

IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

INTERNATIONAL ORGANIZATION OF)	
MASTERS, MATES & PILOTS)	INTEREST ARBITRATOR'S
)	OPINION & AWARD
UNION,)	
)	
and)	
)	2015-2017 MASTERS'
)	CONTRACT
WASHINGTON STATE FERRIES,)	
)	
EMPLOYER.)	PERC NO. 26627-I-14-0651
_____)	

BEFORE: JOSEPH W. DUFFY
ARBITRATOR
PO BOX 12217
SEATTLE, WA 98102-0217

REPRESENTING
THE UNION: RHONDA J. FENRICH
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REPRESENTING
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HEARING HELD: AUGUST 12 & 13, 2014
SEATTLE, WA

OPINION

Introduction

International Organization of Masters, Mates & Pilots (“MM&P” or “Union”) represents a bargaining unit of Staff Masters, Masters and Relief Masters employed by the State of Washington, Department of Transportation, Washington State Ferries Division (“WSF” or “Employer”). This dispute is an interest arbitration conducted under RCW 47.64 to resolve certain issues that the Union and the Employer (“Parties”) could not resolve in collective bargaining for the 2015-2017 collective bargaining agreement. The Parties selected me to serve as sole interest arbitrator in this dispute by mutual agreement. (TRI-7:7-12)¹

At the hearing, the Parties agreed that all procedural requirements to bring this matter to interest arbitration have been met. (TRI-6:23-TRI-7:2) The Employer has agreed to be the custodian of the record in this case. (TRI-7:3-6)

The hearing took place at the Employer’s offices in Seattle, Washington on August 12 and 13, 2014. 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. A court reporter transcribed the hearing and made copies of the transcript available to the Parties and to me.

The Parties submitted twenty-nine Union exhibits (U1-U29) and thirty-seven Employer exhibits (ER1-ER37) into the record. A total of nine witnesses testified at the hearing (Budget Assistant to the Governor Eric Hansen, Compensation and Policy Specialist Kim Grindrod, Port Captain Pete Williams, Office of Financial Management Lead Negotiator Jerry Holder, Compensation Consultant Kamaron Durocher, Captain Daniel Twohig, Captain Lee Anderson, Captain Bryan Hanley and Regional MM&P Representative Captain Tim Saffle). By mutual agreement of the Parties, one witness testified by telephone.

Following the testimony, the Parties waived the submission of post-hearing briefs and made oral closing arguments. I then closed the record. (TRII-228)

Under the statute governing the procedure for interest arbitration, I am required, within thirty (30) days of the conclusion of the hearing, but no later than October 1, to make written

¹ The hearing transcript is in two volumes, each with pages numbered from one. Therefore, I have cited the transcript volume I as TRI-(page number): (line number) and volume II as TRII-(page number): (line number).
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findings of fact and a written determination of the issues in dispute, based on the evidence presented. The Parties agreed to extend the deadline for submitting my award to no later than September 25, 2014. A copy of the written findings and the award is to be served on the Parties and on PERC. This Opinion and Award constitutes my written findings and determination of the issues in dispute. (RCW 47.64.300(5))

The Statutory Framework for this Interest Arbitration

RCW 47.64.005, entitled “Declaration of policy”, provides as follows:

The State of Washington, as a public policy, declares that sound labor relations are essential to the development of a ferry and bridge system which will best serve the interests of the people of the state.

RCW 47.64.006, entitled “Public policy”, provides as follows:

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

RCW 47.64.170(8) provides as follows:

(8) The office of financial management shall conduct a salary survey, for use in collective bargaining and arbitration, which must be conducted through a contract with a firm nationally recognized in the field of human resources management consulting.

RCW 47.64.320, entitled “Parties not bound by arbitration—Arbitration factors”, provides as follows:

(1) The mediator, arbitrator, or arbitration panel may consider only matters that are subject to bargaining under this chapter, except that health care benefits are not subject to interest arbitration.

(2) The decision of an arbitrator or arbitration panel is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to compensation and fringe benefit provisions of an arbitrated collective bargaining agreement, is not binding on the state, the department of transportation, or the ferry employee organization.

