

In the Matter of the Interest Arbitration

between Inland Boatmen’s Union of the Pacific (“Union” or “IBU”)

and

Findings,
Discussion and
Award.

Washington State Ferries Division (“WSF” or “Agency”),
Washington State Department of Transportation
 (“WSDOT”), State of Washington (“State”).

Case Numbers: PERC Case No. 26620-I-14-0649. Arbitrator’s O95.

Representing the Union: Robert H. Lavitt and Schwerin Campbell Barnard Iglitzin & Lavitt, LLP, 18 West Mercer Street, Suite 400, Seattle, WA 98119-3971.

Representing the Agency: David J. Slown, Assistant Attorney General, and Kara Larsen, Senior Counsel, Attorney General of Washington, PO Box 40145, Olympia, WA 98504-0145.

Arbitrator: Howell L. Lankford, P.O. Box 22331, Milwaukie, OR 97269-0331.

Hearing held: In the offices of Washington State Ferries in Seattle, Washington, on July 30 & 31 and August 1, 4, & 5, 2014.

Witnesses for the Union: Jay Ubelhart, Dennis Conklin, Kevin Hall, Jessica Kristjenson, and Jack Lane.

Witnesses for the Agency: Jerry Holder, Pete Williams, Doug Schlieff, Matt Hanbey, Christina Peterson, Kamaron Durocher, Kim Grindrod, and Duayne Erik Hansen.

Date of this award: September 2, 2014.

This is a statutory interest arbitration under the authority of RCW Chapter 47.64 for the period July 1, 2015 through June 30, 2017. I am the parties' mutual choice as a single arbitrator as permitted by RCW 47.64.300(2). The parties agree that the procedures leading up to interest arbitration have been satisfactorily completed, that there are no procedural objections to this interest arbitration, and that each party had satisfactory advance notice of the issues to be addressed in the hearing. The hearing was orderly. Each party had the opportunity to present evidence, to call and to cross examine witnesses, and to argue the case. Testimony was taken down by a court reporter; and the parties agree that the Agency will be the official custodian of the record and will hold me harmless in that regard. The parties agreed to close the record with oral arguments

Only seven issues are addressed here of the 35 issues initially certified to interest arbitration by the Public Employment Relations Commission (PERC). Most of the certified issues not addressed here had already been TA'd but had not yet been ratified by the Union, and all those issues were duly ratified and conclusively agreed to. On the threshold of the arbitration hearing the Union reduced the issues in arbitration to seven, and the Agency does not object to that reduction; and one of those seven—vacation scheduling for Terminal employees—was resolved by discussions on the first day of the hearing. Six Union proposals and one Agency alternative remain at issue. Three of those proposals would make broad changes in the pay rates for bargaining unit employees: (1) a proposal to increase all rates by 4% at the beginning of each fiscal year; (2) a proposal to increase the difference between the top and next-to-top classifications for both the deck and terminal employees, with a resulting increase to the rate for the AB Bos'n classification; and (3) a proposal to replace the current pay rates with a Range and Step schedule, taking the current rates as the new base step. The Union's final three proposals (4) would eliminate a two-track vacation accrual provision which the Union accepted under duress, (5) would create a new Terminal Lead premium, and (6) would require the Agency to count and certify the accuracy of ticket seller working funds each day. The Agency's only alternative (7) is for a single, 3% pay increase from the beginning of this contract period.

This is the largest ferry system in the United States and the third largest in the world, transporting some twenty-two million passengers a year on twenty-three vessels to twenty different ports. The bargaining unit consists of WSF's unlicensed on-deck employees rated Ordinary Seaman (OS) and Able Seaman (AB), including those who work in the shore gang, along with most of the Terminal employees, i.e., Ticket Sellers and Ticket Takers and Traffic Control Employees/Ticket Takers, along with Information staff. (I will refer to ticket takers, traffic control employees and watchmen collectively as "Attendants," as distinguished from Ticket Sellers). There are about 550 on-deck employees, over 350 terminal employees, and an additional 20 Information employees, for a bargaining unit total of from 875 to 900.

I will begin with a brief discussion of each of the statutory criteria as it relates to this dispute and will then turn to the proposals themselves.

STATUTORY CRITERIA

47.64.005

Declaration of policy.

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

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.

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..., 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 it in reaching a decision, shall take into consideration the following factors:

RCW 47.64.320(3)(a): “The financial ability of the department to pay for the compensation and fringe benefit provisions of a collective bargaining agreement.” Interpretative dispute. There is a preliminary dispute about the proper interpretation and application of this statutory factor. The Union argues that I should consider only the ability to pay during the biennium covered by the contract at issue; and the Agency argues that I must also consider long term financial consequences. This is not quite the usual dispute about statutory terms like “ability to pay:” The more common disagreement is whether such

a term means a literal inability to pay in the private sector case law sense or means something more like “inability to *afford*.” There are roughly three senses of “inability to pay:” “We can’t afford the new car” in the rock bottom sense that no one would sell us the new car for the total amount of cash and credit we currently command; “We can’t afford the new car” in the sense that if we did, we would not be able to pay for fundamental necessities such as rent, utilities, food, etc.; and “We can’t afford the new car” in the sense that, even though we could pay for hand to mouth necessities, nothing would be left over for contingencies or retirement. The Agency’s arguments mainly focus on “ability to pay” in the last two senses.

The dispute over the interpretation of “financial ability...to pay” comes down to this: Does the term encompass the issue of the Agency’s ability to responsibly incur the downstream costs which would reasonably follow from a proposal? The answer to that question rests on the more general statutory scheme of which RCW 46.64.320 is a part. RCW 47.64.170(9)(I) and (ii) limit the funding of WSF awards to those that

have been submitted to the director of the office of financial management by October 1st before the legislative session at which the requests are to be considered; and have been certified by the director of the office of financial management as being feasible financially for the state.

The record here includes OFM’s financial feasibility determination for all the WSF awards for 2013-2015, including OFM’s determination that the award issued for this bargaining unit was *not* financially feasible (set out below at pp. 10-11). In making its determination, OFM clearly included consideration of financial consequences far beyond the immediate biennial costs. Therefore, so must I. Neither the union nor the Agency benefits from an award which is struck down by OFM, and it makes no sense for an interest arbitrator operating in this statutory framework *not* to attempt to apply the term “financial ability ... to pay” in the way that OFM apparently will apply that term when it considers the financial feasibility of the resulting award. Long-term financial consequences are part of “financial ability.”

