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THE MATTER OF THE INTEREST)
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ARBITRATION BETWEEN) OPINION & INTEREST AWARD
)
WASHINGTON STATE PATROL)
)
"WSP-THE STATE" or "THE EMPLOYER")
)
AND)
)
WASHINGTON STATE PATROL TROOPERS)
ASSOCIATION)
)
"WSPTA" OR "THE ASSOCIATION")

HEARING: August 18 - 21, 2014
Attorney General's Office
Tacoma, Washington

HEARING CLOSED: September 9, 2014

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BACKGROUND

The Washington State Patrol and Washington State Patrol Troopers Association are in the process of negotiating a replacement collective bargaining agreement that will take effect on July 1, 2015. Unable to reach agreement on a number

of issues, the parties agreed to submit the matter to interest arbitration. Washington statute allows for the use of an arbitration panel or for the Parties to use a single neutral arbitrator. The Parties chose neutral Arbitrator Timothy Williams to hear the matter.

Prior to the hearing, a copy of a letter dated August 6, 2014 was provided the Arbitrator. It contained a list of issues certified for interest arbitration by the Executive Director of PERC, Michael P. Sellars, and is provided in accordance with WAC 391-55-200(3)(a). Those issues, as certified, are as follows:

Article 9, Residence Requirement

Article 16, Other Leaves of Absence

Article 28, Compensation,

A hearing was held on August 18 -21, 2014 in Tacoma, Washington before Arbitrator Williams. At the hearing, both Parties had full opportunity to make opening statements, examine and cross-examine sworn witnesses, present documentary evidence, and make arguments in support of their positions.

At hearing the Parties informed the Arbitrator that only two of the three issues were still in dispute and the hearing proceeded with both Parties presenting evidence in support of its position on each issue. The two issues in dispute each had multiple sub issues such that the following is an overview of the specific points of disagreement between the Parties.

Article 16, Other Leaves of Absence

Article 16.3

Article 16.5

Article 16.7

Article 28, Compensation,

Article 28.1

Article 28.4

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RCW 41.56.450 provides that a recording of the proceedings shall be taken. For this requirement an official transcript of the proceedings was made and a copy provided to the parties and one to the Arbitrator.

The Parties agreed to submit written closing arguments by the end of the day on September 9, 2014, in the form of briefs. The briefs were timely received by the Arbitrator and he declared the hearing closed on September 9, 2014. This document contains the Arbitrator's analysis and final award on each of the issues in dispute.

INTEREST ARBITRATION OVERVIEW

Interest arbitration is a process commonly used in the public sector for bargaining units that provide critical public services and whose work is deemed essential for public safety.

Police, fire and prison guards routinely fall into this category and interest arbitration is granted by statute in exchange for a prohibition against a work stoppage (strike). The statutes that provide for interest arbitration inevitably include a set of criteria that the arbitrator must use in fashioning his or her decision. The State of Washington follows this model in that it does provide for interest arbitration and in RCW 41.56.475 sets forth the following criteria for uniformed personnel in the Washington State Patrol:

- (2) The mediator or arbitration Panel may consider only matters that are subjects of bargaining unit under RCW 41.56.473.
- (3) The decision of an arbitration panel is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to wages and wage-related matters of an arbitrated collective bargaining agreement, is not binding on the state or the Washington state patrol
- (4) In making its determination, the arbitration panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:
 - (a) The constitutional and statutory authority of the employer;
 - (b) Stipulations of the parties;
 - (c) Comparison of the hours and conditions of employment of personnel involved in the proceedings with the hours and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;
 - (d) Changes in any of the foregoing circumstances during the pendency of the proceedings; and

- (e) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under RCW 41.56.473.

The Arbitrator's opinion and awards are submitted, having given careful consideration to the above criteria, on an issue-by-issue basis. The Arbitrator's interest award is based on a careful analysis of the evidence and argument presented during the hearing, as well as the arguments found in the written briefs. On each of the primary issues, the Arbitrator will set forth the position of the Parties, a discussion of the Parties' arguments, the basis of the Arbitrator's award and the award.

As is true in most interest arbitration proceedings, the record in the instant case is voluminous with both Parties presenting extensive documentary and testimonial evidence. The Arbitrator has carefully reviewed this evidence in the context of the above stated statutory criteria. While he has given consideration to the whole record, the Arbitrator will not attempt to provide an exhaustive discussion of all points raised or respond to every piece of documentary evidence. Rather, his discussion will focus on those factors that ultimately were key in determining the award.

POSITIONS, ARGUMENTS, OPINION AND AWARD

The Parties' negotiations over the 2015-17 successor collective bargaining agreement resolved all matters with the exception of two primary issues. The State proposes to make changes to three of the subsections of Article 16 dealing with *Other Leaves of Absence*. The Association opposes all three changes. Article 28 sets forth the compensation for bargaining unit members. The State's proposal provides a modest increase in compensation each year of the new agreement while the Association argues to make substantial increases in base wages and to make significant improvements to other forms of compensation.

