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In the Matter of the Interest Arbitration)
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 between)
)
 PACIFIC NW REGIONAL COUNCIL)
 OF CARPENTERS)
 (Union))
)
 and)
)
 STATE OF WASHINGTON,)
 DEPARTMENT OF)
 TRANSPORTATION,)
 FERRIES DIVISION)
 (Employer))

OPINION AND AWARD
PERC # 26690-I-14-0663
INTEREST ARBITRATION

BEFORE: Kathryn T. Whalen, Neutral Arbitrator

APPEARANCES: For the Union:

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Los Angeles, CA 90071

For the Employer:

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HEARING: August 25 and 26, 2014

RECORD CLOSED: August 26, 2014

AWARD ISSUED: September 22, 2014

I. INTRODUCTION

This interest arbitration is between the State of Washington, Department of Transportation, Ferries Division (State, WDOT, WSF) and the Pacific Northwest Regional Council of Carpenters (PNRCC or Union). PNRCC represents about 22-23 journey-level carpenters who work out of WSF's Eagle Harbor Facility on Bainbridge Island. Under RCW 47.64.300 the parties requested, and Washington Public Employment Relations Commission (PERC) certified, one issue to arbitration--Schedule A wages for their 2015-2017 Collective Bargaining Agreement.

The parties submitted this dispute to a single neutral arbitrator, Kathryn T. Whalen. The Arbitrator convened the hearing beginning on August 25, 2014 and continuing through August 26, 2014. The parties had a full opportunity to make opening statements, examine and cross-examine witnesses, introduce documents, and make arguments for their respective positions. Closing arguments were presented on August 26, 2014 and the Arbitrator closed the record on that date.

II. STATUTORY CRITERIA

RCW 47.64.005 Declaration of policy.

The state of Washington, as public policy, declares that sound labor relations are essential to the development of a ferry and bridge system which 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 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 47.64.170 Collective bargaining Procedures.

* * *

(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 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 employee 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 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 the 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 classifications involved;

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

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

(i) The ability 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.

III. PARTIES' FINAL OFFERS ON WAGES

The Employer proposes a 3% general wage increase to Appendix A-Straight Time Hourly Wage Rates-for all positions of the Union's bargaining unit effective July 1, 2015, of the 2015-2017 biennium. The State proposes no other wage increase for the biennium. The Union proposes a 9% wage increase for July 1, 2015 to June 30, 2016 and a 6% wage increase for July 1, 2016-June 30,

2017. Also, the Union proposes additional 2% or 3% increases for lead and foreperson classifications.

IV. DISCUSSION

A. Overview

RCW 47.64.320 (3) lists 11 factors to be considered by the Arbitrator. Here, the parties focused their evidence and argument on four of those factors, subsections (a), (b), (e) and (f). The parties mentioned other statutory factors but submitted little or no evidence. My decision is tailored to the evidence and the parties' arguments. At the onset of our hearing, the parties agreed to delete the reference to "all crafts" in Appendix A.

Based upon the express language of subsection (f), comparability is to be determined for "the involved ferry employees" ... "doing directly comparable but not necessarily identical work, giving consideration of factors peculiar to the area and classifications involved." Keeping this in mind, it is important to first describe the involved ferry employees, the classifications involved, and their work.

Schedule A of the parties' current Agreement lists classifications of: Journeyman, Leadperson, Foreperson, Health & Safety Supervisor, Planner, Vessel General Foreperson, Terminal General Foreperson, and Helper. All classifications listed after journeyman except for helper receive an additional wage percentage over the journeyman rate. The helper receives a starting rate of 65% of a journeyman. The applicable journeyman job description for shipwright/carpenter essentially is "skilled shipwright/carpentry work."

Examples of carpentry work are metal framing, attaching dry wall to studs and installing tiles, flooring, doors, relights, door locks, door knobs, cabinets and furniture. Millwrights install and maintain machinery. Maintenance carpenters typically have the same skill set as construction carpenters.

Bill Cleland, long-time WSF journeyman, described the work of WSF shipwrights/carpenters. They work in the carpenter shop, lock shop and insulation (asbestos) shop. Those in the carpenter shop do everything from working on the pier and crawling around pilings to fine cabinet work and everything in between on all vessels and terminals. Those in the lock shop maintain and repair all regular locks and electronic locks in all boats and ferry terminals. And, employees in the insulation shop do asbestos abatement. They deal with all types of glass insulation and pads for engines.