Ability to pay, on the merits. The State is the ultimate employer here, through WSDOT and WSF; and the Union points out that the State’s ability to pay reflects its general economic health. Although Washington, like the nation as a whole, is recovering from the 2008 recession, that recovery has taken disturbingly long. The most recent Quarterly Forecast shows additions to the General Fund of \$157M for the current biennium and \$238M for 2015-2017. But it took the state over five and a half years—69 months—to regain all its jobs lost from the 2008 high water mark in employment. The next longest recovery period was less than four years, following the 2000 recession. And, of course, recovering the jobs *lost* does not get the State back to the employment numbers it would have experienced with even modest job growth over the five and a half years of “recovery” and does not reflect change in total workforce size over that period.

Ferry System finances do not involve the General Fund budget. The 2013 fare box provided a healthy 70% of operating costs. The remaining 30% comes almost entirely from

the State's Transportation Account; and about 75% of the Transportation Account, in turn, comes from State gas taxes, with almost all the rest coming from licenses, permits and fees. (Gasoline tax is restricted to highway use, and the ferry system is a marine highway and mass transit system.) The missing leg of what is now a financial two-legged stool is the Motor Vehicle Excise Tax which was first abolished by referendum in 2000 and then permanently eliminated by the legislature with no substantial replacement. Washington highways and public transit agencies have lived hand to mouth ever since.

As the Union points out, that history of hand-to-mouth financing makes the current, 2014 Legislative Financial Plan not very helpful in determining ability to pay. That Plan projects a positive Ending Fund Balance (EFB) of over \$17M for the Ferry Operational Account for the current biennium but accepts rapidly growing deficits in subsequent biennia: \$63.5M in 2015-2017, \$130M in 2017-2019, \$185M in 2019-2021, and \$221M in 2021-2023. On the other hand, the Highway Safety Account—which has recently been used to backfill Ferry Operations—is projected to grow over that same period, from less than half a million dollars at the end of 2013-2015 to \$71M after 2015-2017, to \$129M after 2017-2019, to \$174M after 2019-2021, and finally to the neighborhood of \$226M after 2021-2023. But looking at the Transportation Account as a whole, as the Agency points out, current projections show ever-increasing deficits extending into the future, beginning with the 2015-2017 biennium.

Those legislative projections are what WSDOT and WSF are obliged to assume about future funding; but they present a problem for an interest arbitrator. I am specifically required to keep in mind the legislative purpose set out in RCW 47.64.006: Bluntly, I am to keep the ferries running efficiently and affordably while providing just and fair compensation for ferry employees; and it is not clear that that goal can be accomplished within the apparent limitations of the 2014 Legislative Financial Plan. So I am forced to conclude that the legislature—and future legislatures, too—will make significant changes in budgeting and planning in order to keep the ferry system running and affordable. Legislatures have done so in the past.¹ Substantial WSF expenditures over past biennia have been covered by transfers from other parts of the Transportation Account. (For example, the 2014 Supplemental Budget shifted \$83M out of other Transportation accounts and into the Ferry Operating Account in order to make that account balance for the current biennium.) So I am left to address “financial ability” on the basis of general trends in past Transportation Account income and expenses and on the basis of the most recent report of the Transportation Revenue Forecast Council.

¹For example, the 2014 projected EFB for the Highway Safety Account turned out to be a rosy scenario; and the legislature passed a supplemental Budget in April, of 2014 which might have been aimed at keeping the Highway Safety Account in the black for the current biennium. That same supplemental budget shifted \$13M from the Multimodal Transportation Account into the Puget Sound Ferry Operations Account.

Gas tax rates have been unchanged since about 1991. The Federal gasoline rate of 18.4¢ per gallon for gas in 1991 has declined in value to about 12.6¢ per gallon in 1991 dollars (which underlies the federal government’s recent need to shore up the Highway Trust Fund in order to continue the orderly financing of federal highway construction activities). The Washington State rate of 37.5¢ per gallon comes to a current value of about 25.7¢ per gallon on that same basis. Of the 37.5¢ per gallon total, only about 8¢ per gallon—2.3¢ per gallon in 1991 dollars—is available for ferry system *operations* costs; and ferry operational needs must compete for that 8¢ with many other Transportation Account priorities. Even as the real value of fuel tax income has declined, the estimates of fuel tax income in *current* dollars have never recovered from 2008 due to steady decline in miles traveled by car as well as slight increases in overall fuel efficiency of automobiles.

The June Revenue Forecast shows a \$59M increase over the February Forecast, but \$29M of that is restricted to the Capital Vessel Replacement Account. The record offers no particular reason to be optimistic about future growth in gas tax revenue or in the Transportation budget in general. On the contrary, it offers a series of additional challenges for that budget: There are—not unusually—projected increases in employee health care and PERS rates;² but there is also a current judgment requiring the State to repair culverts as part of its treaty obligations, and those repairs are projected to cost about \$310M per biennium out of Transportation funds; and a Department of Licensing computer upgrade, already in the works, will cost the Transportation Account an additional \$20M in 2015-2017 alone.³ Moreover—at the risk of again getting into the morass of legislative budgeting—the current projected budget for the 2015-2017 biennium mysteriously omits \$20M debt service on the second 144-car ferry under construction, \$10M in highway preservation costs, \$26M for public transit, and \$10M for highway maintenance, among other costs. Finally, it is worth noting that both of the two most recent legislatures have failed to pass a new revenue bill.

The Union points particularly to the Transportation Revenue Forecast Council June 2014 Report. What that Report concludes for the intermediate and long term (on p. 4) is “In the current fiscal year, transportation revenues are estimated at \$2.29 billion which is a 2.8% year-over-year growth and 0.28% adjustment upward from the February forecast. Overall during the 10-year horizon, transportation revenues are projected to be \$24.236 billion with an average growth rate of 0.9% each year.” And the Union is quite correct that both Washington and its Transportation Account are now in far better financial shape than when the economy “cratered.” But what we are “back to” is roughly the levels of employment and

²Medical insurance rates now appear to be about 1% above projections, and PERS costs will require an additional \$13.6M for 2015-2017.

³I do not count *McCleary v. State of Washington*, the ongoing education funding litigation, because of the quite complete separation between the Transportation Account, which supports WSF, and the General Fund Account which supports K-12 education costs.

