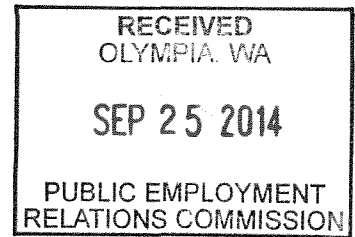


BEFORE THOMAS F. LEVAK, ARBITRATOR  
WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION  
CASE NO. 26652-I-14-0656



In the Matter of the Interest  
Arbitration Between

STATE OF WASHINGTON,  
OFFICE OF FINANCIAL  
MANAGEMENT, STATE  
DEPARTMENT OF TRANSPORTATION,  
WASHINGTON STATE  
FERRIES DIVISION

2015-2017 COLLECTIVE  
BARGAINING AGREEMENT

The State, OFM  
the Department & WSF

ARBITRATOR'S DECISION  
AND AWARD, September 23,  
2014

and

OFFICE & PROFESSIONAL  
EMPLOYEES INTERNATIONAL  
UNION, LOCAL NO. 8

The Union

This matter came for hearing before the Arbitrator on September 19, 2014, at Seattle, Washington. The State was represented by Assistant Attorney General David Slown and the Union by Clifford Freed of Frank Freed Subit & Thomas. The parties requested that the Arbitrator issue his Opinion and Award no later than September 25, 2014; accordingly, this Opinion and Award is issued on an expedited basis. Testimony and documentary evidence were admitted. Oral closing arguments were heard. The proceedings were reported and transcribed by Cindy Koch. On September 20, 2014, Koch provided the Arbitrator with a draft transcript. Based upon the evidence, the arguments of the parties, and an application of the statutory criteria thereto, the Arbitrator, this 23<sup>rd</sup> day of September, 2014, decides and awards as follows.

## DECISION

### I. THE ISSUES.

WSF is the largest ferry system in the United States; it utilizes 23 vessels to transport approximately 22 million passengers a year to 20 different ports. The bargaining unit consists of approximately 53 administrative and clerical employees, most of whom work at the WSF headquarters building at 2901 3<sup>rd</sup> Avenue, Seattle, Washington.

This arbitration concerns two issues relevant to the parties' successor 2015-17 collective bargaining agreement:

a. Article 17, Classification and Wage Rates. 17.4. The Union seeks the movement of the Relief Dispatcher to the next higher wage classification. At the hearing, the State appeared to recognize the validity of the proposal.

b. Appendix A, Classification and wage rates. The Union seeks a modification of the wage rate salary progressions that effectively would result in approximately a 9.1% across-the-board increase for all bargaining unit members effective July 1, 2015, and an additional 5% increase effective July 1, 2016. The State proposes a first-year increase of 3%, with no increase in the second year.

### II. WITNESSES.

Union Witnesses: Valerie Peaphon, Union Representative; Kim Zahn, Relief Dispatcher; Vicky Munson, Hatton Marine (former bargaining unit member).

State Witnesses: Kamaron Durocher, Compensation Advisor; Erik Hansen, OFM Budget Assistant to the Governor; Kim Grindrod, OFM, St. Human Resources - Classification and Compensation.

### III. EXHIBITS.

#### Union Exhibits.

1. Number of bargaining unit employees at WSF per job  
Description
2. 2007 collective bargaining agreement
3. 2011 collective bargaining agreement
4. Pay by month FY 2012-13
5. Hay Report
6. Comp Survey w/ weighted tools
7. 2013 collective bargaining agreement
8. 7/28/14 Union proposal
9. Union costing of its proposal
10. State proposal
11. Union costing of State proposal
12. History of bargaining unit wage increases
13. Bargaining unit wages vs. inflation
14. Comparison of 2013-14 WSF wage increases
15. 2013 MM&P Mates/Pilots collective bargaining agreement
16. 2013 MEBA collective bargaining agreement
17. 2014 Deck Department proposal
18. 2013 MM&P Masters/Pilots collective bargaining agreement
19. Susan Spencer Arbitration Award
20. Anthony Marr Arbitration Award
21. Howell Lankford Arbitration Award
22. Michael Cavanaugh Arbitration Award
23. Seattle Times article
24. Transportation Revenue Forecasts, June 2014
25. OFM Background Information on WSF, August 2012

State Exhibits.