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

(a) The financial ability of the department to pay for the compensation and fringe benefit provisions of a collective bargaining agreement;

(b) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;

(c) The constitutional and statutory authority of the Employer;

(d) Stipulations of the parties;

(e) The results of the salary survey as required in RCW 47.64.170(8)

(f) Comparison of wages, hours, employee benefits, and conditions of employment of the involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classification involved.

(g) Changes in any of the foregoing circumstances during the pendency of the proceedings;

(h) The limitation on ferry toll increases and operating subsidies as may be imposed by the legislature;

(i) The ability of the state to retain ferry employees;

(j) The overall compensation presently received by the ferry employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefits, and all other direct or indirect monetary benefits received; and

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

(4) This section applies to any matter before the respective mediator, arbitrator, or arbitration panel.

The Issues in Dispute

WSF's Proposal

The Employer proposes that the rates of pay contained in Rule 6 - Wages of the collective bargaining agreement be increased by three percent (3%) for the 2015-2017 biennium.

Currently, the Masters' pay rates contained in Rule 6 of the 2013-2015 collective bargaining agreement are as follows:

Effective July 1, 2014, the following rates of pay shall apply:

Classification	S.T.	O.T.	80 Hours
Staff Master	50.16	75.24	4,012.80
Master	46.78	70.17	3,742.40 (U1, p. 12)

A three percent (3%) increase in the above rates, effective July 1, 2015, would produce approximately the following²:

Classification	S.T.	O.T.	80 Hours
Staff Master	51.66	77.50	4,132.80
Master	48.18	72.28	3,854.40

MM&P's Proposals

The Union proposes to change the rates of pay in Rule 6 – Wages as follows:

Effective July 1, 2015, the following rates of pay shall apply:

Classification	S.T.	O.T.	80 Hours
Staff Master	59.37	89.05	4,749.60
Master	55.23	82.84	4,418.40 (U2, U4)

² To calculate the new proposed rate, I multiplied the existing hourly rate by 1.03. Someone more knowledgeable of accounting might use a different method of calculation that would produce a slightly different result by a cent or a few cents. My purpose is to provide an approximate basis for comparison of the rates discussed in this Opinion.
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The change proposed by MM&P in the base pay rate over the July 1, 2014 rate represents an increase in percentage terms of approximately 18.36% for Staff Masters and 18.06% for Masters. (ER7)

The Union also proposes to modify Rule 12 – Vacations in two respects. First, the Union proposes to eliminate the second tier vacation accrual schedule for employees hired after June 30, 2011. Second, the Union proposes to modify the vacation leave accrual rate schedule for all employees in the bargaining unit as follows:

Months/Years of Service	Hours per Month/Year - Current	Hours per Month/Year - Proposed
Six months	Forty-eight (48)	Forty-eight (48)
Seven Months	Fifty-six (56)	Fifty-six (56)
Eight months	Sixty-four (64)	Sixty-four (64)
Nine months	Seventy-two (72)	Seventy-two (72)
Ten months	Eighty (80)	Eighty (80)
Eleven months	Eighty-eight (88)	Eighty-eight (88)
Twelve months	Ninety-six (96)	Ninety-six (96)
Two years	One hundred four (104)	One hundred four (104)
Three years	One hundred twenty (120)	One hundred twenty (120)
Four years	One hundred thirty-six (136)	One hundred thirty-six (136)
Five years	One hundred sixty (160)	One hundred sixty (160)
Seven years	One hundred sixty (160)	One hundred sixty-eight (168)
Nine years	One hundred sixty (160)	One hundred seventy-six (176)
Eleven years	One hundred sixty (160)	One hundred eighty-four (184)
Thirteen years	One hundred sixty (160)	One hundred ninety-two (192)
Fourteen years	One hundred sixty (160)	Two hundred (200)
Fifteen years	One hundred sixty-eight (168)	Two hundred (200)
Sixteen years	One hundred seventy-six (176)	Two hundred eight (208)

Eighteen years	One hundred seventy-six (176)	Two hundred twenty-four (224)
Twenty years	One hundred eighty-four (184)	Two hundred thirty-two (232)
Twenty-one years	One hundred ninety-two (192)	Two hundred thirty-two (232)
Twenty-two years	One hundred ninety-two (192)	Two hundred forty (240)
Twenty-four years	One hundred ninety-two (192)	Two hundred forty-eight (248)
Twenty-six years	One hundred ninety-two (192)	Two hundred fifty-six (256)
Twenty-eight years	One hundred ninety-two (192)	Two hundred sixty-four (264)
Thirty years	One hundred ninety-two (192)	Two hundred seventy-two (272)