State income numbers from the beginning of that long period with little or no real growth. There is no obvious pot of money from which to finance cost increases for this bargaining unit for the 2015-2017 biennium at issue here; there is no reason on this record to reject WSF's claim that operations financing should be estimated to become tighter and tighter in subsequent biennia; and the general policy requirements of RCW 47.64.006 limit any additional cost items awarded here to those that are clearly compelled by the other factors listed in RCW 47.64.320(3).

RCW 47.64.320(3)(b): Past collective bargaining contracts between the parties including the bargaining that led up to the contracts. One of the Union's main arguments in this case is that it has been caught in a *Groundhog Day* loop: It has again and again won pay and benefit increases in arbitration only to have those victories snatched away.

2001-2003 and 2003-2005. That bargaining history begins six contracts ago with the award for 2001-2003, which was issued under the prior, "select the most reasonable offer," statutory language of RCW 47.64.200. The statutory factors at that time included "The right of the legislature to appropriate and to limit funds for the conduct of the ferry system," and the legislature had cancelled a previously approved raise for State employees, including WSF employees. That cancellation led arbitrator Michael Beck (NAA) to conclude (p.4) that he did not have "the authority to order a general wage increase beyond that already provided by the legislature." He also considered both the statutory survey and the CPI and concluded that neither of those required the 3% and 3% proposed by the Union; and he awarded the freeze proposed by WSF as the better of the two choices available to him. But he compared the total annual hours worked among employees of comparable employers and awarded the Union's proposal for a substantial increase in vacation accrual.

That same arbitration also produced the 2003-2005 contract. WSF again proposed a freeze and the Union proposed 1.7%, 1.7%. Arbitrator Beck examined the survey data and concluded that WSF's freeze proposal was the more reasonable for the first year and the Union's 1.7% proposal was the more reasonable for the second. He also declined to enrich the vacation accrual awarded in the prior contract.

2009-2011. The record before me skips from the 2003-2005 CBA to the 2008 negotiations, which were mostly held in the context of a June Senate Ways and Means forecast of a \$359 million surplus for the biennium.⁴ The State had offered all bargaining units across-the-board increases of 1.7% and 1.5%. Even though the WSF operating budget showed a projected \$43 million deficit for 2007-2009 and a \$101.3 million deficit for 2009-2011, arbitrator Beck concluded that he was forced to choose the Union's 4.2%, 4.2% proposal. He also chose the Union's proposal to eliminate the lowest, 70% pay tier for newly

⁴The parties apparently worked out their own agreement for 2007-2009 after an award by arbitrator John Byrne for 2005-2007 (which is not in the record before me).

hired on-call employees and to shorten the resulting 85% initial pay period from 5,200 hours (4,160 for the Information department) to 1,040 hours.⁵ That award was issued on September 20, 2008, but the American (and world) financial markets went into a tailspin almost immediately thereafter. The legislature declined to fund the awarded 4.2% and 4.2% increases—as it declined to fund other WSF interest arbitration awards—and also declined to fund arbitrator Beck’s awarded elimination of the entry tier pay rates.⁶

2011-2013. By the time of the next, 2010 interest arbitration, RCW 47.64.200 had abandoned the ‘pick one,’ last-best-offer approach and had replaced it by the current directive to “issue a decision [the arbitrator] deems just and appropriate with respect to each impasse item.” For 2011-2013, the Union proposed no increase “during these difficult economic times,” but wanted “me-too” protection, which arbitrator Sylvia Skratek (NAA) awarded along with a contractual memorial (p.20, italics in the original) that “*wage increases at the rate of 4.2% effective 7/1/09 and 7/1/10 were granted in Arbitrator Beck’s September 2008 Award but were not funded by the State.*” The Union also proposed (at p.22), “to dovetail the IBU wage schedules into the State of Washington General Service Salary Schedule at applicable range and steps.” Arbitrator Skratek denied that proposal. She also rejected WSF’s proposal to roll back the vacation accrual schedule awarded by arbitrator Beck for the 2001-2003 contract. In an interim interest arbitration, arbitrator Bryne had also declined a vacation accrual rollback proposal for 2007-2009 because “The last arbitrator [Beck] believed that he acted sufficiently to maintain the system’s competitive position with regard to the vacation benefit.” Arbitrator Skratek did “not disagree with the comments of Arbitrators Beck and Byrne. The retention of ferry employees through difficult economic times is dependent upon maintaining a competitive position. When a wage increase is not forthcoming it must be balanced by the maintenance of benefits that are of value to the employees.”

2011 Emergency Renegotiation. Arbitrator Skratek’s award was issued in September, 2010, but the financial climate continued to deteriorate throughout that Fall. Early in 2011 the Governor’s office set out to exact a general 3% rate *reduction* from all State employee

⁵The entry level rate was about 70% of the journey rate for a new employee’s first 2,080 straight time hours, and a second tier rate of about 85% of the journey rate until that employee had completed 5,200 hours (4,160 hours for Information Department employees). Arbitrator Beck agreed with the Union’s proposal to collapse that structure into a two-tier system in which a new hire earns 85% of the journey rate for the first 1,040 hours and 100% after that. The arbitrator’s choice was based on structural comparison with AMHS and BC Ferries and on the fact that 1,040 hours was the close of a new hire’s probationary period under the WSF contract.

⁶Arbitrator Beck again declined to enhance vacation accrual, noting (p.25) “that AMHS has actually been reducing its vacation accrual benefit” for hires after April 1, 1985, and (p.26) that “even if one limits the consideration of vacation benefits to employee groups at WSF entitled to interest arbitration, it is clear...that IBU represented employees enjoy a significantly more generous vacation benefit than do other WSF employee groups entitled to interest arbitration.”

unions for the coming biennium. In February of 2011 the maritime unions were called back into negotiations with the Governor's office. The result was a contract that not only rolled back rates by 3% for the biennium but also reduced overtime from double time to time and a half and reduced overtime intervals to tenths of an hour, and the new contract added dual-tracked vacation accrual, leaving the previously awarded rates for existing employees but reducing accrual rates for employees hired after July 1, 2011.⁷ All other State bargaining units were later rolled back by that same 3%, but outside WSF those rollbacks were matched by hours of leave, which were not provided for this and other WSF units.

