

**BEFORE THE ARBITRATOR**

In the matter of the interest arbitration under Chapter 47.64  
RCW between

**STATE OF WASHINGTON/WASHINGTON  
STATE FERRIES**

**and**

**PUGET SOUND METAL TRADES  
COUNCIL**

**ARBITRATION AWARD**

FMCS No. 14-50043-6

Case 26634-I-14-0653

(2015-2017 Biennium)

**NEUTRAL ARBITRATOR**

**Susan Spencer**

Attorney at Law PLLC  
3929 NE Steinman Lane  
Bremerton, Washington 98310

**DATE AND PLACE OF HEARING**

**August 20-21, 2014  
Seattle, Washington**

**APPEARANCES**

*For the State:*

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*For the Union:*

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## **WITNESSES TESTIFYING**

For the State:

Glenn Frye  
Kameron Durocher  
Kim Grindrod  
Dwayne Erik Hansen

For the Union:

Charles Rayburn  
Martin Yellam  
Harry Thompson

### **I. STATEMENT OF PROCEDURE**

This matter arises out of the Collective Bargaining Agreement (CBA) between the Washington State Ferries (the State) and the Puget Sound Metal Trades Council (the Union).<sup>1</sup> Pursuant to the parties reaching impasse on wages during contract negotiations, the wage issue was submitted to the Public Employment Relations Commission and was certified for arbitration by the Executive Director<sup>2</sup> in accordance with RCW 47.64.300(1)<sup>3</sup>. This issue concerns bargaining unit wages under the two year labor agreement starting July 1, 2015, and ending June 30, 2017. This matter was submitted to a neutral arbitrator, Susan Spencer, for resolution. The parties stipulated that the Arbitrator had been properly called and the issue was properly before the Arbitrator in accordance with statutory requirements and the terms of the contract. An evidentiary hearing was held August 20-21, 2014, in Seattle, Washington. A transcript of the arbitration proceedings was made by John Botelho, CCR, of Byers & Anderson, Inc., and provided to the Arbitrator.

At the hearing, the State and the Union were afforded full opportunity to present their respective positions on the record. This included examination and cross-examination of witnesses, introduction and acceptance of relevant exhibits, and argument. All witnesses testified under oath. The parties elected to make oral closing statements in lieu of submitting closing briefs. The Arbitrator pledged to submit the Opinion and Award to the parties no later than September 22, 2014.

### **II. STATEMENT OF THE ISSUE**

The issue which was certified for interest arbitration is:

Appendix A: Straight Time Hourly Wage Rates (increase for July 1, 2015 and July 1, 2016).

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<sup>1</sup> State Exhibit 5: Collective Bargaining Agreement, Effective July 1, 2013, through June 30, 2015

<sup>2</sup> State Exhibit 1: Ltr from M. Sellars to G. Frye & T. Leahy; Sub: Certification to Interest Arbitration, dated July 30, 2014

<sup>3</sup> State Exhibit 4: RCW 47.64

### **III. RELEVANT STATUTORY AUTHORITY**

#### **RCW 47.64.005 Declaration of policy.**

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

#### **RCW 47.64.006 Public policy.**

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

#### **RCW 47.64.320 Parties not bound by arbitration – Arbitration factors.**

- (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 organization.
- (3) In making its 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 classifications involved;
  - (g) Changes in any of the foregoing circumstances during the pendency of the proceedings;
  - (h) The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature;
  - (i) The ability of the state to retain ferry employees;

- (j) The overall compensation presently received by the ferry employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefits, and 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.

#### **IV. BACKGROUND**

The State of Washington operates the Washington State Ferry System (WSFS) as part of its Department of Transportation (WSDOT). The WSFS is part of the state highway system. The Puget Sound Metal Trades Council and its affiliated organizations<sup>4</sup> represent the Eagle Harbor Maintenance Facilities Bargaining Unit that is responsible for the maintenance, repair, and conversion work to keep the ferry vessels and terminals operational. Although the majority of the work is performed at Eagle Harbor, the employees are on call “24/7” and may be dispatched at any time to any location throughout the system where there is a problem. This may include, but is not limited to, terminals or shipyards in Seattle, Anacortes, Mukilteo, Coupeville, San Juan Islands, Port Townsend, Edmonds, Kingston, Fauntleroy, Southworth, Point Defiance, and Bremerton. This can include work in all sorts of adverse weather and in a diversity of environments including confined spaces, heights, voids, and bilges.

The fleet of ferries is made up of diverse classes of boats of varying ages. Because of the dissimilarities in many of the operational systems, maintenance workers are required to be extremely knowledgeable as well as versatile in their trades in order to keep the ferries running. For example, three of the older boats are powered by DC drive motors that were allegedly salvaged from World War II destroyers. Ships in the same class feature propulsion systems made by a company that has not been in business for more than 30 years. Maintenance and repair can require a complete remanufacture of parts no longer available. The new Olympic class boats utilize a completely different steering system than the old boats. The Issaquah class boats are different yet. The necessity to comply with new Homeland Security mandates, as well as comply with the myriad of different things the Coast Guard requires for marine installations,

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<sup>4</sup> Union Exhibit 3: Seniority List/Classifications (The PSMTC is comprised of the International Brotherhood of Electrical Workers Local 46, International Association of Machinists and Aerospace Workers Local 49, International Brotherhood of Teamsters Locals 117 and 174, Sheet Metal Workers International Association Local 66, International Brotherhood of Boilermakers Local 104, and United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry Local 32.)

places additional requirements on the workers. The split between vessel and terminal work is estimated at about 60/40.