As the above chart shows, under the current MM&P accrual schedule, the accrual rate remains static from year five until year fifteen when eight hours are added to the rate. The rate increases again by eight hours in year twenty. At year twenty-one, the maximum accrual rate of one hundred ninety-two (192) hours is reached.³

MM&P's proposed rate is the same as the current schedule until year seven, but increases by eight hours in each of the years seven, nine, thirteen, fourteen, sixteen, eighteen, twenty, twenty-two, twenty-four, twenty-six, twenty-eight and thirty. Unlike the existing accrual schedule, the 192 hour accrual rate is reached in year thirteen rather than year twenty-one. The maximum accrual rate under the proposal is 272 hours at thirty years. (This accrual rate corresponds with the accrual rate in the IBU contract for employees hired prior to June 30, 2011. (ER30, p. 24, Rule 18.02))

Findings and Determination of the Issues in Dispute Regarding Rule 6 – Wages

Eric Hansen works for the State as Budget Assistant to the Governor. He focuses on Transportation and helps to develop the budget that the Governor submits to the Legislature. His responsibilities include analyzing the revenues projected by the Transportation Revenue Forecast Council and then putting that information together with the information on the cost of maintaining the current level of service, along with any other needs identified by the Transportation Department.

³ Rule 12.9 of the cba allows employees to accumulate up to three hundred twenty (320) hours of accrued vacation. (U1, p. 30)
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Certain realities concerning the Ferry System are unchanging. The System plays a vital role in the economy of the State and provides an essential transportation service to the public. The System is large and complex with a substantial budget. Currently, WSF has an operating budget of \$483.5 million and a capital budget of \$379.0 million. (ER5, p. 5-6; TRI-41:2-5). The record in this case shows that WSF has never been self-sustaining and fare revenue covers only about 70% of the cost of operating the System. Therefore, Transportation funds other than fare revenues are needed to operate and maintain WSF. (TRI-55:17-TRI-59:9; TRI-71:19-TRI-73:13; TR89:3-TRI-93:25; ER5, p. 20) In the past, some of those funds have come from the multimodal account. (TRI-71:19-TRI-72:8)

The State faced significant financial challenges as a result of the 2008 recession. The financial crisis required reprioritization of expenditures by the Legislature and sacrifices by State employees, including the employees represented by MM&P. Recovery from the economic crisis came slowly and remains fragile. (TRI-45:18-25) In addition, litigation has resulted in substantial, unanticipated expenses for the State for education funding and for culvert repair. (McCleary case and “culvert” case; TRI-35:6-23; TRI-63:24-TRI-65:7 and see TRI66:3-TRI-68:11) Federal transportation fund payments to the State have slowed and uncertainty exists with the future availability of those funds because of Congressional inaction. Although Federal Highway Funds are not used for WSF operations, any loss or reduction of those funds affects State spending priorities. (TRI-53:2-TRI-55:22)

Revenues from fuel taxes account for about 75% of the Transportation budget. (TRI-32:3-7) The gas tax is a per gallon amount of revenue that the State receives for each gallon sold. The rise or fall in gas tax revenue is based on gallons purchased and on the tax rate. The tax rate (\$0.375) has not changed since 2003. (TRI-50:7-TRI-52:25; TRI-98:19-TRI-101:12) Although vehicle miles traveled per month have leveled off somewhat in recent years, and fuel efficiency of vehicles has improved, the June 2014 Transportation Forecast Summary observed that gas consumption grew by 1.5% in FY2014, which was much higher than the growth in previous years. (U24, p. 3; ER5, p. 16-17 and see TRI-59:10-TRI-61:21) Testimony in the record shows that the 1.5% growth rate was the highest since 1991. (TRI-103:16-TRI-104:5) Over the long term, the June 2014 Transportation Forecast Summary expects some growth in fuel tax revenue. (TRI-104:1-19)

The remaining twenty-five percent of the Transportation budget comes from the revenue derived from issuing licenses, permits and fees. (TRI-32:8-17) The Legislature passed two bills in 2012 that increased State revenues by \$183.5 million in the 2013-2015 biennium by increasing the rates for certain fees paid to the State. (ER5, p. 20; TRI-66:23-TRI-68:11; TRI-77:25-TRI-78:19; TRI-81:13-TRI-83.4)