The issues will be presented in sequential order with the Arbitrator first providing a general overview of the issue and then proceeding to a detailed discussion and an award on each of the subsections.

ARTICLE 16 - OTHER LEAVES OF ABSENCE

16.3 Military Leave

Current Language:

The existing language in the 2013-15 agreement contains the following sentence:

Paid leave not to exceed twenty-one (21) work days in a calendar year shall be allowed employee ordered to active training duty in an organized reserve or armed forces of the United States.

State's Proposed Changes:

The State proposes replace the existing language with the following sentence:

The Employer will provide paid military leave to allow an employee to report to required military duty, training drills or active duty status in accordance with State and federal law.

Association's Response:

The Association urges the retention of the existing language.

Discussion:

The Arbitrator takes notice that as this award is being written military action is again heating up in the Middle East which may give new meaning to Articles 16.3. As the Arbitrator understands the evidence, the change proposed by the State has no immediate impact on a member of the bargaining unit as current statute is equal to the 21 days. Furthermore, the evidence indicates that the Parties have had to adjust the number of days as statute has changed from 15 days to 18 days to 21 days (Tr III, 170). Moreover, the Union does not disagree that the contractual provision is intended to mirror statute. Thus the State's proposal is almost entirely a matter of "housekeeping" that promotes efficiency. As a result, the Arbitrator will direct the Parties to adopt the State's proposed change for Article 16.3

Award:

The Arbitrator concurs with the State on this issue and directs the Parties to replace existing language with the following sentence:

The Employer will provide paid military leave to allow an employee to report to required military duty, training drills or active duty status in accordance with State and federal law.

16.5 - Pregnancy/Parental Leave

Current Language:

16.5 Pregnancy/Parental Leave

- A. Maternity Leave, Newborn Care or Adoptive Care
Pregnancy is not an unexpected incident in the life of a woman and will not in any way limit her job opportunities or penalize her in terms or conditions of employment.

- B. Limited Duty
Illness or disability caused or contributed to by pregnancy, miscarriage, childbirth, and recovery is considered a temporary condition. The Employer will make a reasonable effort to provide a limited duty assignment for the employee who cannot perform the essential functions of her job because of illness or disability caused or contributed to by pregnancy, miscarriage, childbirth, or recovery. The physical demands of the assignment shall be considered along with recommendations from the employee's health care professional.

- C. Notification of Pregnancy
As soon as an employee realizes she is pregnant, she shall submit an OIC through the chain of command and a written statement from her physician including the following:
 - 1. Verification of pregnancy;
 - 2. Anticipated delivery date;
 - 3. Ability to perform full or limited duties.

- D. Change in Medial Status
If the employee's medical status changes, requiring changes to duty assignment, a written statement from her physician is required immediately.
- E. Ninety (90) Day Notice
The employee shall submit an additional IOC ninety (90) calendar days prior to leave, outlining her leave plans. This shall be waived if some complication occurs and the employee is unable to work prior to the ninety (90) day date.
- F. Parental Leaves of Absences
Any full-time employee may request a leave of absence without pay for pregnancy, childbirth, recovery, or other pregnancy-related disabilities; or newborn adoptive child care; or a new child in the family by birth, adoption or placement in foster care, for the purpose of bonding with his or her natural newborn, adoptive, or foster child. Sick leave may be taken in accordance with Article 15, Sick Leave.
- G. Duration of Leave of Absence
The duration of the leave requested under Subsection F above shall not exceed six (6) consecutive months during the first year after the child's birth or placement, including time covered by the Family Medical Leave Act (FMLA), unless additional leave without pay is granted by the Chief. Accrued leave may be used at the employee's option during this six (6) month period in accordance with ESP policy and this Agreement.
- H. Human Resource Division (HRD)
It shall be the responsibility of the employee to contact HRD concerning the effect a leave of absence without pay may have upon any employee benefits and for insurance information.
- I. Credit of Leave
Full-time employees who have been in pay status for eight (80) non overtime hours in a calendar month, including holidays, shall be credited monthly with annual and sick leave. One (1) day in a pay status each month is necessary to retain insurance benefits (i.e., day of work, annual leave, sick leave, etc.

J. Return to Duty

Employees returning from parental leave shall give two (2) weeks advance notice and shall be reassigned to the same job classification and commissioned rank in an area not requiring a change of residence.

State's Proposed Changes:

The State proposes to delete the existing language and to replace it with language that emphasizes compliance with Federal and State statutes related to pregnancy, illness and disability. The State also proposes to give Article 16.5 a new heading. The State's proposal is as follows:

16.5 Family Medical Leave Act and Americans with Disabilities Act

- A. The Employer will comply with federal and State law related to disabilities, and family and medical leave, including parental and pregnancy disability leave.
- B. Change in Medical Status
The employee shall report any change in employee's medical status. The Employer may require a written statement from a physician.
- C. Human Resource Division (HRD)
It shall be the responsibility of the employee to contact the HRD concerning the effect of a leave of absence without pay may have upon any employee benefits and for insurance information.