Within this bargaining unit are between 72 and 80 employees, depending upon staffing levels at any given time,<sup>5</sup> who work out of the Eagle Harbor facility on Bainbridge Island. The Journeymen in this unit are all paid a composite rate regardless of their respective skills or certifications. (i.e., Electricians, machinists, boilermakers/welders, sheet metal workers, pipefitters, truck drivers, and warehouse workers are all paid the same straight time hourly wage.)

**V. POSITIONS OF THE PARTIES AND FINAL OFFERS ON WAGES**

**A. STATE**

The State was “pleased” to be able to propose a 3% wage increase effective July 1, 2015, and a zero percent increase in 2016, for a total of 3% over the biennium. This is “frontloaded” to the first year of the contract, which is not the most economical for the state, but which the state points out is more beneficial to the employees. This proposed increase represents what the State has determined it can afford and what the Office of Financial Management (OFM) has determined is within the realm of “financial feasibility.” This is the same proposal (i.e., 3%/0%) that was given to at least five of the bargaining units of Washington State Ferry Workers.<sup>6</sup>

The State's proposal is shown as follows:<sup>7</sup>

<b>Classification</b>	<b>Proposed Wage 7/1/2015</b>	<b>Proposed Wage 7/1/2016</b>
Journeyman (all crafts)	\$27.74	\$27.74
Leadperson (5% over Journeyman)	\$29.13	\$29.13
Foreperson (7% over Journeyman )	\$29.68	\$29.68
Health & Safety Supervisor (5% over Journeyman)	\$29.13	\$29.13
Planner (7% over Journeyman)	\$29.68	\$29.68
Vessel General Foreperson (9.5% over Journeyman)	\$30.38	\$30.38
Terminal General Foreperson (9.5% over Journeyman)	\$30.38	\$30.38
Helper – starting rate: 65% of Journeyman rate	\$18.03	\$18.03

<sup>5</sup> *Id.* “Within this bargaining unit there are 57 Journeymen, 10 Lead + Safety persons, 8 Forepersons + Planner, and 2 General Foreperson.”

<sup>6</sup> Transcript page 49, Line 22

<sup>7</sup> State Exhibit 2: Ltr. From G. Frye to M. Sellars: Sub: 2015-2017 State of Washington /PSMTC (Metal Trades) Contract Negotiation at Impasse – Certification of Issues, dated July 23, 2014.

**B. UNION**

The Union has proposed two 6% wage increases. The first would be effective on July 1, 2015, and the second would be effective on July 1, 2016. The Union submits it has worked with the State to deal with the recession by taking both wage cuts and a wage freeze. Now that the economy is recovering, the proposed increases are warranted to commence the process of bringing the bargaining unit more in line with the pay rate of workers in comparable trades. The Union has also proposed to increase the percentage differential between the journeyman level and other positions as follows:<sup>8</sup>

- Leadperson: From 5% to 7.5%
- Foreperson: From 7% to 9.5%
- Health & Safety Supervisor: From 5% to 7.5%
- Planner: From 7% to 9.5%
- Vessel General Foreperson: From 9.5% to 15%
- Terminal General Foreperson: From 9.5% to 15%

The Union’s proposal is shown as follows:

<b>Classification</b>	<b>Proposed Wage 7/1/2015</b>	<b>Proposed Wage 7/1/2016</b>
Journeyman (all crafts)	\$28.55	\$30.26
Leadperson (7.5% over Journeyman)	\$30.69	\$32.53
Foreperson (9.5% over Journeyman )	\$31.26	\$33.13
Health & Safety Supervisor (7.5% over Journeyman)	\$30.69	\$32.53
Planner (9.5% over Journeyman)	\$31.26	\$33.13
Vessel General Foreperson (15% over Journeyman)	\$32.83	\$34.80
Terminal General Foreperson (15% over Journeyman)	\$32.83	\$34.80
Helper – starting rate: 65% of Journeyman rate	\$18.56	\$19.67

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<sup>8</sup> Union Exhibit 1: PSMTTC Proposal

## **VI. DISCUSSION OF STATUTORY FACTORS: RCW 47.64.320 (3)(a)-(k)**

### **A. The financial ability of the department to pay for the compensation and fringe benefit provisions of a collective bargaining agreement.**

The State's ability to pay for the compensation and fringe benefit package is the driving force in this interest arbitration. In reaching impasse, the State has declared that the Union's proposal of two 6% increases is not affordable. The State has offered a front loaded 3% increase which the OFM has declared is affordable. The Arbitrator, who is not a budget analyst, is basically tasked with determining whether the State's offer is fair and reasonable, or whether some number other than 3% is affordable. For a layperson to second guess experts is an ominous task, but a review of the evidence presented casts doubt on the State's "ability to pay" being limited to 3%.