The legislative mood for these WFS negotiations was not entirely a product of the economic climate. A Seattle television exposé, *Waste on the Waters*, had stirred legislative ire and there was talk of an outright statutory prohibition on double time overtime, travel time, and other bargained or awarded contract benefits.

2013-2015. The prior contract rates were due to “snap back” from the 3% rollback on the very last day of that 2011-2013 CBA. In the interest arbitration for the 2013-2015 contract the State proposed the continuation of the resulting “snap back” rates throughout the next biennium. The Union, on the other hand, proposed an additional 3% on the first day of each fiscal year and proposed to once again eliminate the lowest of the three pay tiers; and the Union reiterated its request to “adopt the State General Service Salary Schedule and place employees into an applicable range at Step A.” Here is arbitrator Skratek's discussion of the range and step schedule proposal (pp. 11-12, exhibit references omitted, italics in the original):

Given this environment the Arbitrator has reviewed the Union's compensation proposals and while it is true that in her previously issued award she denied *the Union's proposal to dovetail the IBU wage schedules into the State of Washington General Service Salary Schedule at applicable range and steps* it is also true that there have been significant changes in the last two years that warrant a new look at the proposal. As she discussed within the 2010 Analysis *collective bargaining agreements are negotiated over the life of the employment relationship and in this matter that relationship has been ongoing since at least the mid 1960's. There are reasons that the wage schedule has developed in the format that it appears in the Agreement and to simply replace it with something that appears in the agreements of the general state employees would be premature and inappropriate at this time.* Today it is clear that the employment relationship has evolved to the point that the State has successfully begun to incorporate many of the provisions that are found within the agreements with general government employees. Given the fact that one of the criteria within RCW 47.64.320 at Section (3) subsection (b) requires the consideration of *Past collective bargaining contracts between the parties including the bargaining that led up to the contracts,* the Arbitrator finds that the bargaining that has

⁷Both arbitrators Beck and Skratek had specifically rejected WSF's proposal to move to a tenth-of-an hour administration of overtime. The new contract addressed the reduced overtime rate by adding three hours of callback pay, reducing the net loss for a *full shift* of overtime to only one hour of pay.

led to the current collective bargaining agreement has resulted in provisions that are comparable to those contained within general government agreements. The time is right to dovetail the IBU wage schedules into the State of Washington General Service Salary Schedule at applicable range and steps. Furthermore a range and step schedule is not only consistent with comparators but is also consistent with a step schedule that is used internally by the WSDOT Ferries Division.

How to accomplish the dovetailing is a question not easily answered. *** In her calculations the Arbitrator used the General Service Salary Schedule ...

The Arbitrator has also considered Arbitrator Beck's award issued September 8, 2008 in which he awarded the Union's proposal of "...a two tier system with the lower tier employees receiving a wage rate of 85% of the full-time journey wage until the employee has worked 1,040 straight-time hours." For all of the reasons set forth by Arbitrator Beck, this Arbitrator awards the Union's proposal in this proceeding to eliminate the third tier that had been the entry level rates. The elimination of these rates and the modification of what were the temporary position rates to the new entry level rates will result in numerous employees being placed at higher rates than they would have received under the three-tier system. Not only will the employees on the entry level tier be moved to what had been the temporary position tier but also the employees on the temporary position tier will be moved to the highest tier. The moves will be tied to the number of hours worked which have been modified in the Union's proposal to eliminate the lowest tier. Once the employees have been moved to their appropriate position on the tiers, they will then be placed on the General Government Service Salary Schedule range and step as per the Union's proposal. ***

Arbitrator Skratek found that this award was compelled by comparability and by the statutory compensation survey which showed (p. 13) that

WSF Ferry/Terminal positions lag the market average (including and excluding benefits) this year as opposed to leading it in both areas in previous years. Factors contributing to this new market lag include the State's 3% salary reduction in addition to market actual average salaries increasing by approximately 8% (excluding COLD, approximately 7% including COLD).

2013 Finding of Financial Unfeasibility. OMB found all the interest arbitration awards for the 2013-2015 contracts to be financially feasible except the one for this bargaining unit. Without detailing all the cost items granted in the other WSF awards, they generally provided for total increases of 2% to 3% for the biennium (except for MM&P Watch Supervisors). Here is OFM's explanation of its rejection of the award for the IBU bargaining unit (pp.4-5):

The current wage schedule for members of the IBU bargaining unit consists of three tiers with one wage for a specified position. Placement on a tier is dependent upon the number of hours worked. The arbitrator's award eliminated this three-tiered wage scale and replaces it with moving bargaining unit members onto the state's general government service salary schedule at Range 59 after completing two (rather than three) entry level wage rates. All IBU members at the top of the current tiered wage scale are placed at Step A on Range 59 on the same date of July 1, 2013.

The award is a structural change to IBU member pay, which creates a bow-wave of costs that cannot be sustained. By moving IBU members to Range 59, the arbitrator has increased the top salary for these positions from \$23.92 an hour to \$31.81 an hour, and effectively makes the starting salary for these positions the current top wage. Like general government employees, IBU members would reach the top salary on the range by receiving two step increases each year, generally amounting to a 5 percent annual salary increase for six years. The cost of moving IBU members to the state's general government service salary schedule and paying for step increases during the 2013-15 biennium is \$4,097,803. However, the bow-wave of *additional* funds required to implement step increases from the award grows to \$10.6 million in 2015-17, \$11.7 million in 2017-19, and \$6.3 million in 2019-21.

The arbitrator's award also increases costs by moving IBU members to Step A with the same anniversary date for step increases. This is different from general government where employees are distributed among the steps in a range depending on their entry step and seniority. This distribution reduces costs because the length and value of each employee's step increase varies. For example, the cost of a step increase for an employee with a May anniversary date is lower than that of an employee with a January anniversary date because the increase covers 13 months of the biennium rather than 18 months. Under the arbitrator's award, step increase costs for the ferry system will be for 24 months each biennium because the bulk of IBU members will share the same anniversary date.

Additionally, employee turnover also offsets step increase costs. For example, employees at higher steps (e.g., step G) are replaced by employees at a lower step (e.g., step C). However, employee turnover in the Washington State ferry system is much lower when compared to all of state government. Additionally, as the arbitrator notes, her modifications of entry level rates will result in numerous employees being placed at higher rates than they would have received under the three-tiered system. Thus, even when employee turnover does occur, those new employees will enter the system at a higher cost rather than produce savings.