The Transportation Forecast Council, in the June 2014 report, projected an average annual growth rate for transportation revenues of 0.9% per year. (U24, p. 4) Nevertheless, expenses are also expected to rise. (TRI-35:4-23; TRI-124:8-24)

A significant portion of Transportation revenue goes to debt service. The Transportation Budget, as enacted in the 2014 supplemental, totals 9.3 billion, of which 1.2 billion is allocated to bond retirement and debt service. (ER5, TRI-36:20-TRI-37:8)

On the positive side, the record shows that employment in the State has now returned to pre-recession levels, although the process of recovering all the jobs lost during the recession took more than five years from 2008 to the end of 2013. (ER5, p. 9; TRI-45:19-TRI-50:5)

Ability to pay remains a major factor despite some positive changes in the State's economy. (ER5, p. 21)

WSF has projected the cost of the wage increase proposed by the Union at \$1,513,410 per year for a total during the 2015-17 biennium of \$3,026, 820. The cost of the 3% wage increase proposed by the Employer is estimated to be \$250,660 per year for a total cost during the biennium of \$501,320. (ER7)

In making a determination on wages, another major factor is comparability. The policy of the State, as contained in RCW 47.64.006, is to promote just and fair compensation, benefits and working conditions as compared with "the public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia in directly comparable but not necessarily identical positions."

The record shows that finding valid comparators within the geographic boundaries outlined in the statute is challenging. WSF is the largest ferry system in the United States and the fourth largest in the world. In terms of number of vehicles carried, WSF is the largest in the world. (ER25) Approximately seventy Masters are employed by WSF. No comparator the size of WSF exists within the boundaries outlined in the statute.

The Union raised some legitimate questions about the validity of the comparators used in the Hay Salary Survey. Although the comparators used come from within the geographic area described in the statute, questions exist whether the comparators meet the statutory requirement that the comparators actually are “directly comparable but not necessarily identical positions” to the positions held by this bargaining unit.

Ms. Durocher testified that even if the comparators do not have the full qualifications that are required of WSF Masters, the survey nevertheless considered those comparators a match, meaning a valid comparison. She testified that if a job description at a comparator matches to the level of 80%, then the match is valid for purposes of the salary survey. (TRII-11:18-TRII-12:4) As the Union points out, however, the employees of Golden Gate, King County, Skagit County and Whatcom County can operate vessels for those employers without having a license for any gross tons and without having pilotage. The any gross tons license and the pilotage qualification are significant qualifications that require substantial amounts of study, preparation and testing. The Union argues correctly, that an employee of Golden Gate, King County, Skagit County or Whatcom County qualified to operate a vessel with one of those employers, which jobs were used as comparators in the survey, would not be qualified to work as either a Mate or a Master with WSF. (TRII-147:18-TRII-150:11) The fact that WSF Masters must have a high level of maritime qualifications differentiates them and the work they do from the employees of the other employers used as comparators who can work without those qualifications.

In addition, those four employers employ significantly fewer people in the jobs used as comparators and some of the employers have only one or two employees in the comparable category. Even though the salary survey applied a weighted average in making the wage comparisons, the validity of the positions at Golden Gate, King County, Skagit County and Whatcom County as comparators is questionable.

The Union contends that the most legitimate comparisons in the survey are the Alaska Marine Highways (“AMH”) day boat Masters and the Black Ball Masters. (TRII-150:15-23) The Union argues that to make a valid comparison of positions, the type of licenses required and the size of the vessel are the most important factors to consider when deciding whether the jobs are “directly comparable but not necessarily identical positions”. Among the comparators used in the salary survey, only Black Ball and AMH require the same level of licenses and have the same size vessels as WSF. (TRII-146:3-13) The Union argues that when WSF wages are

compared to the wages at AMH and Black Ball, the Masters at WSF clearly are far behind. Therefore, the Union contends that the wage increase it proposes is entirely justified. The Union proposes to raise the Masters' pay rates to a level that splits the difference between Black Ball and AMH rates. (TRII-145:2-19; U4)

In addition, the Union argues that IBU members at WSF have a reduced incentive to obtain the qualifications necessary to promote to Master because the pay difference between IBU and MM&P positions is not great enough. The Union contends that IBU employees do not see the advantage of taking on the greater responsibilities of a Master at the current pay levels.