As background, the wages and benefits for the WSFS are covered under the WSDOT portion of the transportation budget for the State of Washington. For the WSFS, appropriations for operations (labor, fuel, and other<sup>9</sup>) cannot be used for capital projects (e.g., vessels), and vice-versa. The ferry system's primary operating fund sources are fares, non-fare box revenue, gas tax revenue, license fees, and "transfers."<sup>10</sup> The ferry operating budget is approximately 70% self-funded through fare box (i.e., ferry auto and passenger tickets), and non-fare box (e.g., concessions and advertising) revenues. In the upcoming biennium, both an increase in fares and an increase in ridership are projected.<sup>11</sup>

In his testimony, Mr. Hansen, Budget Assistant to the Governor, provided extensive information on many aspects of the State budgeting process. For the most part, the information was at a high level and its direct applicability to the ferry budget was hard to decipher. There are many "unknowns" that can impact the budget both positively and negatively. For example, a great deal of time was spent on the gas tax. Mr. Hansen explained that 75% of the transportation budget is gas tax supported. The decline in the buying power of the gas tax revenue, coupled with more economical cars theoretically being driven fewer miles, painted a potentially gloomy picture. However, after further examination, the evidence revealed that gas tax revenues are

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<sup>9</sup> "Other" includes such things as maintenance contracts, rents and leases, parts/materials/supplies, marine insurance, credit card fees.

<sup>10</sup> Transcript page 227, line 3 ("Transfers" are funds transferred into the account from projected surpluses in other DOT divisions such as the Motor Vehicle Account and the Multi-Modal account.)

<sup>11</sup> Testimony page 225, line 9

expected to increase,<sup>12</sup> and only about 9% of the ferry budget is funded through gas taxes.

Another significant “unknown” is the magnitude of the “transfers” into the ferry operations account. Because “transfers” are funded in legislative budget bills which cannot bind legislatures in the future, they are not yet included in the financial plan for the 2015-17 biennium<sup>13</sup> shown to the Arbitrator. Per Mr. Hansen, “You don’t know how much you have to transfer from other funds until you know what the whole picture is and you’re putting the final financial plan together.”<sup>14</sup> Consequently, determining “affordability” at this point is somewhat academic.

Mr. Hansen spoke about how long and protracted it has been climbing out of the “Great Recession” of 2008. He acknowledged that “our economists would say the recession is over,”<sup>15</sup> but that budget analysts are cautious about the speed of recovery. Again, how this impacts the ferry budget is unknown. Basically, Mr. Hansen painted a picture that the projections, speculation, and best guesses used in the development of the budget and formulation of the wage offer to the Union were very conservative and that any proposed increases will likewise be cautiously reviewed by policymakers in a conservative economic climate.

With regard to best guesses, the projection that the ending fund balance of the Puget Sound Ferry Operating Account (based on the 2014 Legislative Financial Plan) would be over \$63 million in the negative<sup>16</sup> is the most troublesome data presented by Mr. Hansen. Seeing the negative numbers displayed in red immediately elicits a response that the ferry operating budget is in big trouble and begs the question how the State can even offer a 3% increase with this projection. However, upon further review, it becomes obvious that money is shifted into the operating account (transfers) from other sources as a normal course of business and that projections are continually changing. As reference point, Mr. Hansen gave a similar presentation in the interest arbitration for the last biennium. His projection made in August 2012 showed the ending fund balance projection for the ferry operations account for the current biennium was \$33 million to the negative. This compares to the current projected ending balance for this account of a positive \$17.3 million. This is a \$50 million swing, which needless to say, casts a shadow on the validity of the projections when trying to analyze data to assess “affordability.”

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<sup>12</sup> Union Exhibit 12: June 2014 Transportation Economic and Revenue Forecasts Vol. 1 Summary, page A-5

<sup>13</sup> Transcript page 245 line 19

<sup>14</sup> Transcript page 249, line 12

<sup>15</sup> Transcript page 186, line 18

<sup>16</sup> State Exhibit 13: Major Transportation Accounts Estimated Ending Fund Balances, page 18



To add a further perturbation, the \$63 million negative projection promulgated in the June 2014 Legislative Revenue Forecast has been reevaluated with more current data by Mr. Hansen and has already decreased \$27 million to a new projection of approximately negative \$36 million.<sup>17</sup> In Mr. Hansen's own words, "So in a month or two will I have a slide that looks different than this? I will."<sup>18</sup> Clearly, decisions regarding affordability are driven by which data from what point in time is shown to policy makers (and Arbitrators).

Another point of reference to consider is the Forecast to Forecast Biennium of All Transportation Revenues.<sup>19</sup> The "Total Revenues" projection for the 2015 to 2017 biennium for "Sources of Transportation Revenue" shows a rise in revenue of \$59.3 million, \$39 million of which is earmarked for vessel replacement. While the remainder is obviously not solely for use in wages, the accounts that fund ferry operations (e.g., fares, gas tax, licenses), all show projected revenue increases.