Given the forecasted continual decline in ferry fare box revenue, overall stagnant growth in transportation revenues, and the manner in which the arbitrator moved bargaining unit members to the state's general government service salary schedule, the arbitration award for the Inlandboatmen's Union is not feasible.

Subsequent, 2012 negotiations. As required by statute, the parties went back to the table after the rejection by OFM, and the contract that resulted from those negotiations included an 18% increase in the entry level rates and 2.5% at the beginning of each year of the biennium. The 18% increase brought the entry rate up from 70% of the journey rate to about 79% and left the middle tier rate intact at 85%. Finally, in December, 2012, the parties entered into a MOU negotiate "a salary schedule" (set out below at pp. 20-21 as part of the discussion of the Union's current Range and Step proposal).

RCW 47.64.320(3)(c): The constitutional and statutory authority of the employer. Neither party particularly appeals to this factor in the case at hand and there is no reason to discuss it in detail beyond recognition that the legislature had carefully restricted WSDOT's ability to shift funds among Transportation accounts so that the funding of any

cost increases for WSF for 2015-2017—indeed the funding of WSF *without* any cost increases for 2015-2017— apparently depends on legislative action.⁸

RCW 47.64.320(3)(d): Stipulations of the parties. The procedural stipulations are mentioned at the beginning of this discussion. The parties also agree to the resolution of the Union’s Issue #5 regarding the Sellers’ working funds, as discussed below.

RCW 47.64.300(3)(e): The results of the salary survey as required in RCW 47.64.170(8). The scope of the survey was unchanged from the prior biennium.⁹ In some cases arising under this statute there are sharp disputes about the survey or about its results. This is not such a case.¹⁰ The overall results of that survey are set out in Figure 1. As the Union points out, the OFM survey itself shows the OS and Attendant employees to have been substantially underpaid on January 1, 2014, the “snapshot” date of the survey; and as WSF points out, the survey did not show substantial lag at that time except in those classifications.

Class	Base Rate	+ Benefits
AB	3.3%	1.0%
OS	-2.2%	-7.0%
Seller	6.0%	[no data]
Attendant	-7.4%	-14.2%
Info Agent	8.0%	-0.9%

Figure 1.

RCW 47.64.300(3)(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. The statute invites two perspectives on comparability, one through the OFM survey and one directly, addressing the total compensation of employees “doing directly comparable but not necessarily identical work” for “public and private sector employees in states along the west coast...”

⁸With respect to the Union’s Range and Step proposal, the State argues this legislature could not “bind future legislatures,” a puzzling argument in light of the steps in the WFSE and SGSS schedules and the legislature’s recent addition of a longevity step.

⁹Three of the tug operators offered as comparables by the Union—Crowley, Gunderson and Manson—declined to participate in the OFM survey. The data offered by the Union with respect to those employers comes from IBU’s representation of their employees. A fourth employer, Foss, did participate in the survey, but the resulting data was not used for deck personnel (but only for shipyard administration).

¹⁰The Union notes that the compensation numbers for Alaska Marine Highway do not include the Cost of Living Differential (COLD) which reflects a higher cost of living in Alaska.

The data in the record. With respect to the direct consideration of comparability, the Union offers as comparables several private sector barge and tug operators, King County—which operates passenger-only ferries between Seattle and Vashon Island and between Seattle and West Seattle—and the State itself, which operates two additional ferries, one serving McNiel Island and one crossing the upper Columbia River in Eastern Washington. The Union also offers a different perspective on BC Ferries and Black Ball, which are included in the OFM survey. WSF’s simple contract rates are currently \$25.13 for an AB and \$22.67 for an Ordinary Seaman.

- BC Ferries now pays an AB-equivalent employee CAD 26.28 (equivalent to about \$23.97 on the exchange rate in effect on the day this discussion is being written) and pays an OS-equivalent CAD 25.27 (about \$23.05). Ticketing employees receive CAD 23.82 (about \$21.73) and Attendants CAD 25.47 (about \$23.23).
- Black Ball operates a single ferry between Port Angeles and Victoria, BC. The current, 2012-2015 CBA began with an OS rate of \$27.69 and an AB rate of \$31.28, but twice annual automatic COLA adjustments, with a 1% minimum, have driven those rates to \$29.08 and \$32.85 respectively.
- Turning to King County, the Marine Deckhands and Marine Information Agents are paid on “the King County Marine Division ‘Squared’ Pay Schedule” (quoting the relevant CBA). Deckhands fall into range 52 of that schedule, with ten possible steps, and Information Agents into range 40, with the last five of the schedule’s ten steps available to them. On that schedule, Deckhand pay ranges from a base of \$27.9238 per hour to a top of \$35.3950, and Information Agents range from \$21.0074 to \$26.6281. As far as this record shows, the 2014-2017 agreement with that schedule and Range placement is the second three-year contract, and there are now Deckhands near the beginning and near the middle of the schedule but not near the top. The initial Range placement was based on a survey of Black Ball, WSF, and three local tug companies. The King County website (of which I take notice here) refers to both of these vessels as “water taxis,” and they are both catamarans, each with a total crew of three and a capacity of about 150 and 170 passengers.
- Mason Construction operates “tugs, workboats, and launches” and pays \$33.79 for a “Deckhand,” (apparently without separate rates for OS or Quartermaster). In addition, Mason employees get \$2.06 per hour in insurance premium control incentive. Even at this rate, however, Mason is having retention problems.
- Brusco Tug and Barge operates tugs out of Grays Harbor and Everett and began with 2012-2017 CBA period with a rate of \$4,944 per month for a “deckhand/engineer.” That CBA provides automatic annual increases of 2.5% for the life of the contract, which made the 2013 rate \$31.67.
- Crowley Marine Services paid Deckhands \$25.73 as of October 16, 2013 with

- increases of 2% on the 2014 anniversary and 3% in each of 2015 and 2016.¹¹
- Dunlap Towing pays a rate of \$25.02 for the classification “Dkhnd/Eng. Dknd/Cook” and \$25.07 for the classification “HarborDeck/Eng.”
- Foss Maritime Company pays a Deckhand \$25.73.¹²
- Puget Sound Pilots operates two boats out of Port Angeles to take the pilots to and from vessels. Their CBA began with a 2012 rate of \$27.08 for a “Deckhand-Engineer” and includes a ‘me-too’ provision for any “percentage by which the then average Basic Base Pay” of Crowley, Dunlap, and Foss increases for “Deckhand-Engineer.”