Association's Response:

The Association urges the retention of the existing language.

Discussion:

On the surface, the changes proposed by the State appear similar to the one proposed for Article 16.3. The State

recognizes that it must comply with Federal and State statutes and believes that much of the verbiage found in Article 16.5 is unnecessary since it duplicates what is found in statute. Additionally, the State is concerned that some of the language related to pregnancy is intrusive to the point that it may be illegal.

While some of the State's arguments with regard to the merits of the proposed change make sense to this Arbitrator, there is a significant difference between the reference to statute in Article 16.3 and the reference to statute in Article 16.5. The existing language in Article 16.3 does, in fact, mirror statutes but the existing language in Article 16.5 provides benefits beyond what are provided in statute; the existing language is an enhancement. For one thing, paragraph F provides for a six month leave which is substantially more than is provided by either Federal or State statute. Likewise, paragraph I establishes a protocol by which annual and sick leave can be credited as well as the minimum standard that must be met to maintain insurance benefits. As the Arbitrator understands the State's proposal, all of these enhanced benefits would be lost upon the acceptance of the new provision. The Arbitrator does not find the State's arguments and evidence sufficient to warrant diminishing the benefits found in Article 16.5.

As to the intrusive, outdated language, the Arbitrator concurs with the State that the language, if strictly applied, could run afoul of the law. However, the State points to no prior problems with this language and it does provide some guidance for employees. More important, it is language that has been negotiated and agreed to by the Parties. There appears to be no urgency over changing it and there will be future contracts were it can be a death focus of the negotiations.

Award:

The Arbitrator concurs with the Association on this issue and directs the Parties to retain existing language for Article 16.5.

16.7 - Limited/temporary light duty

Current Language:

16.7 Temporary Limited Duty and Long Term Limited Duty

The following provisions shall govern temporary limited duty and long term limited duty assignments.

A. Definitions

1. "Active service," "line duty," "other duty," and "disability" shall have the respective meanings set forth in WAC 446-40-020 in effects as the date of this Agreement.
2. "Temporary Limited Duty" shall mean an active service assignment for an employee incapable due to a disability of performing line duty but capable of performing other duty of a light or modified nature consistent with the operation of the Employer. Temporary limited duty is the time period before an employee is considered fixed and stable.

3. "Fixed and stable" shall mean the point reached when a disability is unlikely to be significantly improved by further medical treatment and the employee is not reasonably expected to be able to return to line duty, typically referred to as permanent.
4. "Work hardening" shall mean a process approved by the employee's physician and, if necessary, by the Employer's physician after an independent medical examination (IME), as part of rehabilitation designed to facilitate an employee's return to line duty if possible.
5. "Long Term Limited Duty" shall mean a permanent limited duty assignment for an employee whose condition is fixed and stable.

B. Obligation to provide

1. Temporary Limited Duty
Temporary limited duty assignments shall not require a change in residency and all travel time associated with a temporary limited duty assignment shall be at the expense of the Employer. The employee shall be permitted to use the Employer's vehicle for commuting purposes.
2. Long Term Limited Duty
The Employer shall use reasonable efforts to provide a long term limited duty assignment within fifty (50) miles of the employee's current residence. If after using reasonable efforts the Employer is unable to provide a long term limited duty assignment within the fifty (50) mile distance, then the employee may elect to move residence and the Employer shall reimburse the employee's moving costs in accordance with Office of Financial Management guidelines.

C. Procedure

An employee requesting any limited duty assignment shall submit the request by IOC through the chain command. The HRD shall coordinate selection of a limited duty assignment with the employee's attending physician and, if necessary, with the Employer's physician after an IME. An employee shall have the

option to accept a limited duty position that is approved by his/her attending physician and, if necessary by the Employer's physician after an IME and that is in compliance with this Agreement. An employee who has accepted a limited duty assignment must participate in a work hardening program approved by his/her attending physician and, if necessary, by the Employer's physician after an IME.

D. Return to Line Duty

A temporary limited duty or long term limited duty assignment will end when the employee is certified as capable of return to line duty by his/her physician and, if necessary, when an IME ordered by the Employer determines that the employee is capable of return to line duty.