Although I find the Union's argument about qualifications and comparability persuasive, I also have to consider the evidence submitted by the State concerning ability to pay. (ER5, p. 21 and TRI-69:20-TRI-70:20 and TRI-74:6-TRI-77:13) In addition, I have to consider the cost of the vacation benefit, as discussed below, as well as the cost of the items that the Parties reached agreement on in collective bargaining. (ER7) In the current economic climate, even though conditions have improved, the eighteen percent raise proposed by MM&P, if awarded, would, more probably than not, be found infeasible by OFM. Therefore, I am awarding the 3% increase proposed by WSF.

Findings and Determination of the Issues in Dispute Regarding Rule 12 – Vacation Leave

The Union proposes to adopt the accelerated vacation accrual schedule comparable to the one contained in the IBU contract. The Union also proposes to drop the second tier accrual schedule for employees hired after June 30, 2011.

The vacation accrual rate issue has a fairly extensive history that I will summarize briefly. In 2005, Arbitrator Cavanaugh granted the Union an increased vacation accrual rate roughly comparable to the IBU rate. In his award, Arbitrator Cavanaugh focused on internal equity, reasoning that MM&P employees should receive vacation comparable to the IBU employees they supervise. The Legislature funded the enhanced accrual and the new rates went into effect in 2006.

WSF management, however, had concerns about the enhanced vacation accrual. WSF described those concerns at that time in part as follows:

WSF management is very concerned that the newly-awarded vacation accrual rates will adversely affect the ability of WSF to conduct ferry operations for years to come. Specific management concerns include the need for more employees to fill in for employees due to vacation and other absences, the large disparity in

vacation accrual rate between MM&P-represented employees and other state employees, including WSF employees and the effects of increased vacation accrual upon crew cohesiveness. (ER19)

Therefore, WSF approached MM&P with a proposal to buy back the enhanced accrual rate. The Parties ultimately agreed that, effective July 1, 2006, MM&P would give up the enhanced accrual rate and revert to the former rate in exchange for a 5% pay increase across the board and lump sum cash payments to individuals, based on seniority. The cash payments ranged from \$4,000 for an employee with seven to fourteen years of seniority up to \$10,000 for employees with twenty-one years or more of seniority. (ER19)

In the 2008 interest arbitration, Arbitrator Beck again awarded to MM&P the enhanced accrual rate roughly comparable to the IBU rate. MM&P proposed that the vacation benefit be awarded in lieu of a general wage increase. In his award, Arbitrator Beck focused on the issue of internal equity on the vessel, as Arbitrator Cavanaugh had previously. (ER20, p. 3-8) Arbitrator Beck's award was never implemented, as OFM found it to be financially infeasible. Captain Anderson testified that the Union voluntarily offered to forego the vacation award. (TRII-111:1-8)

In the 2010 interest arbitration, MM&P again presented the vacation issue, this time to Arbitrator Williams. He rejected the proposal on three grounds. First, he reasoned that in the prior arbitration with Arbitrator Beck, MM&P did not trade a proposed wage increase for the vacation accrual that Arbitrator Beck awarded. Arbitrator Williams found that the wage increase referred to would never have occurred and so the Union had nothing to trade. Apparently, Arbitrator Williams arrived at that conclusion because OFM found the enhanced vacation benefit infeasible and presumably would also have found a wage increase infeasible. Second, the Watch Supervisors, also represented by MM&P, had only recently achieved an accrual rate equal to the current MM&P rate, and he could not see a reason to break that parity. Third, Arbitrator Williams had concerns about the financial impact of the increase in vacation accrual. He noted that the bargaining unit includes many senior employees and the enhanced vacation accrual would mean that many members of the bargaining unit would receive a substantial increase in vacation, which he characterized as a cost that is "difficult to award in these economic times." (ER21, p. 80)

In 2012, Arbitrator Cavanaugh again was presented with the proposal for enhanced vacation accrual. In that interest arbitration, the Union argued that by agreeing in collective bargaining to a second, lower tier accrual rate for employees hired after June 30, 2011, the Union responded to the Employer's concern that marine employees' vacation rates be more closely aligned with the rates of other State employees. The Union also argued, as it does here, that the MM&P accrual rate for those hired prior to June 30, 2011 acts as a disincentive for IBU employees to obtain the licenses to advance to deck officer, since the employees earn greater leave benefits by remaining in the IBU unit.