Issues behind the data. These data present three issues: First, WSF argues that tow and barge Deckhands are not “doing directly comparable but not necessarily identical work,” as ferry Deckhands, which is required for comparison under subsection (3)(f). The record offers only the most cursory evidence relevant to this dispute, viz.: Shipboard experience of any sort counts when WSF takes on a new hire as an AB; the training that WSF offers its new OS hires makes them generally more attractive in the local maritime community in general; the Union’s hiring hall apparently does not differentiate between these types of experience; and there is no dispute that there is currently sharp competition for ABs in the local market. On that limited basis I must conclude that a Deckhand is a Deckhand and tug and barge work is comparable but not identical to ferry work.

The second issue is the absence of the complete compensation picture contemplated by the statute, i.e., “*hours, employee benefits, and conditions of employment.*” Comparison in terms of wage rates alone fits within subsection (3)(k)’s “other factors,” but in light of the clear mandate to consider comparability on an all-things-considered basis, the weight given to such a comparison must be modest.

Finally this part of the record also lacks employee population data to go along with the salary schedule data. This issue has a history in the prior interest arbitrations between these parties. OFM has traditionally produced compensation averages in “weighted” terms, thus averaging all the many employee pay checks received and not just the pay schedules themselves. However, in the proceeding for the 2009-2011 biennium, the Union objected that only AMHS and Black Ball had provided OFM with population numbers, which made such an analysis impossible, and arbitrator Beck agreed that under those circumstances analysis in terms of an average of schedules (in which an employer of 100 counts no more than an employer of 5) was the only approach supported by the available data.

¹¹Crowley apparently bought out a minimum manning provision and pays an additional \$15.00 per day for reducing its crews by one Deckhand.

¹²Foss, like Crowley, apparently bought out a minimum manning provision and pays an additional \$39.00 per day for reducing the crew size by one Deckhand.

The Union offers only salary schedules without showing the size of the various workforces involved. The record gives no clue about whether these tug and barge employers generally employ scores of deckhands or a mere handful. It also tells me little about the seasonality and longevity of the work: WSF points out that hiring halls commonly deal with limited duration employment opportunities, but the Union claims that most of the private sector employers it offers here have significant full-time, year-round workforces. Without any picture of the workforce populations or characteristics I cannot significantly temper the OFM survey conclusions with the Union's direct comparability data.

On the other hand—and the other hand is important here—the Union's presentation of local private employer data, and WSF's admission that its newly hired Ordinary Seamen are commonly picked off by other employers after WSF has begun their training, provide substantial support for the Union's claim that there is serious competition for deck personnel; and it would be careless of me not to take that labor market pressure into account.

RCW 47.64.320(3)(g). Changes in any of the foregoing circumstances during the pendency of the proceedings. Any compensation survey is a snapshot taken on a particular date in the past, and this OFM survey shows compensation as of January 1, 2014. But the survey also lists some known anticipated changes in compensation; and perhaps the two largest of the surveyed employers have scheduled increases to take effect on or before the beginning of the 2015-2017 biennium which is at issue here: On the shore side, Alaska Marine Highway had a Terminal employee increase of 1% on July 1, 2014 and will have another increase of 2.5% on July 1, 2015, and BC Ferries had a 2% increase January 1, 2014 and will have another 2% increase on July 1, 2015. BC Ferries will have had a total 4% increase both on-deck and onshore; and Alaska Marine Highway will have had a 3.5% increase onshore with (unfortunately) unknown increase on deck.

RCW 47.64.320(3)(b). The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature. The limitations on operating support from beyond the fare box is addressed under ability to pay, above; and neither party here argues for toll increases as a source of operating funds. (An interest arbitrator is restricted in considering additional fare increases beyond those limitations which have been imposed by the legislature.)

RCW 47.64.320(1). The ability of the state to retain ferry employees There is no retention problem among the more senior Deckhands or Terminal employees. OFM keeps count of turnovers which are not retirements, deaths, promotions, etc. On that basis, the turnover rates for long-term employees is very low: for 2013, 1.5% for AB, 0.7% for OS, and 2.1% for Sellers. But there is a fairly bright line in the turnover data. The rates jump alarmingly for those who are working their way into full-time employment or who are at the

bottom of the classification pay schedules: 29.7% On Call Deck and 17.7 On Call Terminal.¹³ Those numbers did not change much from 2012, despite the current contract's substantial increases at the bottom of the schedule. In fact, On Call Deck further deteriorated by over three percent, up from 26.1% in 2012.¹⁴ The parties agree that part of the problem lies in insufficient available work during an On-Call employee's first year; but the Union points out that not much work can be turned into an insurmountable retention barrier when combined with not much pay.

WSF tries to hire about 60 deck employees per year to replace eventual retirements, deaths and departures. Of eleven AB new hires sharing a January 22, 2013 hire date, only five still appear on the seniority list in August, 2014. Similarly, six ABs were hired in November, 2013, and only three were left at the time of hearing. Some of those departing November hires left because of the limited on-call work available in the Winter months. Of the 22 Ordinary Sailors who successfully completed WSF's AB classes last year, almost half chose not to promote despite the existing pay difference. The significance of the apparent low retention rate at the very bottom of the seniority list is problematic, however, because WSF puts new OS hires through its own series of training classes in, e.g., firefighting, first aid, etc., and the completion of those classes makes them substantially more attractive to other potential employers.

On the Terminal side, WSF essentially agrees that it has problems hiring and retaining qualified personnel but also points out that there has been an unusually large number of retirements over the period of the Union's overtime data together with an increase in FMLA leave associated with an aging workforce.

The Union also points to WSF's overtime data as an indication of a retention problem. The Union's data shows overtime usage and costs for 2012, for 2013 and for the first half of 2014; and overtime costs for deck personnel jumped by almost 50% in 2013 compared to 2012. That rate does not seem to have slowed: Data for 2014 is available only through June, but looking at just the first half of 2012 and 2013 for comparison purposes, there was a 47% jump from 2012 to 2013 and another 33% jump from 2013 to 2014. For terminal employees, 2013's overtime costs were similarly 47% over 2012's; and looking at just the first half of each year, the growth was almost 88% from 2012 to 2013 and another 40% from 2013 to 2014. Overtime in this unit happens only when a position cannot be filled by a Relief employee in that classification or by an On Call employee in that classification (or possibly by a promotion on watch).