The forecasting and budgeting process is extremely complex and there is inherently a danger in "cherry-picking" facts to substantiate a position. The data presented in the hearing does not facilitate making any definitive conclusions regarding which revenue sources and expenditures will or will not become reality. It merely leaves the Arbitrator with an overall impression that the economy is projected to improve in the next biennium, that there will be an increase in revenue from operational funding sources, and that decision makers will have to prioritize where they believe funds are most needed and warranted.

**B. Past collective bargaining contracts between the parties including the bargaining that led up to the contracts.**

Arbitrator Jane Wilkinson awarded this bargaining unit 1.5% in each year of the current 2013-2015 biennium. These increases were effective July 1, 2013, and July 1, 2014. For the prior biennium (2011-2013), the Union agreed to accept a wage cut of 3%. That cut ended on June 30, 2013, when the bargaining unit received a 3% increase. Also in that contract, the Union agreed to a reduction in overtime pay from double time to time and a half. Arbitrator Marvin Schurke awarded the Union two successive 6% wage increases for the 2009-2011 biennium, but

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<sup>17</sup> State Exhibit 13: Background Information Washington State Ferries dated August 2014, page 21.

<sup>18</sup> Transcript page 225 line 24.

<sup>19</sup> Union Exhibit 12: Transportation Revenue Forecast Council June 2014 Transportation Economics and Revenue Forecasts Adopted 6-19-14, page A5.

the OFM determined this award was not financially feasible and, ultimately, the Union agreed to accept a wage freeze. That increase was never given. In summary, since 2008 the journeyman level of this bargaining unit has received a total increase of only 79 cents (3.02%) in their straight time wage (from \$26.14 to \$26.93 per hour).<sup>20</sup>

**C. The constitutional and statutory authority of the employer.**

Although, with a few exceptions, testimony did not include specific statutory references, it is clear that constitutional and statutory authority tightly directs the budgeting process. For example, as previously stated, the Governor cannot submit a budget that is not balanced and that is outside “current-law revenue.” Money is often gated into specific accounts, limiting the options for transfers. The amount of gas tax that can be directed to ferry operations is set at a fixed rate. All fare box revenue must be used for ferry operations (unless specifically indicated such as the 25 cent surcharge for new vessel construction). Any proposed wage increase, including an award resulting from arbitration, is subject to a rigorous review for financial feasibility by OFM, the Governor’s office, and ultimately the State Legislature.

**D. Stipulations of the parties**

The parties stipulated to the admission of each other’s exhibits. However, they did not stipulate to the truth, accuracy, or reliability of the other side’s exhibits.

**E. The results of the salary survey as required by RCW 47.64.170.**

The data and conclusions presented in the 2014 Marine Employees’ Compensation Survey<sup>21</sup> are key to determining the relative relationship of the compensation of the PSMTC workers (identified as WSFS in the survey) to workers in comparable trades. Unfortunately, this survey data contains some questionable assumptions and premises, as well as a mathematical logic formula, which significantly skews the results to the detriment of the PSMTC workers.

The methodology used in the compilation of the survey data was explained by the state’s witness, Kamaron Durocher of the Hay Group, who prepared the survey. A similar approach has

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<sup>20</sup> Union Exhibit 14: PSMTC Wage History With Employer Proposal

<sup>21</sup> Union Exhibit 8 and State Exhibit 6 : Office of Financial Management (OFM) Marine Employees’ Compensation Survey dated March, 2014

been used in prior surveys and in surveys for other state workers, and presumably is likely to remain the model used for subsequent surveys. Notwithstanding, it is important to highlight the principal incongruities, and their impact on the bottom-line comparative numbers. If either the Arbitrator, OFM Director, Legislature, or Governor were to rely solely on the survey data (and Executive Summary) as presented as a valid determining factor in compensation, without understanding the ramification of what it actually reflects, a potentially gross disservice to the PSMTC workers could result.

Although it is understood and acknowledged that assumptions need to be made in preparing survey data, the following are observations regarding the assumptions and methodology used in the 2014 Survey. Also included are comparative tables that demonstrate how survey methodology can and does skew the results.

1. **Comparators (Survey participants)**

In her decision for the current biennium, Arbitrator Jane Wilkinson concluded that “it was not proper to include the State of Washington Government and Higher Ed employees as a comparator in the salary survey.”<sup>22</sup> This Arbitrator agrees. The continued inclusion of this group in the 2014 Survey, which was at the request of the State, has the obvious result of bringing the comparator average down. The Union once again objected to the use of the Washington Gen/Ed employees as a comparator group. Using the same employer (the State) as a comparable employer, and using these State comparables that are not related to Marine or Shipyard work that are allegedly an 80% match, casts significant doubt on the validity of the Washington Gen/Ed as a viable comparable.

By statute, when analyzing the “State’s ability to pay,” the Arbitrator is directed to look at “Comparison of wages, hours, employee benefits, and conditions of employment of the involved ferry workers 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.” The Salary Survey, which presumably provides this data for comparison, includes data from the following sources:

Foss Maritime Company (Seattle)  
Port of Seattle (Seattle)

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<sup>22</sup> Union Exhibit 6: Arbitrator Wilkinson’s Opinion and Award

Puget Sound Naval Shipyard (Bremerton)  
Vancouver Shipyards Co. Ltd. (Vancouver, B.C.)  
Washington State-General Government and Higher Ed.