In his 2012 decision, Arbitrator Cavanaugh stated that he reluctantly reached the conclusion to deny the Union's proposal. He based his decision on three reasons. First, he found the proposal too expensive under the then current economic conditions. Second, he discussed the fact that the Union had bargained away the benefit after having previously been awarded it. He wrote:

...I awarded a form of this vacation proposal once, it was then funded by the Legislature, and the increased accrual rates actually went into effect in 2006. Nevertheless, the membership voted to "sell" that increased vacation benefit for a 5% wage increase and one-time lump sum payments to employees. The vote may have been close, and no doubt in light of subsequent events there is now some "buyer's remorse," but the membership having made a choice to bargain away its vacation improvements for more immediate financial gain, the Union's internal comparability arguments lack the persuasive power they held in late 2005. (ER24, p. 25)

Third, Arbitrator Cavanaugh also discussed the Union's argument that the Union gave up a wage increase in 2008 in order to achieve the increased vacation benefit that Arbitrator Beck awarded in 2008. Arbitrator Cavanaugh noted that Arbitrator Williams specifically rejected that argument in 2010.

Arbitrator Cavanaugh, however, added a footnote to this discussion that reads as follows:

I do not mean to suggest that conditions will *never* support vacation improvements for this bargaining unit. If the State's finances improve so that additional vacation costs can reasonably be assumed by WSF, and if those improvements are supported by the wage and benefit survey required under the statute, or if other State bargaining units—particularly marine employee units—receive additional vacation benefits, or if some combination of those factors is established in the record in the future, the fact that the bargaining unit sold its vacation improvements in the past—or that Arbitrator Williams denied the Union's proposal in 2010—will not necessarily preclude granting vacation

improvements at an appropriate time. The conditions are not ripe as of now, however. (ER24, p. 26)

Taking the above-quoted footnote from Arbitrator Cavanaugh's 2012 award as the point of departure on this issue, the logical questions are whether conditions have changed and, if so, whether those changes provide support for granting this benefit?

Ability to pay remains an issue with benefits, as well as wages. WSF estimates the cost of the Union's proposal to adopt the IBU vacation accrual rate at \$210,748 in the first year of the next biennium and \$216,947 in the second year, for a total of \$427,695. (ER7)

The State's estimates for the cost of the increased vacation accrual include assumptions about the need to replace employees on vacation. Captain Saffle, however, testified that he believed from his experience of thirty-five years with WSF, including nine years as a Port Captain, that most of the additional time off could be covered by the Relief Masters working at straight time. (TRII-162:4-12) Therefore, the Union argues that the State's assumption concerning the backfill for vacationing Masters is overstated. (TRI-145:1-TRI-150:6; ER7; ER8; TRI-164:25-TRI-168:23)

In his testimony, Captain Williams disagreed with the Union's contentions about filling vacancies. He testified that under current conditions Masters' absences often have to be covered on overtime because of the shortage of Mates who can promote. He also testified that Masters take leave for other than vacation, such as compensatory time and FMLA. (TRI-176:16-TRI-181:6) The Employer asserts that increasing the vacation benefit will add significant costs for replacements. (ER10, ER11, ER12, ER15, ER16, ER17)

The reality concerning the cost of replacing vacationing Masters lies somewhere between the positions outlined by the Parties. Overtime will, no doubt, be needed, but whether the level of cost associated with the enhanced benefit will reach the levels outlined by the Employer is not clear.