B. Ability to Pay

1. Fact Summary

The evidence concerning the statutory factor of the State's ability to pay largely was submitted through the testimony of State witness Erik Hansen who serves as the budget analyst to the Governor for transportation. Hansen testified in conjunction with a power point presentation which was provided in documentary form. (State Exhibit 5.)

Kim Grindrod is a compensation and policy analyst employed by the Office of Financial Management (OFM), State Human Resources (HR) division. Grindrod prepared a cost analysis of the State and Union proposals that was submitted as State Exhibit 8 and she performed a supplemental analysis that

was submitted as Union Exhibit 31. The Union also submitted a copy of the State's April 2014 Supplemental Transportation Budget. Union Exhibit 6. I relied upon this evidence for my findings concerning ability to pay.

The biennial cost of the State's 3% wage proposal for FY 2016 and FY 2017 was calculated as \$90,316. The biennial cost of the Union's wage proposal of 9% (FY 2016) and 6% (FY 2017) was calculated as \$369,395. The proposed increases to lead and foreperson classifications added \$22, 268 for a total cost of \$391,663 for the Union's proposal. The difference between the parties' proposals is \$301,348.

The State has three budgets: the operating budget, the capital budget and the transportation budget. The legislature appropriates most transportation funds. It considers the Governor's budget, and then creates its own budget bill. Once passed, the budget goes to the Governor who can veto portions of it. Eventually it is signed into law and becomes the budget.

The 2014 transportation budget is about \$9.3 billion. Its primary revenue source is the gas tax. Within the transportation budget are operating and capital components. Important here is the WSF operating budget which is \$483.5 million.

In terms of the current economic climate, near the end of 2013, the State of Washington came out of the recession that lasted five years. The State is back to pre-recession employment levels. This is important because when people are employed, they drive more which in turn fuels gas tax revenues.

On the other hand, gas taxes do not grow with price or keep up with inflation, so every year the value of gas tax revenues decline. The State also projects that revenues will continue to decline as a result of more fuel efficient engines and climate pressures to reduce our dependence on fossil fuels. Still, even though a decline in gas tax revenue is projected, gas tax revenue is growing--just not at the rate the legislature and forecasters anticipated prior to the recession.

In 2012, the legislature increased some fees that have resulted in \$183.5 million in additional, ongoing revenue to transportation. For ferry operations, this has meant \$35 million in new revenue for 2013-2015. According to Hansen, the estimated ending balance for 2013-2015 for the ferry operations account is more than \$17 million. Due to existing transportation pressures, however, Hansen projects that despite new revenues, absent cost reduction/corrective action, ending fund balances will be in the red for 2015-2017 and several biennium thereafter.

Among transportation pressures are such things as the State's obligation to native tribes as a result of the *Culvert* case¹, Department of Licensing computer upgrades, employer health care and pension costs.

2. Parties' Positions

The State argues that the pressures on WDOT, particularly the *Culvert* case, show for the upcoming biennium there is a substantial amount of money

¹ According to Hansen, in the *Culvert* case a federal court agreed with tribes that the State of Washington had the obligation to fix a list of culverts that were created by the construction of roads. These culverts adversely affected the ability of fish to get upstream and, correspondingly, tribes' ability to catch fish. The approximate cost to the State to fix this problem is \$2.4 billion which, in turn, is broken down into 17 years and the payment of \$310 million per year.

that is owed that will put WDOT in the red. The State is required to have a balanced budget, and so choices must be made that involve cutbacks.

Still, argues the State, it has proposed a 3% general wage increase for PNRCC and all state employees with the total cost of \$44 million to the State. The State asks the Arbitrator to bear in mind other pending arbitration decisions. If there are decisions for more than 3%, financial infeasibility will be considered. My decision will be reviewed by OFM and the legislature in this greater context.

PNRCC contends that the State has the money to pay for its proposal as shown by its own evidence--new, ongoing revenue of \$183 million (\$35 million to ferries). The Union points out that in prior negotiations, the State also projected it would be in the red for 2013-2015, but when the budget was ultimately passed it was balanced. And, argues the Union, there is always some extra money--right now that total is \$99.38 million as shown by adding the columns of the State's own Exhibit 5 (p. 21). This evidence, coupled with the State's own costing of the Union's proposal at a few hundred thousand dollars, demonstrates the State's ability to pay.

3. Findings: Ability to Pay

As demonstrated by the State's costing analysis, the amounts at issue in this proceeding are modest. The bargaining unit is small. I am convinced by evidence of the State's existing financial condition and new ongoing revenue that it has the ability to pay either wage proposal--the difference of the two proposals being \$301,348.