1. When an employee returns to line dut from temporary limited duty the employee shall be returned to his/her former assignment.
2. When an employee returns from a long term limited duty assignment the following shall apply:
 - a. Troopers shall be returned at the employee's option:
 - i. To a line assignment (or, at the discretion of the Employer, a previously-held speciality assignment) in a detachment where the employee will be able to comply with the residence requirements in this Agreement without moving his/her residence. An assignment under this Subsection shall supersede the transfer list; or
 - ii. To a line assignment(or, at the discretion of the Employer, a previously-held speciality assignment) in the geographic ara where the employee was assigned immediately prior to his/her transfer into the position from which the employee is being transferred./ An employee reassigned under this Subsection must comply with the residency requirements within one hundred twenty (120) calendar days. An

assignment under this Subsection shall supersede the transfer list.

b. Sergeants shall be returned at the employee's option:

i. To a line assignment (or at the discretion of the Employer, a previously-held specialty assignment) in a detachment where the employee will be able to comply with the residence requirements in this Agreement without moving his/her residence. An assignment under this Subsection shall supersede the transfer list; or

ii. To a line assignment (or, at the discretion of the Employer, a previously-held speciality assignment) in the geographic area where the employee was assigned immediately prior to his/her transfer into the position from which the employee is being transferred. An employee reassigned under this Subsection must comply with the residency requirements within one hundred twenty (120) calendar days. If a sergeant assignment is not available at the time this Subsection applies, then the employee shall have the right to the next available sergeant position in that geographic area. An assignment under this Subsection shall supersede the transfer list.

E. If an employee on temporary limited duty does not improve to a point permitting return to line duty, i.e. the employee's condition is fixed and stable, then the Chief will either: (1) place the employee on long term limited duty; or (2) place the employee on disability as provided in WAC 446-40-040.

F. Use of Equipment

When an employee is placed on long term limited duty the HRD shall determine the use of the Employer's vehicles and wearing of the uniform. The Employer agrees to bargain with the Association prior to implementing any changes to its take home vehicle

policy with respect to employees currently in long term limited duty assignments.

- G. Relation to Disability
Section 16.7 shall have no impact on an employee's eligibility for disability.

State's Proposed Changes:

The State proposes to delete what it considers unnecessary language and to change the word "shall" to "may;" a change that gives the Chief some discretion over whether to grant a temporary or long term limited duty assignment. The specific wording of the State's proposal is as follows:

16.7 Temporary Limited Duty and Long Term Limited Duty

The following provisions shall govern temporary limited duty and long term limited duty assignments.

- A. Option to provide
The Employer may offer temporary limited duty and long term limited duty assignments to employees when the Chief determines appropriate bargaining unit work is available

1. Temporary Limited Duty

Temporary limited duty assignments shall not require a change in residency and all travel time associated with a temporary limited duty assignment shall be at the expense of the Employer. The employee shall be permitted to use the Employer's vehicle for commuting purposes.

2. Long Term Limited Duty

The Employer shall use reasonable efforts to provide a long term limited duty assignment within fifty (50) miles of the employee's current residence. If after using reasonable efforts the Employer is unable to provide a long term limited duty assignment within the fifty (50) mile distance, then the employee may elect to move residence and the Employer shall reimburse the

employee's moving costs in accordance with Office of Financial Management guidelines.

B. Procedure

An employee requesting any limited duty assignment shall submit the request by IOC through the chain of command. Provided the Chief determines that appropriate bargaining unit work is available, the HRD shall consult with the employee's attending physician and, if necessary, with the Employer's physician after an IME.

C. Return to Line Duty

A temporary limited duty or long term limited duty assignment will end when the Employer is certified as medically capable of return to line duty. The Employer may order an independent medical examination (IME), by a physician(s) of the Employer's choosing and at the Employer's expense, to determine whether the employee is medically capable of returning to line duty. An employee who has accepted a temporary limited duty may be required to participate in a work hardening program.

Association's Response:

The Association urges the retention of the existing language.

Discussion:

The Arbitrator notes at the outset that the change proposed by the State for Article 16.7 is a significant change as a matter of actual practice. Currently the language requires that the State find temporary limited duty and long term limited duty, as applicable, for an injured trooper. The State proposes to change the word "shall" to "may" and makes the right to limited duty work contingent upon the availability of "appropriate bargaining unit work." In other words, the

proposed language changes give the State a clear and distinct basis upon which to deny an injured trooper limited duty work.

The Arbitrator carefully reviewed the evidence and arguments on this proposed change and finds that the State has put on a very strong case. On the other hand, the Association has put on a very strong rebuttal in its efforts to convince the Arbitrator to retain the provision as it exists in the current CBA.

Ultimately there were two factors that led the Arbitrator to side with the Association on this issue. First, it is clear that this it is a very significant benefit to the troopers and that it is the product of an agreement reached at the bargaining table for the 1998 to 2001 CBA (Tr IV, 114 and A 15-23). The fact that it has existed as a significant benefit for some 16 years places a heavy burden on the Employer to make a case strong enough to justify a significant modification. The State's case, in this Arbitrator's view, clearly established that meeting the requirements of the existing language is often a challenge. However, the State's evidence did not go so far as to establish that the existing language is unworkable or that it has been unduly exploited by the troopers.