1. PERC's Certification of Issues, August 1, 2014
2. State Certification letter to PERC, July 30, 2014
3. Union Certification letter to PERC, August 1, 2014
4. 2013-15 collective bargaining agreement
5. OFM Compensation Survey
6. Background Information of WSF
7. [Exhibit withdrawn]
8. RCW 47.64
9. Union proposed projected costs, 2015-17

IV. THE STATUTES.

**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 interest 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.

#### V. ISSUE NO. 1, THE RELIEF DISPATCHER.

The patently credible testimony of Relief Dispatcher Kim Zahn was unrebutted and unrefuted, namely: Regular Crew Dispatchers and Crew Coordinators work in the next higher job classification. Their duties and responsibilities do not interact or interchange. Both groups work regular, set 4/10 or 5/8 shifts, with regular starting and ending times. The Relief Dispatcher has no set schedule, shift or starting times. In the absence of a Crew Dispatcher or a Crew Coordinator, the Relief Dispatcher is regularly called to work with no significant notice to work either job performing either daily or long term dispatching, or both. The Relief Dispatcher must be aware of the particulars of all jobs and the terms of the collective bargaining agreements that they are dispatched under. The collective bargaining agreements require that the Relief Dispatcher, on occasion, work up to nine days straight without overtime. On occasion, the Relief Dispatcher may end a shift at 10:00 p.m. and be required to return to another shift by 5:00 a.m. the next morning, leaving almost no time to sleep. Summers and vacations are particularly trying; for example, last Christmas Zahn took her daughter to work on Christmas so she could be with her.

The Arbitrator awards the movement of the Relief Dispatcher to the next higher classification. First of all, the cost of the increase in wages will be relatively insignificant, and therefore, the State clearly has the financial ability to fund it. In the second place, while internal comparability is not a specific statutory criterion, it is a normal and traditional one within the meaning of paragraph (3)(k); and that criterion clearly supports the Union's proposal. Finally, as noted already, the State did not offer a serious objection to the Union's proposal.

## VI. ISSUE NO. 2, THE WAGE INCREASES.

The Arbitrator wishes to state that before formulating even a tentative decision, he carefully studied all of the submitted exhibits, starting with the arbitration decisions and moving then to the remaining documentary evidence. The Arbitrator also spent some significant amount of time examining and reexamining Erik Hansen's testimony and the documents he referenced; Hansen was the closest thing to an expert at the hearing and his testimony was entirely neutral, credible and forthright. Finally, the Arbitrator examined and reexamined the parties' opening and closing arguments.

Rather than spending time summarizing all of the parties' arguments, the Arbitrator believes that, in the interest of providing this Decision to them in the requested time, it is best to move directly to an application of the statutory criteria to the undisputed facts. After all, the salient facts are that bargaining unit members have not had a wage increase since 2008, but the State now has many and diverse financial obligations; and, as noted by Sloan in his closing, the Arbitrator's obligation is to attempt to award a percentage increase or increases that both satisfy the statutory criteria and have a reasonable change of acceptance at the next levels. As Arbitrator Lankford stated on page 4 of his Decision, "Neither the union nor the Agency benefits from an award which is struck down by OFM. \*\*\* Long-term financial consequences are part of 'financial ability.'" That being said, the Arbitrator will award a 3% increase in the first year and a 2.5% increase in the second year. The following is the Arbitrator's rationale.

*Ability to Pay.* First, while the State may have technically "recovered" from the 2008 recession, that recovery was extremely long; moreover, in recovery, the State must now attempt to finance numerous neglected projects, as well as attempt to rectify wage injustices. Further, while the State and the Transportation Account are in much better shape than when the recession started, the State is merely back to the income and employment levels that existed then. Second, the funding of WSF faces a significant test: 70% of operating costs come from the fare box, the remaining 30% comes from gas taxes to the Transportation Account, an account that is projected to show deficits in the future; the abolished Motor Vehicle Excise tax no longer provides revenue. Other expenditures, such as the court imposed culvert repair, are bound to have an effect on the State's ability to pay wage increases that will satisfy

the RCW 47.64.006 requirement that “fair and just compensation” be paid. That latter criterion cannot be ignored; too long has passed without equitable steps being taken to rectify the financial straits in which bargaining unit members find themselves mired. Given that fact, we turn to the other statutory criteria.

*Past collective bargaining agreements and the bargaining that led up to those agreements.* 2008 to 2009 was a disaster for the State and its employees: The initiation of the recession led the legislature to necessarily refuse to fund wage increases, including those awarded in interest arbitration. No wage increases subsequently followed; employees even had to survive a temporary 3% wage rollback. The Arbitrator agrees, as Mr. Freed stated in his closing argument, that the lack of any pay raise since 2008 is the criterion that must be given the most weight by the Arbitrator.

*The Salary Survey.* The Arbitrator frankly has some significant difficulty with the methodology used by Kamaron Durocher to create the Hay Group Report. Her decision not to utilize a weighted average brings the entire report into question.

*Other factors: The CPI.* All other arbitrators have recognized the indisputable fact that while employee salaries have remained unchanged, the CPI for the State and Seattle have risen, a completely unacceptable situation.

*Other factors: internal comparability.* Of course, it cannot be known what OFM and the legislature will determine; however, it does seem probable that modest wage increases ultimately will be finalized for both years of the upcoming biennium that recognize Arbitrator Lankford’s cogent comment that “the record cries out for something in the middle”—a two-step increase that will somewhat alleviate the long term damage done by the recession. Such an increase has been awarded by all other arbitrators.

Accordingly, the Arbitrator awards increases of 3% and 2.5%.

Dated this 23<sup>rd</sup> day of September, 2014,



Thomas F. Levak, Arbitrator,  
Happy Valley, Oregon.