The Employer also must treat the vacation accrual on the books as a liability on the Employer's balance sheet. (ER9) The Union points out, however, that the liability is reduced and controlled to some extent by the fact that the Masters with more than five years of service are required to take 160 hours of vacation each year. (U1, Rule 12.6A, p. 29) The total accrual a Master can carry forward is 320 hours. (TRII-162:13-TRII-163:11) Any leave in excess of the maximum accrual will be lost. In an given anniversary year, an employee can accumulate more

than 320 hours, so long as the employee uses the hours in excess of 320 prior to his or her anniversary date. (U1, Rule 12.9, p. 30)

In terms of external comparators, the record shows that vacation accrual at Black Ball is similar to the current MM&P accrual rate and MM&P's rate is superior in some years. (TRII-164:13-TRII-165:15) Captain Saffle testified, however, that Black Ball Masters are paid about \$20 per hour higher than WSF Masters. (TRII-177:22-TRII – 178:1) The Employer also argued that the Masters working for AMH, for the most part, work under significantly different conditions from WSF Masters. A WSF Master, in most instances, is free to leave work and go home at the end of a shift. AMH Masters, aside from those that work on the two AMH day boats, are out for one or two week sailings and live on board during the sailings. Consequently, AMH Masters spend more time away from home and have greater disruption to their private lives because of the schedules that they work. (TRII-165:5-21) The Union also pointed out, however, that AMH Masters work only twenty-six weeks per year and they also receive 504 hours of vacation per year. (TRII-178:2-10)

In my judgment, the central issue with the vacation accrual is internal equity. The record shows that in addition to IBU employees, the MEBA represented employees now have the enhanced vacation accrual rate. (TRI-212:1-4; TRII-151:5-9; ER32, ER34) Therefore, the argument for granting the benefit to achieve internal equity on the vessel has strengthened with the addition of the benefit for MEBA-represented employees. Now, the majority of the employees on the vessels have the benefit, but the Masters, who have by far the greatest level of responsibility and the highest level of qualifications, do not have the benefit. (TRII-111:23-TRII-112:12) When WSF proposed to buy back the benefit from MM&P in 2006, WSF expressed concern about the effect that an enhanced vacation benefit for MM&P would have on crew cohesiveness if other members of the crew did not have a similar benefit. (ER19) That argument seems to be turned around in the present circumstances and justifies granting the benefit to the Masters.

The Employer correctly points out, however, that the bargaining unit previously had the accelerated leave accrual schedule and gave it back in 2006. In return, the bargaining unit received a five percent pay increase that carries forward today, as well as a one-time cash payment. The Employer contends the buyback was intended to be a permanent buyback of the vacation accrual. (TRI-183:8-24; TRI-208:13-TRI-209:1; ER19)

Captain Saffle testified that the Employer stated at the time of the buyback that it intended to negotiate with IBU to take away the accelerated vacation accrual in future negotiations. He testified that in subsequent negotiations with IBU the Employer did not propose to reduce the IBU vacation accrual rate. (TRII-151:16-TRII-152:14) Mr. Holder confirmed that, to his knowledge, the Employer has not requested in negotiations to reduce the IBU vacation accrual rate, or, if it has, it has not pursued the issue to interest arbitration. (TRI-211:9-19)

The Union points out that the Employer has found a way to fund the enhanced vacation accrual for most of the employees who work on the vessels, but resists providing the benefit to the Masters, who are the employees with the greatest responsibility for the vessel and who oversee all of the other workers on the vessel. Mr. Holder testified that IBU represents the largest number of employees working on WSF vessels, estimated at over 800. (TRI-211:20-22) IBU members include ticket sellers, ticket takers and information workers in addition to the employees who work on the vessels. In addition, the other workers on the vessels who are represented by MEBA also have the accelerated vacation schedule.

Masters rise through the ranks in a closed system. Captain Twohig, for example, had extensive maritime experience when he came to work for WSF in 2005. He had a Master's license at the time, but he had to start as an ordinary seaman with WSF and work his way through the ranks. As his example shows, the possibility of hiring a Master from outside directly into a Master's position is unlikely. Captain Williams provided a further example. He testified that he qualified as a Master in 1980, but he did not acquire sufficient seniority to obtain a Master's job with WSF until 1987. (TRI-174:13-TRI-176:15; TRI-181:7-13; see also TRII-157:14-TRII-158:14)

Accordingly, the Masters are the highest qualified and are also among the most senior, longest serving employees of WSF. One of the issues that the statute directs an interest arbitrator to consider is "the ability of the state to retain ferry employees." (RCW47.64.320.3.i)

The lower vacation accrual rate for the Masters has a potential detrimental effect on recruiting and retention of Masters. (TRII-112:13-TRII-113:15; TRII-124:16-TRII-128:1) One example of the unfairness of the different vacation accrual rates involves IBU members working temporarily as Mates or Masters. Those employees receive the higher rate of pay during the temporary assignment but they also continue to accrue vacation at the IBU accrual rate. The

Union argues that the difference in benefits affects recruiting of Masters. The Union contends that IBU members do not have a sufficient incentive to promote if they are going to receive a lesser amount of vacation. In addition, the Union contends that the pay difference for working as a Master does not provide a sufficient incentive for IBU employees to promote and assume the much higher level of responsibility associated with the Master's job.