The second factor leading to the Arbitrator's conclusion that current language should be retained is that it establishes an important mandate that does not exist in statute. The

State's argument, which the Arbitrator believes was offered in good faith, is that the State would continue, after the adoption of its proposed language changes, to offer light duty work under its statutory obligations related to disabilities. The Arbitrator finds himself in agreement with the Association's conclusion that there is no statutory obligation to provide light duty work (A Br 65) and that the obligation is a unique product of the language currently found in Article 16.7. Ultimately the Arbitrator arrives at the determination that changing the language would result in a significant diminishment to the protections found in the existing language. This determination leads to a final conclusion that the State's case is insufficient to warrant this diminishment.

Award:

The Arbitrator concurs with the Association on this issue and directs the Parties to retain existing language for Article 16.7.

Article 28 - Wages

Article 28.1 - Base Wage Increase

Current Language:

- A. Effective July 1, 2013, all salary ranges and steps of the WSP Commissioned Officer Salary Schedule that was in effect on June 30, 2013 shall be increased by three percent (3%), as shown in Appendix A.

Association's Proposed Increases:

- A. Effective July 1, 2015, all salary ranges and steps of the WSP Commissioned Officer Salary Schedule that was in effect on June 30, 2014 shall be increased by twelve percent (12%), as shown in Appendix A. Effective July 1, 2016, all salary ranges and steps of the WSP Commissioned Officer Salary Schedule that was in effect on June 30, 2016 shall be increased by ten percent (10%), as shown in Appendix B.

State's Response:

- A. Effective July 1, 2015, all salary ranges and steps of the WSP Commissioned Officer Salary Schedule that was in effect on June 30, 2015 shall be increased by three percent (3%), as shown in Appendix A. Effective July 1, 2016, all salary ranges and steps of the WSP Commissioned Officer Salary Schedule that was in effect on June 30, 2016 shall be increased by three percent (3%), as shown in Appendix B.

Discussion:

The Association comes to interest arbitration proposing a 12% increase the first year of the new agreement and a 10% increase the second year. By anyone's analysis and under current economic conditions, these are extremely large numbers. The State counters with what would be considered under most circumstances a most generous offer of 3% and 3%. Needless to

say, most of the evidence and argument received by the Arbitrator focused on the issue of wage increases.

As noted above, the Arbitrator will not attempt to do a comprehensive overview of all of the evidence and arguments presented by the Parties on the issue of compensation. Suffice it to say that he carefully reviewed all of the evidence, the transcripts and the briefs before arriving at his decision. He is limiting this discussion to those specific factors that ultimately led him to the conclusion that a 7% increase the first year of the new agreement and a 3% increase the second year is fully warranted by the facts of the case. This discussion continues by first looking at WSP's efforts to recruit and retain qualified troopers. It will then look at the matter of comparability and conclude by addressing the State's concern over its ability to pay for any increased compensation.

Recruitment and Retention

WSP has a recruitment and retention problem. Chief John Batiste extensively testified to this problem on both direct and cross examination:

Q And again, you told the legislature that the reason for not being able to do more hiring was the fact that troopers and sergeants were not receiving competitive pay?

A Yes. I pretty much preached from the highest mountain that that's my obstacle, yes.

Q And you're talking about troopers and sergeants at every year of service, are you not?

A Yes, I am. But I'm trying to address recruitment and retention. (Tr I, 77)

The Arbitrator notes that the evidence establishes a need by the WSP to hire more than 300 new troopers in the near future (Tr I, 53). The evidence also establishes that WSP often times loses the recruitment battle to local police agencies that compensate at a higher level. The Arbitrator further notes that one of the criteria used by interest arbitrators in arriving at a decision is the public interest. The public interest is best served, in this Arbitrator's view, when WSP can be active and effective in recruiting top candidates.

As an important side note, the Arbitrator takes national notice of a summer that oftentimes reflected poorly on police services. Ferguson, Missouri is only one important example of the challenges that face every trooper and police officer. It provides a clear and challenging illustration of the importance of recruiting only the best talent. As a practical extension of this point, the evidence before this Arbitrator is that WSP has not been able to fill its training classes (Tr I, 53). Also, it is only able to offer positions to 2.5% of every group of 4000 candidates (Tr I, 77). Most important, the Arbitrator wants to emphasize that recruitment and retention is both a short term and long-term problem. In the short term the evidence clearly establishes the need for WSP to hire a sizable number of new troopers and it is struggling in this quest. In the long term,

the quality of today's recruiting impacts the leadership and performance of WSP. Today's recruits become tomorrow's sergeants, lieutenants and captains.

Comparability

At page 11 of its brief, the Association provides the following pertinent point:

Like many reported interest arbitration cases, this case involves a dispute over which jurisdictions are comparables. However, this is also a case in which the Arbitrator does not need to resolve the dispute in order to conclude that the compensation provided to Association represented employees is not competitive. In this regard, subsequent sections of this brief will show that the compensation provided to Association represented employees is not competitive with the wages and benefits provided by either the comparables and comparators selected by the Association or the State.