C. Historical Evidence, Salary Survey and Comparability

1. Past Contracts and Negotiations

Evidence of the statutory factor of past collective bargaining was provided by testimony from Glenn Frye, a State negotiator and Edward Triezenberg, a Union senior contract administrator. Both were lead negotiators in the parties' 2014 negotiations. Frye and Triezenberg have extensive bargaining and labor relations experience. Documentary evidence consisted of: prior contracts for 2013-2015, 2011-2013 and 2009-2011; evidence of renegotiated agreements in 2011; and carpenter wages for the last 10 years. State Exhibit 1, Union Exhibits 12 (p. 48); 13, 14 and 28.

In 2014, the parties had their first negotiation session on April 17 and reached impasse on wages on August 4, 2014. They had a total of five sessions.

In terms of economic items, the parties tentatively agreed to reimbursement for safety shoes as well as coveralls. The latter is a "wash" economically as the State previously provided coveralls. The parties also agreed to an enhancement to call-back pay and to reimbursement for renewal of the Transportation Worker Identification Certification, or "TWIC" card. These cards are renewed every five years. Frye did not know how many bargaining unit members would renew their cards in the next biennium and/or the specific cost of this item. The record also does not reflect the cost of the call-back enhancement.

The wage history for the Union's WSF unit members from 2007 through June 30, 2015 is as follows: 2007/2008--4.8% increase; 2008/2009--2%

increase; 2009/2010--0%; 2010/2011--0%; 2011/2012--3% decrease; 2012/2013--3% decrease; 2013/2014--1.5% increase; 2014/2015--1.5% increase.

Early in 2011, WSDOT renegotiated collective bargaining agreements with unions representing marine employees that resulted in approximately \$20 million in cost savings for the 2011-2013 biennium. The renegotiated agreements resulted in, among other things, reduced overtime costs, reduced vacation leave accrual, elimination of "guaranteed time," and incorporation of a three percent wage reduction.

Washington has a prevailing wage statute modeled after federal law. It requires agencies (including state agencies) and their construction contractors to pay prevailing wage rates. PNRCC maintains a database of wage and benefit distributions for its bargaining units and contracts. The Union reports wages and benefits to public agencies such as State Labor & Industries for prevailing wage purposes. In setting prevailing wage rates, the State mandates consideration of wages and benefits.

When PNRCC negotiates a contract, it negotiates a total package that includes wages and benefits together. Unlike maintenance contracts, PNRCC construction contracts do not contain paid time off--such as sick leave, vacation, holiday or personal days off. According to Triezenberg, in order to value paid time off, PNRCC typically seeks to negotiate maintenance contracts at 85% to 88% of the construction industry prevailing wage rate. In 2004, the WSF bargaining unit was at 77% of the prevailing wage rate; it now is just above 70% of the prevailing wage rate.

2. Salary Survey

OFM hired the Hay Group to perform the 2014 salary survey. The Hay Group is a nationwide consulting firm on human resources issues. Kameron Durocher now works for the State OFM/HR. At the time of the 2014 survey, however, she worked for the Hay Group ("Consultant") and she conducted the marine employees' salary survey.

Durocher provided testimony in this proceeding and submitted a power point summary of the 2014 survey along with survey, itself. State Exhibits 6, 7. Durocher also conducted the 2012 survey and was involved in the 2010 survey for the State of Washington. The Union submitted these prior surveys along with the 2008 salary survey performed by another consulting firm, Milliman. Union Exhibits 3-5.

For this carpenter bargaining unit, the Consultant used four participating organizations as comparators: Foss Maritime Company, Port of Seattle, Puget Naval Shipyard (Department of Navy) and Washington State General Government (WSGG). Four organizations declined to participate in the survey: Crowley Maritime, Gunderson LLC, Manson Construction and Vigor Shipyards. The survey included a cautionary note about the interpretation of the market data with a sample size of less than 15 organizations.

The 2014 survey was conducted in much the same manner as the 2012 survey except that in 2014 the Consultant did more data analysis/review of job description information. The Consultant calculated weighted averages based upon the number of current employees matched in each benchmark job, in this

case shipwright/carpenter. The Consultant reviewed job descriptions (when provided) to eliminate inappropriate job matches (less than 80% job description match).

The Consultant calculated a corresponding pay/benefit value. The benefit data included a weighted average for health, vision and dental premiums. The survey did not include the July 1, 2014 wage increase of 1.5% for this bargaining unit.