An enhanced vacation accrual schedule can be an incentive for a senior employee, who accrues at the highest rates, to remain employed. In this case, if the Employer pays more for providing enhanced vacation accrual to a senior workforce and those employees remain employed rather than retiring, then the Employer also receives the benefits, both tangible and intangible, that derive from retention of a highly qualified, knowledgeable and experienced group of employees.

The difference in the vacation accrual schedule has at least the potential, as Captain Hanley and others testified, to create a disincentive for Masters, who potentially could retire, to continue in employment. (TRII-118:5-TRII-119:8; TRII-131:24 – TRII-132:16; TRII-153:16-TRII-154:1; TRII-155:10-23)

Although the Parties agreed in collective bargaining to the vacation buyback and an exchange of value occurred, context is important in evaluating the buyback of the vacation. The salary survey conducted at the time showed that the employees were behind the comparators in pay. Therefore, at least some of that five percent and the cash payments could be attributed to bringing the pay rates closer to the comparators. Captain Anderson testified that three percent was attributable to the vacation buyback and the remaining two percent was intended to bring the pay rate closer to the comparators. (TRII-109:4-TRII-111:22) More importantly, the current salary survey in the record shows a deficit of 2.5% in pay with the comparators as of January 1, 2014. (U3, p. 19) Therefore, even though the five percent increase has carried forward, pay for the members of the bargaining unit remains behind the comparators. In addition, the Union has argued that the more valid comparators, such as Black Ball, pay significantly higher rates of pay than the pay received by WSF Masters, thus placing the WSF Masters even further behind the comparators.

Other arbitrators have stated that an arbitrator should not award a benefit simply because another arbitrator has awarded the benefit to another bargaining unit. I agree generally with that principle. This case, however, presents a situation of glaring inequity on the vessels. I cannot

find a reasonable justification to conclude that the employees with the greatest responsibility and the highest level of qualifications on the vessel should have a lower vacation accrual rate than the other subordinate employees working on the vessel. Therefore, I am awarding the accelerated vacation accrual schedule proposed by the Union, but limited to those employees hired prior to June 30, 2011.

Currently, the Masters' contract has a two tier vacation accrual schedule. Employees hired after June 30, 2011 accrue at a lower rate than employees hired prior to that date.

The Union proposes to eliminate the second tier, lower accrual rate for employees hired after June 30, 2011. This proposal is revenue neutral, at least for the coming biennium, since no one is currently on the second tier and no one is likely to be for some time in the future. (TRI-164:4-13; TRI-171:5-TRI-172:19; ER13) Even if IBU employees promote to MM&P represented positions, the date of hire with WSF remains the date on which the vacation accrual rate is based. (TRI-218:21-TRI-219:2)

The second tier was agreed to by the parties in collective bargaining rather than being awarded by an interest arbitrator. (TRI-212:20-TRI-213:2) Presumably, an exchange of value occurred when the parties agreed to the second tier, which means that, absent changes in circumstances that would justify a change in the second tier arrangement, the parties' agreement should be respected. In addition, the IBU contract, which MM&P points to as a major justification for increasing the accrual rate for the senior employees, has the lower, second tier. (ER30) Therefore, I have decided not to award the elimination from the contract of the second, lower tier of vacation accrual that applies to employees hired after June 30, 2011.

Award

As discussed above, my award on the issues presented to me in this case is summarized briefly as follows:

- 1.) An increase of three percent (3%) in the rate of pay for the 2015-2017 biennium, effective July 1, 2015, is awarded.
- 2.) The enhanced vacation accrual schedule proposed by MM&P is awarded for employees hired prior to June 30, 2011.

3.) The MM&P proposal to eliminate the second, lower tier vacation accrual schedule for employees hired on or after June 30, 2011 is not awarded.

Dated this 22nd Day of September 2014



Joseph W. Duffy, Interest Arbitrator