The Arbitrator found substantial support for the above assertion in the testimony of Elliot Susseles, a consultant, who did most of the comparable research for the State and who provided the majority of the State's evidence on the question of comparability. On cross examination, Mr. Susseles provided the following pertinent response:

Q You would agree with me, would you not, that, regardless of whether we use the trooper's comparables or the State's comparables, they show that the Washington State patrol troopers and sergeants are behind the average of the comparables?

A The survey speaks for itself, and it says that.

The most telling of Mr. Susseles' testimony, from this Arbitrator's point of view, is his efforts to establish that WSP

was at least comparable in the lower reaches of comparability. However, when pressed with the fact that this interest arbitration proceeding is concerned with the contract that will take effect July 1, 2015 and that his assertions about comparability were locked onto data from January 1, 2014 he became non-responsive. Specifically:

Q To the extent that the peer employers provide their officers with a wage increases in 2014 and 2015, and potentially the first part of 2016, the 3% and 3% may not get the troopers into the lower level of the chart?

A I think I answered that the analysis is ceteris paribus, so there could be wage freeze going out there. I'm not going to opine on the future. There could be wage cuts; there could be wage freezes. (Tr III, 39 & 40)

But, the Arbitrator's role is to give considerations to the future and Mr. Susseles' evasive since its response is not helpful to the State's case. What becomes clear to the Arbitrator from the evidence is that local jurisdictions such as the City of Seattle, King County Sheriff's Department, etc. will not be static and that the problem of comparability will not go away with a 3% plus 3% pay increase during the 2015-17 CBA. Most important, it is the comparability with the local jurisdictions which drives WSP's recruitment and retention problem. And, as the Association asserted, whether you use the State's comparables or the Association's comparables, WSP's base wages suffer substantially.

Ability to Pay

The State, in this Arbitrator's view, put on a compelling case with regard to the financial concerns related to the 2015 - 17 biennium. Ultimately the issue for the Arbitrator ended up being twofold. The first is the fact, as emphasize by the Association, that RCW 41.56.475 does not make the State's ability to pay a primary consideration for the Arbitrator. This is a fact unique to WSP as the statute covering other interest arbitration eligible bargaining units does include ability to pay as a prime consideration. Instead, RCW 41.56.475 makes it clear that the Arbitrator's award is not binding on the legislature and that ultimately it's the legislature that will determine whether it can afford it or not afford the compensation portion of the decision.

From the Association's perspective, the absence of ability to pay as a prime consideration puts the Arbitrator in the position of providing an award consistent with the facts and deferring the issue of the costs of the award to the legislature. This argument has appeal but it raises the Arbitrator's second consideration and that is the fact that the RCW 41.56.475 criteria direct the Arbitrator to take into consideration the factors that are normally considered by interest arbitrators. Obviously ability to pay would be one of those considerations.

Ultimately the Arbitrator reconciled his thinking about ability to pay by taking a middle position towards the dual facts that the statutory criteria pertinent to WSP do not make ability to pay a prime factor but that it remains a factor normally considered. The middle position is simply that while the Arbitrator would have directed a larger increase in base wages, he tempered the need to do so against the obvious concerns of the State with regard to its ability to pay for any increases.

The Arbitrator also notes that the Association brought six compensation issues to interest arbitration. With the exception of Article 28.7.A, the Arbitrator said no to these requests. His primary conclusion is that whatever money the State musters towards improving the comparability of trooper and sergeant's compensation, it should be directed at base wages not at other compensation concerns.

Finally, the Arbitrator is very aware of the fact that the State has a substantial number of employees and a large number of bargaining units all of whom desire wage increases. Employers, for obvious reasons, are always hesitant to give one bargaining unit a much larger raise than members of other bargaining units. While the Arbitrator gave consideration to the fact that a 7% increase effective July 1, 2015 will probably create some dissonance along the above lines, his answer is that

he doubts that others groups of State employees face the same difficulties around recruitment and retention. As noted above, the State has some 350 troopers that it needs to hire in the near future and it is currently having difficulty filling its recruitment classes. This is the primary factor that the drives the Arbitrator's conclusion that at least a 7% increase should be awarded for July 1, 2015.

Award:

The Arbitrator directs the Parties to place the following paragraph under Article 28 of the CBA.

- A. Effective July 1, 2015, all salary ranges and steps of the WSP Commissioned Officer Salary Schedule that was in effect on June 30, 2015 shall be increased by seven percent (7%), as shown in Appendix A. Effective July 1, 2016, all salary ranges and steps of the WSP Commissioned Officer Salary Schedule that was in effect on June 30, 2016 shall be increased by three percent (3%), as shown in Appendix B.

Article 28.4 - Additional Longevity Pay

Current Language:

Employees will receive longevity pay in accordance with the following schedule:

- A. Three percent (3%) longevity pay based upon the top pay step of the Commissioned Officer Salary Schedule shall be added to the salaries identified in the applicable Appendix for all employees with five (5) through nine (9) years of commissioned service.
- B. An additional two percent (2%) longevity pay shall be added for all employees with ten (10) through fourteen (14) years of commissioned service.
- C. An additional two percent (2%) longevity pay shall be added for all employees with fifteen (15) through nineteen (19) years of commissioned service.