The results of the carpenter salary comparison show PNRCC employees lag behind comparators in average base pay rate by 4.8% (comparators-\$27.81/hour to WSF \$26.53/hour). In benefits, however, WSF carpenters were shown to be 22.3% above the average (comparators-\$6.30/hour to WSF \$8.11/hour). When combined, average actual base pay and benefits showed WSF carpenters to be above the market by +1.5%. Foreman and lead WSF carpenter positions show a lag behind comparators in base pay while helpers are ahead of comparators.

The survey does not provide underlying wage-specific data for comparators nor was any collected raw data for the survey submitted as evidence.

In 2013, Arbitrator Jane Wilkinson issued an interest arbitration award for *WSF and Puget Sound Metal Trades Council*, PERC No. 2505-I-12-0604 (September 16, 2013). The 2012 Hay Group salary survey was submitted in that arbitration. Durocher was the Hay Group compensation analyst that testified for the State.

Arbitrator Wilkinson concluded that it was not proper to include the State of Washington (General Government/Higher Ed) as a comparator in the salary survey. It was a new comparator and employees included craft, truck driving and warehouse employees of the State in non-ferry units.

Arbitrator Wilkinson explained: (1) it was unusual to include the same employer as a comparable employer in an interest arbitration (2) in the past, comparable employers were shipyards or shipping facilities. The Arbitrator questioned how an 80% job description match could be found with Washington General Government employees with the unit at issue; and (3) the State presented no explanation why Washington Gen/Ed employees were added as comparators; and by their inclusion, this comparator group brought down the comparator wage average substantially.

In addition, Arbitrator Wilkinson was puzzled by the salary survey evidence in that in 2008 the Milliman salary survey showed bargaining unit journey level wages lagged by 10% and when benefits were added the lag increased to 15.8%. Yet, with wages frozen since 2008, in 2013 the Hay Group survey showed wages went from 10% behind in 2008, to 2.7% behind in 2013. With benefits added there was no lag--the weighted average was above the market by 3% in 2013.²

In this proceeding, Durocher explained that in 2012 the Washington General Government employees were added as comparator at the behest of the State. She did not object and believed it followed the statute in terms of what to

² Ultimately, considering a variety of factors, Arbitrator Wilkinson awarded 1.5% for fiscal year 2013 and 1.5% for fiscal year 2014.

include in the survey. Also, she determined from a review of the positions that there was an 80% match.

3. Other Comparability Evidence

The Union submitted comparability evidence through the testimony of Triezenberg and Union Exhibits 17-24. These exhibits consisted of wage and fringe benefit information (health & welfare; pension contribution) from contract wage schedules and data collected and maintained by PNRCC. The Union provided information from: Foss Maritime Shipyards, Lake Union Dry Dock Company, Vigor Shipyards, Washington Marine Repair, King County carpenters, City of Seattle carpenters, and regional school district carpenters. For Union Exhibit 24, Triezenberg took information from the State Labor & Industries website on prevailing wages for Kitsap County that is within Puget Sound.

The Union created a summary list of the wage and benefit information which was submitted as Union Exhibit 27. This exhibit was based upon the raw data provided in Union Exhibits 17-24. PNRCC calculated a simple (not weighted) average carpenter wage per hour. That average carpenter wage was as \$40.62/hour compared to WSF carpenters of \$36.02/hour, a difference of \$4.60/hour.

4. Parties' Positions

The State argues that its salary surveys reflect not only what contracts show but what public and private sector employers offer for salary. Since 2008, these surveys show that WSF carpenters are not at the top of the hourly wage or at the bottom of the hourly wage--they are not outliers.

The State relies upon Arbitrator Wilkinson's decision to support this argument. Arbitrator Wilkinson opined that employees should not necessarily be brought up to the average of comparators because the market is not like that. Rather, when determining wages, consideration should be given to a variety of factors. Among those factors are such things as the employer's fiscal outlook, cost of living differences, geographical location, and historical ranking.

The State contends that under the Washington statute it was appropriate to include Washington State employees because they are public employees and on the west coast. Although Arbitrator Wilkinson said it was unusual to include such employees, Durocher testified that the State is not a typical employer. It is a government with different facets. The State acknowledges there are differences between ferry workers and general government employees but claims there are enough similarities to be compared.

According to the State, the Union's evidence is one-page appendices from different contracts. There is a difference between what others get and ferry workers--the WSF carpenters are marine employees. The State argues had the Union's information been provided to Durocher months ago it might have been instructive, but not now.

