remaining ones. (TR675:678:14)

Nancy Gill testified for the Employer and presented information on turnover and vacancy rates. (E54) She testified that vacancy numbers can be inflated by positions that are vacant because they have been abolished but have not been removed from the HMRS. She also testified that a freeze on hiring or Department reorganization can temporarily increase the vacancy rate.

In terms of staff vacancy rates, Mr. Obenland testified that OFM typically asks the Department to maintain a certain vacancy rate to help with the budget. Correctional officers and sergeants are not included, but clerical and certain other jobs are. (TR612:2-24) Ms. Aho testified that for many years the Department required a 3% vacancy rate for certain jobs. (TR425:12-24)

Sgt. Deuel testified about signing bonuses and other incentives paid by some Counties to help recruit or retain corrections staff. He testified that Department employees have left to work for Mason County and other counties. (TR295:20-TR296:15) Spokane County, for example, has offered $10,000 signing bonuses for corrections staff. (U26)

Two facts to bear in mind concerning retention in this context. Corrections work is not for everyone. The job may look appealing from the outside but much less so from the inside for some people. Some new hires find that the demands of the work far exceed their expectations and they decide to leave. Not to mention the unprecedented demands that the pandemic made on the staff. Second, if the compensation is not competitive, then recruiting will be more difficult.

<u>vii Changes in any of the factors listed in this subsection during the pendency of the proceedings.</u>

This factor does not require discussion.

<u>viii Such other factors which are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under RCW 41.80.020(1).</u>

County comparative data has relevance under this factor and was discussed earlier. I have also considered the July 1, 2021 zero increases negotiated with other unions representing State employees. (TR497:6-20)

Summary of the Award

1. The Agreement shall be a two-year Agreement from July 1, 2021 to June 30, 2023.

2. No increase is awarded for July 1, 2021.

3. A General Wage Increase of four percent (4%) is awarded effective July 1, 2022.

4. A one-time bonus of $1,500.00 shall be paid to each member of the bargaining unit on July 1, 2022.

5. The targeted range increases awarded shall take effect on July 1, 2022. (See previous pages 31-33)

6. The tentative agreements that the Parties achieved on July 31, 2020, including the McNeil Island premium, are confirmed for inclusion in the 2021-2023 contract. (J10)

Dated this 24th Day of September 2021

Respectfully submitted

Joseph W. Duffy
Arbitrator