- D. An additional two percent (2%) longevity pay shall be added for all employees with twenty (20) or more years of commissioned service.

Association's Proposed Change:

Employees will receive longevity pay in accordance with the following schedule:

- A. Three percent (3%) longevity pay based upon the top pay step of the Commissioned Officer Salary Schedule shall be added to the salaries identified in the applicable Appendix for all employees with five (5) through nine (9) years of commissioned service.
- B. An additional two percent (2%) longevity pay shall be added for all employees with ten (10) through fourteen (14) years of commissioned service.
- C. An additional two percent (2%) longevity pay shall be added for all employees with fifteen (15) through nineteen (19) years of commissioned service.
- D. An additional four percent (4%) longevity pay shall be added for all employees with twenty (20) through twenty four (24) years of commissioned service.
- E. An additional two percent (2%) longevity pay shall be added for all employees with twenty five (25) through twenty nine (29) years of commissioned service.
- F. An additional two percent (2%) longevity pay shall be added for all employees with thirty (30) through thirty four (34) years of commissioned service.
- G. An additional two percent (2%) longevity pay shall be added for all employees with thirty five (35) or more years of commissioned service.

State's Response:

The State urges the retention of the existing longevity pay benefit.

Discussion:

This is simply a limited money issue. The State, as discussed above, has only so much financial resources it can use to address trooper compensation issues. It is this Arbitrator's conclusion that the financial resources available should be, almost in total, applied to base salary increases. The State's lack of competitiveness with regard to recruiting is a function of base salary, not of longevity. Additionally, the Arbitrator's award of a significant base salary increase equally impacts all ranges of the salary schedule including those with 20 or more years of experience.

Award:

The Arbitrator concurs with the State on this issue and directs the Parties to retain the existing Longevity Pay benefit.

Article 28.5.A – Master's Degree Incentive Pay

Current Language:

- A. The following monthly education incentive pay will be paid to each employee upon completing the listed degree and providing proof of completion to the Agency.

Associate Degree Two percent (2%)

Bachelor Degree Four percent (4%)

Association's Proposed Change:

- A. The following monthly education incentive pay will be paid to each employee upon completing the listed

degree and providing proof of completion to the Agency.

Associate Degree	Two percent (2%)
Bachelor Degree	Four percent (4%)
Master Degree	Six percent (6%)

State's Response:

The State urges the retention of the existing monthly education incentive pay benefit without the addition of the Master Degree

Discussion:

Matters of compensation are a two way street. The system should work so that troopers get more compensation while the State gets additional value. The State's arguments were persuasive to this Arbitrator in that while a master degree gives the State extra value when it is obtained by a lieutenant or captain, it does not give extra value to the State when it is obtained by a trooper. This is true because a master degree generally focuses on leadership skills not on field operations. The Arbitrator believes that the State should not be paying for something that brings it no value and thus he sides with the State on this issue.

Award:

The Arbitrator concurs with the State on this issue and directs the Parties to retain the existing monthly education incentive pay benefit.

Article 28.7A – BAC Tech Specialty Pay

Current Language:

Article 28.7A contains a list of 15 specialty activities for which the State provides additional compensation. The compensation is figured as a percentage of the trooper's base wage and the rate ranges from 2% (Armorer) to 15% (Command Pilot).

Association's Proposed Change:

The Association proposes to add an additional specialty, BAC Tech, with a three percent (3%) specialty pay.

State's Response:

The State urges the retention of the existing list of specialty pay activities and opposes the addition of the BAC Tech specialty.

Discussion:

The Parties have determined in prior agreements that there are a number of special duties that are deserving of additional compensation. The question here is whether the BAC Tech specialty should be added to that list. The State contends that the duties of the BAC Tech specialty do not rise to the same level as those activities which have been given additional compensation. The Association argues strenuously for the opposite. Ultimately the Arbitrator finds himself in

concurrence with the Association and found two factors significant in arriving at this conclusion.

First, there is no disagreement that a trooper must have extensive additional education in order to function as a BAC Tech. Taking this into consideration, the Arbitrator examined the list of approved specialties and found a number that received extra compensation that would require far less specialization; armorer is a good example.

Second, the State has concerns over the fact that there are two civilian employees who do many of the same functions as a BAC Tech but get paid less. Ultimately the Arbitrator resolved this concern by way of the evidence which stresses that a trooper, unlike the civilian employees, can administer the breathalyzer test in the field. The trooper is a commissioned officer and, even while working the BAC Tech specialty, does not lose the responsibilities and mandates of that position.

Award:

The Arbitrator concurs with the Association on this issue and directs the Parties to add the BAC Tech specialty with a rate of three percent (3%) to the list found in Article 28.7A.