The Union claims the State's salary survey is unreliable and biased. According to the Union, it is unreliable because only four shipyard employers were included which is not a statistically valid sample. And, despite criticizing the Union for including non-marine employees, the State included Washington general government employees who are not marine employees.

Relying on Arbitrator Wilkinson's 2013 decision and reasoning, the Union argues that inclusion of Washington general government is not appropriate based upon the record here.

The Union asserts that like 2012, the State provided little raw data for its salary survey so that its methodology cannot be tested. In addition, the State selected the employers to be included rather than letting the nationwide firm independently determine the proper entities to survey. The State also did not include pension costs in their calculations. In doing these things, the State acted inconsistent with the Washington statute that seeks fair and just wages for its ferry workers.

In contrast, according to the Union, its evidence provides underlying wage information for each employer and includes more complete wage and benefit information.

5. Findings: Survey, Comparability and Prior Contracts

With respect to the salary survey, the record in this case leads me to the same conclusions as Arbitrator Wilkinson for similar reasons. I am not convinced, based upon the evidence, that Washington General Government employees are doing directly comparable work to WSF carpenters and/or that such employees are an appropriate comparator under Washington law. Also, like Arbitrator Wilkinson, I am troubled that the 2008 survey results are so discrepant from the 2014 results when the wage history does not reflect increases that would justify such changes. I find Washington General Government employees

should not have been included in the salary survey and, as a result, I conclude the survey results are unreliable.

Further, the survey presents summary information about comparables; no raw data or specific data for each employer was provided. Consequently, I relied upon the survey only for general information and for identification of employers the State deems as comparable.

The Union's compensation evidence included more data for area public and private sector employers. This evidence, however, did not include information about some comparables identified by the State--such as Puget Sound Naval Shipyard and Vancouver Shipyards. And, there is insufficient evidence to establish overall compensation of comparators.

Still, Union evidence gave a broader sample of wages and benefits in the area. Underlying data was provided. Triezenberg explained the methodology used for compensation comparisons. Calculations were straightforward and transparent.

Taking a simple average of all the Union data (journeyman and lead/forepersons) calculations show the WSF carpenters lag behind the average of comparable carpenters by \$4.60/hour or about 11%. If this same simple average calculation is done for only employers identified as comparables by both parties, this lag is less-- about \$3.65/hour or about 9%.³

Based upon the record before me, I find the aforementioned evidence on comparability more trustworthy than the State's survey and so I find that the WSF carpenters lag behind the average of comparable employers as indicated above.

³ Foss Maritime, Port of Seattle, King County, Vigor and Manson Construction.

In addition to this lag, historical evidence established that the Union has lost standing in the last decade with respect to prevailing wages.

V. Summary and Conclusion

My task as interest arbitrator is to issue an award that promotes just and fair compensation for this bargaining unit considering the statutory factors in RCW 47.64. 320(3). This is a small bargaining unit. The State has the ability to pay these employees the Schedule A wages proposed. These employees have lost ground in wages and lag behind the market average of comparable employees by about 9-11%. These factors favor an award that is more than the State's proposal of 3%.

On the other hand, the parties have not agreed on a set of comparable employers. And, the evidence is insufficient to compare overall compensation and determine comparables with complete confidence. Further, I am mindful that the State recently came out of a long and significant recession and it has many financial pressures and obligations. The future is unknown and projections indicate cost reductions will be necessary.

In this greater context, considering all of the relevant statutory factors, I find the Union's proposal is too much for this biennium. I find a just and fair wage to be a 6% increase spread over two years: FY 2015--3% and FY 2016--3%. The record shows the State has the ability to pay this amount. It recognizes the failure of this skilled unit to keep pace with the average of comparator wages. I will issue an award consistent with these findings and conclusions.

In arriving at my findings and conclusions, even if not specifically mentioned, I have reviewed and considered all of the evidence, authorities and arguments submitted by the parties.

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AWARD
PERC # 26690-I-14-0663
INTEREST ARBITRATION

Being mindful of the legislative purpose under RCW 47.64.005 and 47.64.006 and taking into consideration the factors of RCW 47.64.320 (3), the Arbitrator awards the following wages:

1. FY 2015: Effective July 1, 2015, the bargaining unit will receive a 3% wage increase.
2. FY 2016: Effective July 1, 2016, the bargaining unit will receive a 3% wage increase.
3. Pursuant to RCW 47.64.300(3), the parties will share equally in my fees and expenses.

Respectfully submitted,



Kathryn T. Whalen
Arbitrator
Date: September 22, 2014