Although survey data is contingent upon who is willing to respond, this hardly appears to be responsive to the requirement to compare “public and private sector employees along the west coast of the United States, including Alaska. . . .”

Without question, the comparables used in this survey skew the results to the detriment of the Union. If the State is genuinely interested in a more realistic assessment of the gap between this bargaining unit and comparables, the survey should be revised.

2. **Time frame covered**

The “snap-shot” in time used for providing wage and benefit data in the survey is January 2014. It should be noted that the bargaining unit received a 1.5% wage increase on July 1, 2014, that is not reflected in the survey numbers. Likewise, the comparables may have also received increases not reflected. For example, Journeymen for all Foss crafts purportedly received a 4.24% wage increase on July 1, 2014.<sup>23</sup> The Port of Seattle electricians, plumbers, and steamfitters also purportedly received 1.3% and 1.1%, respectively, in June 2014. The Vancouver Shipyard workers received a 2.5% wage increase in March 2014. The fact that the wage comparison numbers are not static and are dependent upon when the survey is taken and who is in the mix simply underscores the importance of understanding what the comparison figures actually represent.

3. **Simple and Weighted Averages**

In the Market Survey, care was taken to ensure a weighted average for each of the benchmark titles was calculated. According to Ms. Durocher’s own testimony, “the weighted average is adjusted to avoid distortion.” However, a simple average is used to calculate the ‘bottom line.’ No explanation was provided by the State for this change in mathematical logic which significantly alters and distorts the difference between the bargaining unit and comparables, as will be shown following.

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<sup>23</sup> Union Exhibit 31: Scheduled raises after January 1, 2014

4. **Three Market Comparison Options Using the Same Survey Data with Different Calculation Premises**

a. **Option 1: Survey data using a simple average for the bottom line**

Benchmark Title	# of EEs	Average (Actual) Base Pay Rate	Average Hourly Benefit	Average Actual Base Pay & Benefits
Shipyards Machinist	1	\$31.29	\$6.56	\$37.85
Shipyards Electrician	1	\$32.65	\$6.39	\$39.04
Shipyards Boilermaker/Welder	1	\$30.05	\$6.09	\$36.14
Shipyards Pipefitter	1	\$28.72	\$6.21	\$34.93
Shipyards Sheet Metal Worker	1	\$31.90	\$6.32	\$38.22
Shipyards Truck Driver	1	\$25.66	\$7.18	\$32.84
Shipyards Warehouse Worker	1	\$21.61	\$6.73	\$28.34
<b>TOTAL</b>	7	\$201.88	\$45.48	\$247.36
<b>Simple Average</b>		\$28.84	\$6.50	\$35.34
<b>WSFS</b>		\$26.53	\$8.11	\$34.64
<b>% Above or Below Market</b>		<b>-8.7%</b>	19.9%	<b>-2.0%</b>

The Option One table figures are taken directly off the chart on page 78 of the Hay Group survey.<sup>24</sup> The ‘bottom line’ is the “Metal Trades Total Percentage (%) Above or Below Market” entry on the chart. To calculate this ‘bottom line,’ the survey used a simple average that gave equal weight (i.e. “1”) to the seven benchmark jobs that make up the Journeyman level of the bargaining unit (WSFS in the survey) regardless of the actual skill mix of the population of the group (i.e., No consideration is given to the actual “# of EE’s” in the respective benchmark classifications.) The Average (Actual) Base Pay difference between the WSFS rate and comparators rate using this calculation method is minus 8.7% without benefits included, and minus 2% with benefits included. The State’s offer is presumably based on this comparison which the Arbitrator sees as flawed.

<sup>24</sup> State Exhibit 6: OFM Marine Employees Compensation Survey, page 78/109

b. **Option 2: Survey data assuming a weighted average for all participants**<sup>25</sup>

Benchmark Title	# of EEs	Average (Actual) Base Pay Rate	Average Hourly Benefit	Average Actual Base Pay & Benefits
Shipyards Machinist	158	\$31.29	\$6.56	\$37.85
Shipyards Electrician	284	\$32.65	\$6.39	\$39.04
Shipyards Boilermaker/Welder	346	\$30.05	\$6.09	\$36.14
Shipyards Pipefitter	245	\$28.72	\$6.21	\$34.93
Shipyards Sheet Metal Worker	128	\$31.90	\$6.32	\$38.22
Shipyards Truck Driver	69	\$25.66	\$7.18	\$32.84
Shipyards Warehouse Worker	130	\$21.61	\$6.73	\$28.34
<b>**TOTAL</b>	<b>1360</b>	<b>\$40,313.16</b>	<b>\$8,659.11</b>	<b>\$36.01</b>
AVG all participants (i.e. TOTAL/1360)		\$29.64	\$6.37	\$36.01
	WSFS	\$26.53	\$8.11	\$34.64
	% above or below Market	<b>-11.7%</b>	21.5%	<b>-4.0%</b>

The weighted average methodology used in Option 2 takes into account all 1360 survey participants, which are more heavily comprised of the higher benchmark classifications. This bottom line, which represents the difference in rate between the WSFS and all respondents, is minus 11.7% without benefits included and minus 4.0% with benefits included. In her testimony, Ms. Durocher emphasized the importance of using a weighted average in determining the “Average (Actual) Base Pay” in individual benchmark calculations, but failed to follow through with this logic in determining the bottom line. While using the survey respondent population is also not necessarily a valid methodology to use in making a comparison, it nonetheless illustrates how decisions made on how to calculate data can impact results. In this case, it demonstrates a further widening of the gap between actual WSFS compensation and the compensation of comparables.