¹³The exhibit in the record has puzzling numbers for Attendant, showing one turnover among "1.9" employees.

¹⁴The 2012 exhibit includes useful numbers for Attendant and a turnover rate of 1.2%. The 2014 data covers only the first part of May and is not particularly useful.

The significance of this overtime history is particularly difficult to assess because the period 2012-2014 saw a sharp increase in the overall staffing requirements of the Agency. Minimum safe staffing standards are set by the Coast Guard for each vessel in the fleet. The Coast Guard reevaluated those minimums and, in late 2012, increased by one the minimum AB staff on eleven different vessels. Given the operating schedules of those vessels, that change resulted in an overall staffing increase of 27 to 30 ABs. But WSF offers no such staffing change to account for the on-shore numbers.

RCW 47.64.320(3)(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. Comparative compensation studies can get a lot more complex and inclusive than the OFM study, analyzing overall compensation including differences in hours and all contractual fringe benefits. Neither party here proposes a perspective that goes beyond the OFM approach, and I conclude that neither party has found other factors that would significantly move the bottom line one way or the other.

RCW 47.64.320(3)(k). Other factors that are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under this chapter. Two such “other factors” are pressed by the parties in this case: Changes in the CPI and internal comparability.

With respect to the cost of living, prior interest arbitration awards for this unit have generally used the BLS All Cities CPI-W, but the record here includes only the Seattle-Tacoma-Bremerton index. That index shows a 1.2% increase in the cost of living for all of 2012 of 3.2%, an additional 2.0% for all of 2013, and a final 2.0% for the first half of 2014. The Union also notes that BLS and the City of Seattle issue CPI-W *forecasts*, and the February, 2014, forecasts for June, 2015 and 2016 were 2.2% and 2.5% respectively.

The statutory factors do not expressly include internal comparability, i.e., the relationship between the compensation of the bargaining unit employees and of other employees of the same employer. Appeals to internal comparability are common in bargaining table exchanges for interest arbitrable bargaining units. (The more traditional dispute is not over whether *any* other bargaining units of the employer should be considered but over whether or not the bargaining units without access to interest arbitration should be considered or should count as much as those that do.) In this case both parties offer appeals to internal comparability—for example, the WSP argues that the IBU bargaining unit has the most generous vacation accrual in State government, and IBU argues that it, too, should be paid on a Range and Step schedule quite like the SGSS—and I have considered such arguments in the discussion below.

ISSUE #1: Two General Rate Increases of 4% each.

The State's proposal for all bargaining units is a single, 3% increase on June 1, 2015. That offer reflects a decision at the highest levels of State government that State employees—whose recent pay history has been zero, minus 3%, and back to go—should finally get some increase. OFM estimates the cost of the Union's 4% & 4% proposal at about \$6.2M for the biennium, which is roughly \$3.15M more than WSF's own single 3% increase.

This is the first economic proposal supported by the Union's *Groundhog Day* metaphor. The 4% & 4% proposal echoes the award of 4.2% & 4.2% which the Union won in interest arbitration for the 2009-2011 contract only to have the legislature decline to fund the WSF interest arbitration awards for that biennium. But there are important distinctions. First, that prior increase was awarded under the "select...the most reasonable offer" version of the statute, so arbitrator Beck's award does not mean that he found 4.2% & 4.2% to be justified by the data before him but only that he found it to be less *unreasonable* than the State's blanket offer of 1.6% & 1.7% to all bargaining units for that biennium.¹⁵ And second, arbitrator Beck's award was driven by the comparator rates before him which showed (p. 10) "that as of September 2007 the average of the four comparable ferry systems was 4% higher than WSF" and "the average increase in 2009 is 4% and 3% in 2010." In short, the 2008 interest arbitration experience was a substantially different "day."

On the other hand, I am not constrained to pick one of the two proposals before me with respect to general rate increases; and the record here cries out for something in the middle. First of all, the public policy set out in the statute requires an additional fix at the bottom of the schedule, which is addressed below under Item #3. But that policy also requires an increase to keep this bargaining unit within reach of its OFM survey comparators. The survey results show this bargaining unit to have been generally close to its Survey comparators on January 1, 2014; but it also shows that the unit will be substantially behind by the *beginning* of the contract period at issue here. BC Ferries will go into the biennium at issue up an additional 4%; and Alaska Marine Highway will be 3.5% higher on shoreside (with the on-deck change unfortunately not given in the record). The record also shows significant forthcoming increases in the rates for deckhands among all the Union's private sector proposed comparables. (Along with WSF's own explanation that its own new hires are frequently hired away locally after receiving their new-employee training here, this record of forthcoming increases locally is significant.)

Those increases do not reflect whatever rate adjustments the employees of those major comparators may win *for the period that is at issue here*. More likely than not, on this

¹⁵The "select...the most reasonable offer" approach to interest arbitration inherently carries that 'riverboat gambler' potential: The goal is to make an proposal slightly less outrageous than the other party's proposal.

record, the State's 3% & 0% proposal will leave IBU quite substantially behind its reasonable comparators going into the 2017-2019 biennium and still further behind coming out of it and also behind intervening increases in the cost of living. The history of negotiations and interest arbitrations for this bargaining unit shows the fiscally uncomfortable consequences of lurching back and forth between almost up to the average and substantially behind it. Although WSF's current financial condition is tight, the statutory policy I am obliged to pursue would not be well-served in the long run by allowing this bargaining unit to fall seriously behind for the projected even tighter intermediate future.

I therefore award general rate increases of 2.5% for each year of the biennium, which comes to 2.0% over the State's offer, slightly backloaded with respect to biennial costs. Nothing in the record shows the cost of such an award to be outside the State's ability to pay; and the past history—allowing rates here to fall quite far behind with resulting upward lurches in interest arbitration—shows that the policy of the statute is best served by keeping closer to the survey average coming out of the biennium at issue.

ISSUE #2: Wage Spread / Wage Compression

The Union proposes to increase the AB wage to \$26.92 in order to provide a greater financial incentive for AB-certified Ordinary Seamen to step up to AB watches, with a similar increase to encourage Attendants to step up to Seller watches.¹⁶ OFM costs the ship-side proposal at \$1.3M per year for a biennial total of about \$2.7M and the Terminal costs to be \$0.7M per year for a biennial total of about \$1.4M.¹⁷ The OFM survey provides no support for increasing these rate spreads: The percentage difference between an OS and an AB at WSF is already greater than that difference at the surveyed comparables.