Article 28.8 - Increased FTO Sergeant Pay

Current Language:

Troopers assigned as a FTO will be compensated an additional ten percent (10%) of their regular rate of pay

for all hours worked as a FTO. Sergeants will be compensated an additional five percent (5%) of their regular rate of pay for all hours worked as a FTO supervisor.

Association's Proposed Change:

The Association proposes to raise the rate of pay for a FTO Sergeant from 5% to 10%.

State's Response:

The State urges the retention of the existing FTO compensation rate to include 5% for sergeants.

Discussion:

The primary evidence used by the Association to support its proposal comes from the testimony of Sergeant Courtney Stewart. The Arbitrator found Sergeants Stewart's testimony extremely persuasive in that she detailed the amount of extra work performed by a FTO Sergeant. However, the State's rebuttal evidence led the Arbitrator to conclude that Sergeants Stewart's work as an FTO Sergeant is most likely the exception and not the rule. For one thing, she works in King County where she would likely have a heavier FTO workload. Additionally, while Sergeant Stewart's diligence is to be lauded, the Arbitrator is not convinced that all FTO Sergeants would put in a similar effort.

To summarize, while the Arbitrator found some merit in the Association's proposal, he did not find the total weight of the evidence sufficient to change a 5% benefit into a 10% benefit.

Award:

The Arbitrator concurs with the State on this issue and directs the Parties to retain the existing FTO Sergeant pay of 5%.

Article 28.10.A - Pay for All Hours Worked in a Supervisory Capacity

Current Language:

- A. To be compensated for temporarily assuming the duties of a supervisory position, the supervisor must be gone for forty (40) or more consecutive hours. If more than one (1) employee is appointed to work in the supervisor's position, each employee will be compensated for the actual time worked, provided each employee has worked at least eight (8) consecutive non-overtime hours in the position.

Association's Proposed Change:

- A. To be compensated for temporarily assuming the duties of a supervisory position, each employee will be compensated for the actual time worked in the position.

State's Response:

The State urges the retention of the existing language as found in Article 28.10.A.

Discussion:

On this issue the Association seeks to acquire compensation for all of the hours worked by members of this bargaining unit

when they are performing in a higher position. Currently the employee must work a minimum of 40 hours in a higher position in order to receive the 15 percent premium pay associated with working in a higher position.

The Arbitrator found the State's case overwhelmingly persuasive that the change requested by the Association would be an unwarranted administrative nightmare. While it may seem someone excessive to have to work at least 40 hours in a higher position to receive additional compensation, the existing language was fashioned at the bargaining table and it clearly contains operational controls that make it workable. The Association's case to modify this language is simply unpersuasive and probably unwise.

Award:

The Arbitrator concurs with the State on this issue and directs the Parties to retain the existing language found in Article 28.10A.

AWARD SUMMARY

ISSUE 1

Article 16 -- Other Leaves of Absence

16.3 Military Leave

Award:

The Arbitrator concurs with the State on this issue and directs the Parties to replace existing language with the following sentence:

The Employer will provide paid military leave to allow an employee to report to required military duty, training drills or active duty status in accordance with State and federal law.

16.5 - Pregnancy/Parental Leave

Award:

The Arbitrator concurs with the Association on this issue and directs the Parties to retain existing language for Article 16.5.

16.7 - Limited/temporary light duty

Award:

The Arbitrator concurs with the Association on this issue and directs the Parties to retain existing language for Article 16.7.

ISSUE 2

Article 28 -- Compensation

Article 28.1 - Base Wage Increase

Award:

The Arbitrator directs the Parties to place the following paragraph under Article 28 of the CBA.

- A. Effective July 1, 2015, all salary ranges and steps of the WSP Commissioned Officer Salary Schedule that was in effect on June 30, 2015 shall be increased by seven percent (7%), as shown in Appendix A. Effective July 1, 2016, all salary ranges and steps of the WSP Commissioned Officer Salary Schedule that was in effect on June 30, 2016 shall be increased by three percent (3%), as shown in Appendix B.

Article 28.4 - Additional Longevity Pay

Award:

The Arbitrator concurs with the State on this issue and directs the Parties to retain the existing Longevity Pay benefit.

Article 28.5.A - Master's Degree Incentive Pay

Award:

The Arbitrator concurs with the State on this issue and directs the Parties to retain the existing monthly education incentive pay benefit.

Article 28.7A - BAC Tech Specialty Pay

Award:

The Arbitrator concurs with the Association on this issue and directs the Parties to add the BAC Tech specialty with a rate of three percent (3%) to the list found in Article 28.7A.

Article 28.8 - Increased FTO Sergeant Pay

Award:

The Arbitrator concurs with the State on this issue and directs the Parties to retain the existing FTO Sergeant pay of 5%.

Article 28.10.A - Pay for All Hours Worked in a Supervisory Capacity

Award:

The Arbitrator concurs with the State on this issue and directs the Parties to retain the existing language found in Article 28.10A.

This interest award is respectfully given on this the 30th day of September, 2014 by,

Timothy D. W. Williams
Arbitrator