<sup>25</sup> The total accounts for all 1360 survey participants at their respective rates. {e.g., The “Average (Actual) Base Rate” total equals (158 X \$31.29) + (284 X \$32.65) + (346 X \$30.05) + (245 X \$28.72) + (128 X \$31.90) + (69 X \$25.66) + (130 X \$21.61).}

c. **Option 3: Survey data assuming a weighted average for WSFS population paid at market rates**<sup>26</sup>

Benchmark Title	# of EEs	Average (Actual) Base Pay Rate	Average Hourly Benefit	Average Actual Base Pay & Benefits
Shipyard Machinist	13	\$31.29	\$6.56	\$37.85
Shipyard Electrician	14	\$32.65	\$6.39	\$39.04
Shipyard Boilermaker/Welder	8	\$30.05	\$6.09	\$36.14
Shipyard Pipefitter	12	\$28.72	\$6.21	\$34.93
Shipyard Sheet Metal Worker	9	\$31.90	\$6.32	\$38.22
Shipyard Truck Driver	1	\$25.66	\$7.18	\$32.84
Shipyard Warehouse Worker	4	\$21.61	\$6.73	\$28.34
<b>**TOTAL</b>	<b>61</b>	<b>\$1,848.11</b>	<b>\$388.96</b>	\$36.67
AVG WSFs at Market (i.e. TOTAL/61)		\$30.30	\$6.38	\$36.67
WSFS		\$26.53	\$8.11	\$34.64
% Above or Below Market		<b>-14.2%</b>	21.3%	<b>-5.9%</b>

The weighted average methodology used in Option 3 takes into account the actual makeup of the Eagle Harbor WSFS group if they were paid at market rates. The actual number of WSFS EE's is more heavily comprised of the higher paid benchmark classifications. The Average (Actual) Base Pay difference between the WSFS rate and comparators rate using this calculation method is minus 14.2% without benefits included, and minus 5.9% with benefits included. Although not explicitly stated, presumably, the Union's position is founded on this comparison, which the Arbitrator believes is the more valid.

<sup>26</sup> The total accounts for the actual makeup of the existing Eagle Harbor WSFS group at the respective survey rates for their related Benchmark Title. {e.g., The "Average (Actual) Base Rate Pay Total" equals (13 X \$31.29) + (14 X \$ 32.65) + (8 X \$30.05) + (12 X \$28.72) + (9 X \$31.90) + (1 X \$25.66) + (4 X \$21.61).}

d. **Summary of Three Survey Options**

<b>Options</b>	<b>Average (Actual) Base Pay Rate</b>	<b>Average Hourly Benefit</b>	<b>Average Actual Base Pay &amp; Benefits</b>
<b>WSFS</b>	\$26.53	\$8.11	\$34.64
Option 1			
<b>Simple Average</b>	\$28.84	\$6.50	\$35.34
<b>% Above or Below Market</b>	<b>-8.7%</b>	19.9%	<b>-2.0%</b>
Option 2			
<b>Weighted Avg accounting for all Participants</b>	\$29.64	\$6.37	\$36.01
<b>% Above or Below Market</b>	<b>-11.7%</b>	21.5%	<b>-4.0%</b>
Option3			
<b>Weighted Avg for WSF at Market Value</b>	\$30.30	\$6.38	\$36.68
<b>% Above or Below Market</b>	<b>-14.2%</b>	21.3%	<b>-5.9%</b>

This chart summarizes the conclusions from the above three options for comparative purposes. It clearly illustrates how the calculation of data from the same Base Salaried Market Comparison can yield dramatically different conclusions. By using a simple versus a weighted average methodology in the survey, the Option 1 result of minus 2.0% (which is the published survey result) understates the discrepancy between WSFS and the comparables used in the survey. It is the opinion of the Arbitrator that Option 3 provides a more accurate and realistic comparison. Considering the aforementioned trepidations about the makeup of the survey participants (i.e., utilization of Washington Government and Higher Ed.) and the limited number of participating firms, the minus 5.9% discrepancy in “Average Actual Base Pay & Benefits” in Option 3 is also very likely understated.

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

The comparator evidence that was presented at the hearing was primarily included in the statutorily required survey data discussed above. As previously stated, the comparables used in the survey did not necessarily seem to reflect a broad range of public and private sector employees doing comparable work. However, given the comparables that were used, sufficient data was included in the survey to do a cursory comparison of benefits and, to some degree,



working conditions. With regard to working conditions, it should be once again noted that this bargaining unit has the unique function of working in a wide range of environments and locations on land and over water to keep the ferry system operating.

**G. Changes in any of the foregoing circumstances during the pendency of the proceedings.**

The only evidence presented by the parties that seems applicable to this consideration is the need to account for the 1.5% wage increase received by the bargaining unit on July 1, 2014. The wage rate data for the unit used in the Compensation Survey was “as of” January 1, 2014. This increase is factored-in under Section VII, Conclusion. Increases in wage comparables will also be addressed.

**H. The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature.**

The only evidence presented that addresses this consideration was testimony by Mr. Hansen regarding the Transportation Economic Revenue Forecast that indicates a two and a half percent annual fare increase, fiscal year 2016 through 2027.<sup>27</sup> It is not entirely clear whether this is merely a projection made for the upcoming biennium based on an assumption or whether these increases will, in fact, occur.

**I. The ability of the State to retain ferry workers.**

The Union provided a list of employees who have left the Eagle Harbor unit since 2009.<sup>28</sup> The reason for these actions included retirement, dismissal, resignation, probationary separation, and reassignment. From this list, it is not possible to ascertain whether or not the state has a problem in its “ability to retain ferry workers.” Since the start of the current biennium, roughly eight employees have left the unit. In a 77 person unit, this is roughly 10 %. On the surface, this might seem like a reasonable and expected number. However, in his testimony Union witness Charles “Buck” Rayburn strongly and convincingly made the point that there is a “huge learning

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<sup>27</sup> Union Exhibit 12: Transportation Economic Revenue Forecast, page IV 6-7

<sup>28</sup> Union Exhibit 36: WSDOT Staff Who Left PSMTC from 6/1/2009 thru 6/24/2014

curve to these jobs” due to the age and range of the vessels, required certifications, and varied working environments. He attributed the recent loss of Sergy Mogulevskiy and Sylwester (*sic*) Mroczek to their ability to make eight to ten dollars an hour more elsewhere. According to Rayburn, these were two well-credentialed and capable employees who had been with the ferries about two years and were just getting up on the learning curve. He also gave other examples. The point here, which is well taken and should resonate with the State, is that the current workforce is aging (Rayburn estimated the average age at 55) and the learning curve is steep. The ferry system cannot afford the inability to attract and retain well-qualified and well-trained workers. They are essential to the operation and maintenance of the ferry system.

**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.**

The overall compensation presently received by the ferry employees has been discussed previously. Employees of the state enjoy a comprehensive compensation package that includes vacation, holidays, paid excused time, pension, insurance and other direct and indirect monetary benefits. The one factor that has not yet been discussed and is definitely noteworthy is the job stability that has been afforded these workers. While journeymen with comparable skills working for other employers have faced layoffs and job uncertainties, this bargaining unit has experienced job stability without layoffs or the requirement to take furlough days. Job security (i.e., stability and longevity) is an important advantage to employees and must be given consideration when making comparisons.

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

**1) Consumer Price Index (CPI) growth relative to wage growth**

Although the Union provided the CPI information from June 2002 to June 2014 as an exhibit, no testimony was presented as to its direct relevance to the bargaining unit growth in wages. As previously stated, between 2008 and 2014, the straight time wages increased a total of only 3.02%. During the same period, the CPI-W (Urban Wage Earners and Workers: Seattle-

Tacoma-Bremerton) increased by a much larger percentage.<sup>29</sup> This reflects a loss in buying power for bargaining unit members.

## 2) **Internal Equity**

The Hay Group Salary Survey also addresses the wages and benefits of the ferry terminal employees and ferry system administrative employees. Although the parties did not present testimony or evidence regarding this data, the Arbitrator assumes a similar methodology was used in its preparation. These groups were also found to lag behind the comparator averages. While the State must be mindful of treating employees fairly and equitably, it must also not disregard the factors unique to each bargaining unit. In this case, the fact that the Eagle Harbor crew are skilled trade workers in a job with a lengthy learning curve that has significant ramifications for non-performance (i.e., ferries do not operate) should be considered and recognized. “Fairly and equitably” should not necessarily mean all ferry workers should receive the same wage package.

## **VII. CONCLUSION**

In the State’s closing remarks were the cautionary words, “I hope that you consider that an award that’s too outside the realm of financial feasibility runs the risk of not being funded.”<sup>30</sup> Since financial feasibility appears to be a moving target, this provides an interesting dilemma. As shown above, the same core data looked at from different perspectives yields markedly different conclusions. Whether analyzing the State’s “ability to pay” based on revenue forecasts, the salary comparison data, or a combination of factors, it is clear the State has made a proposal to this bargaining unit based on premises and assumptions that yield what appears to be a very conservative offer. If “financial feasibility” is somehow synonymous with “conservative” in assessing if this Arbitrator’s award is “too outside the realm,” as opposed to assessment of the substantive observations contained herein, then there is indeed the risk that this award might not be funded. Regardless of the consequences, it behooves this Arbitrator to provide a decision that conforms to a reasoned analysis of the evidence presented and statutory guidelines. “Financial feasibility” ultimately rests with the OFM, the Governor, and the Legislature.

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<sup>29</sup> Union Exhibit 13: CPI Information from June 2002 through June 2014.

<sup>30</sup> Transcript at page 422 line 5

In order to justify modifying the State’s position, some observations must be summarized. First, the Salary Survey comparative data for the last three bienniums clearly demonstrates the base pay rate gap between the bargaining unit and the comparables has progressively gotten worse and ferry workers are falling further behind with each contract.<sup>31</sup> Second, the State’s use of the simple versus the weighted average in calculating the gap between the bargaining unit and the comparables skews the data and understates the disparity. Third, the States inclusion of the Washington Gen/Ed in the field of comparables is inappropriate and artificially minimizes the gap. And lastly, State revenue projections continue to improve.

In order to justify modifying the Union’s position, some other observations must also be summarized. First, the Union did not provide the rationale for its 6% and 6% proposal. Neither did it provide adequate testimony or evidence from which to conclude the proposed wage increases for the “non-journeyman” positions were justified. Simply presenting new job descriptions, without more, was not sufficiently persuasive. Next, the fringe benefits afforded the bargaining unit members, including job security in particular, are significant and competitive. And lastly, the State is not in a financial position to make up for all past losses at once.

Even though this Arbitrator has concluded the methodology used in the Salary Survey distorts and understates the magnitude of the actual variance of the bargaining unit to comparators, it is nonetheless the method accepted by the State at this point. Therefore, in deference to addressing the “affordability” parameter, the following calculations are all based on using these actual Salary Survey figures (Option 1) as a starting point, which is by far the most conservative approach.

Option 1 Starting Point using Simple Average Methodology	Average (Actual) Base Pay Rate	Average Hourly Benefit	Average Actual Base Pay & Benefits
<b>Benchmark Comparators</b>	\$28.84	\$6.50	\$35.34
<b>WSFS</b>	\$26.53	\$8.11	\$34.64
<b>% Above or Below Market</b>	<b>-8.7%</b>	19.9%	<b>-2.0%</b>

<sup>31</sup> Union Exhibit 9 and State Exhibit 6: OFM Marine Employees Compensation Surveys dated April, 2012 and March, 2014 for Comparative Base Rate Pay. (2010 = -4%, 2012 = -5.4%, and 2014= -8.7%)

Beginning with the current simple average as of January 2014, the base rate pay for WSFS is \$26.53 as compared to the market rate \$28.84. However, the WSFS enjoys a positive \$1.61 in benefits as compared to the market (\$8.11- \$6.50 = \$1.61). For an “apples to apples” base rate comparison, the market rate is adjusted for the “benefit differential,” yielding an adjusted market rate of \$27.23. ( $\$28.84 - \$1.61 = \$27.23$ ). This now compares to the WSFS base rate of \$26.53.

The WSFS received a 1.5 % increase on July1, 2014, which changed the WSFS base rate to \$26.93 ( $\$26.53 \times 1.015 = \$26.93$ )

Assuming a 2% increase per year for “benefit adjusted” comparator rate, which is conservative,<sup>32</sup> the market base rate would be as follows:

2% effective 7/14..... $\$27.23 \times 1.02 = \$27.77$   
 2% effective 7/15..... $\$27.77 \times 1.02 = \$28.33$   
 2% effective 7/16..... $\$28.33 \times 1.02 = \$28.90$

The 3% WSFS base rate increase offered by the State is as follows:

3% effective 7/15..... $\$26.93 \times 1.03 = \$27.74$   
 0% effective 7/16..... $= \$27.74$

**Using even the most conservative data and methodology that minimizes the actual magnitude of the disparity, the State’s offer would still yield a substantial base rate difference between the WSFS and the market. ( $\$27.74$  minus  $\$28.90 =$  minus  $\$1.16$  or minus 4.2%).**

The additional cost to the State to address this discrepancy would be approximately \$165,000 over the State’s current proposal.<sup>33</sup> Not only is this warranted using an objective calculation, it is also warranted using a subjective one. These bargaining unit members are uniquely qualified and essential to the effective operation of the State Ferry System and should be compensated accordingly. An additional \$165,000 out of a multi-million dollar budget that is based on conservative projections should be financially feasible.

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<sup>32</sup> Union Exhibit 31: Scheduled Raises After January 1, 2014. (Data is provided for three of the five survey comparables (i.e., Foss, Port of Seattle, and Vancouver Shipyards) showing increases in the wage and benefit packages for 2014 and the next biennium.

<sup>33</sup> State Exhibit 9: PSMTC 2015-2017 Projected Costs (Management Proposal: FY 2016 = \$158,347, FY 2017 = \$158,418, Total Biennial = \$316,765; Arbitrator’s Award: FY 2016 = \$158,347 FY 2017 = \$158,347 + 1.04(\$158,347) = \$323,028 Total Biennial = \$481,375. Difference = \$164,610.)

### **VIII. AWARD**

The wage award is as follows:

**FY 2015 Wage Award:** Effective July 1, 2015, the bargaining unit will receive a **3.0%** wage increase.

**FY 2016 Wage Award:** Effective July 1, 2016, the bargaining unit will receive a **4.0%** wage increase.

No provision is made for any increase in the percentage differential for the Leadperson, Foreperson, Health & Safety Supervisor, Planner, Vessel General Foreperson, or Terminal General Foreperson positions. Insufficient justification was presented by which an analysis could be made.

Respectfully submitted the 18<sup>th</sup> day of September, 2014.



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Susan Spencer  
Arbitrator