The Union argues that the increased spread would encourage AB employees to leave OS positions and fill the currently unfilled AB vacancies, thus reducing WSF's high overtime costs. I quite agree that recent overtime experience and costs are disturbing, and so, too, is the increase in unbid positions which partly drives the increase in overtime, but I cannot agree that the Union made a persuasive connection between those problems and the proposed increase in rate differentials. That connection is particularly difficult to establish in the face of the fact that AB work requires an employee to be clean-shaven in order to wear a

¹⁶The numbers set out in the proposal are puzzling: "Current AB Wage 24.92. Current OS Wage 22.12. Proposed AB Wage 26.92 (Based on 10%)." But those are not the current wages in the 2013-2015 CBA (\$15.13 and \$22.67 respectively), and I cannot find a combination of numbers that produces the proposed \$26.92 "based on 10%" of anything. The parties agree that the other part of the written proposal, which refers to the Bos'n rate, is at issue only because that rate depends on the AB rate.

¹⁷These cost estimates are based on increasing the current bare CBA rates by 10%.

respirator on the fire crew, which OS Exempt work does not. Virtually all of the AB-qualified employees in OS bids are in OS Exempt positions.¹⁸ In short, the record before me provides inadequate support for this proposal in light of its cost and WFS's financial picture, and I will not award the proposed rate change.

ISSUE #3: Range and Step Schedule

Preliminary dispute over the proper interpretation of the MOU. The MOU negotiations had been separate from general contract bargaining, although the parties agreed to add the MOU salary schedule issue to this statutory procedure. Still, there is a separate jurisdictional foundation for the resolution of the dispute under the MOU; and the Union argues that MOU requires me to put this bargaining unit on a Range and Step schedule, leaving only the question of just what Range and Step schedule that should be. This is the 2012 MOU “regarding the negotiation of a Salary Schedule:”

1. The parties agree to meet and build a conceptual framework that will provide the basis for a negotiated salary schedule for the 2015-2017 Collective Bargaining Agreement. Negotiations over the conceptual framework of the salary schedule shall commence in January of 2013 or as mutually agreed by the parties.
2. [Mediation.]
3. If the impasse is not resolved through mediation, the issue shall be decided through interest arbitration before an independent arbitrator agreed to by the parties.
4. Such arbitration shall be limited to the structure of the salary schedule and the placement of current employees on the salary schedule.
5. The parties agree that pursuant to RCW 47.64, any increases in compensation are subject to financial feasibility determination by the Director of the Office of Financial Management and funding by the legislature.

(Negotiations did not reach impasse until so late in the biennium that the biennial arbitrator selection process contemplated by RCW 47.64.170(6)(a) had begun, and in light of the problem of arbitrator availability and the MOU's October 1 deadline, WSF suggested that the parties include the MOU arbitration as an issue to be certified by PERC at the end of the general contract bargaining process. The Union agreed to that proposal.)

¹⁸There are about 77 ABs now in OS positions, but all but two of those 77 are “OS Exempt.” Moreover, some Ordinary Seamen may be disinclined to take AB watch because a vessel's minimum AB complement is legally fixed so the nonappearance of a relief can mean that the OS in an AB slot must be held over the scheduled end of the watch. Masters have more discretion in “running short” of a vessel's designated OS complement. Thus the ending time of an OS watch is somewhat more certain than the ending time of an AB watch.

On its face, the MOU requires the parties to bargain over “a negotiated salary schedule” and limits interest arbitration under the MOU to “the structure of the salary schedule and the placement of current employees on the salary schedule.” On its face, the MOU does not require the parties to bargain over, or require an interest arbitrator to award a Range and Step schedule specifically. Nonetheless, Range and Step schedules and Range and Step schedule placement were the sole topic of the negotiations under the MOU. More likely than not on this record, the parties to the MOU expected an interest arbitrator to complete the negotiations the parties actually engaged in, and to do that in a way that OFM would find financially feasible.

On the merits. There are four separate problems in determining “the structure of the salary schedule and the placement of current employees on the salary schedule” if the “salary schedule” is a Range and Step schedule: Range placement, Step placement—initial cost concentration—and long-term costs.

Beginning with Range placement, the award for the 2013-2014 CBA—which OFM found to be not financially feasible—proposed “to dovetail the IBU wage schedules into State of Washington General Service Salary [(SGSS)] Schedule at applicable rates.” The award itself would have placed bargaining unit employees into the SGSS ranges proposed by the Union: Range 59 for AB, Range 55 for OS, Range 54 for Auto Attendant and Range 59 for Seller. But the Union’s proposal—which was awarded by the arbitrator—marked all those ranges with a note, “Range to be determined based on wage” and the arbitrator’s discussion spoke of “applicable rates” on the SGSS schedule. The State argues that such a process—determining Range by pay rate—would have the tail wag the dog.

The charge to determine “the structure of the salary schedule and the placement of current employees on the salary schedule” requires a brief detour into the nature of salary schedules. Contemporary approaches to compensation divide roughly into comparability and market. SGSS schedule is intended to capture value comparability across a very wide collection of diverse classifications. The object is to end up with similar pay rates for “comparable” positions, where “comparable” is based on an analysis of duties and responsibilities, required education and experience, and adverse working conditions and physical requirements. Classifications that are “comparable” in that sense are supposed to end up in the same Range and therefore receive the same rate of pay.

The other approach to compensation depends primarily on labor markets. A pure comparability approach does not leave much room for labor market analysis; and the two approaches, labor market analysis and comparability analysis, have never really learned to play well together. That poor fit is hardly surprising in light of the history of comparability analysis, which developed in response to the perception of wide-spread gender inequality in the labor market driven workplace. Periodic labor market analysis plays a role in Washington State compensation practice, but that role is limited to irregular attempts to keep individual

classifications within 25% of market unless a Range change is driven by acute problems of recruitment and retention.

Returning to the issue of range placement, then, ranges above 40 in the SGSS require a college degree; but the Union's proposal to arbitrator Skratek would have put ABs and Ticket Sellers into Range 59. By comparison, the classifications at Range 48—eleven Ranges down the scale—include Aircraft Pilot 1, Biomedical Electronics Technician, and Chemist 1. IBU classifications, at their current rates, simply cannot be “dovetailed” into the SGSS.

The Union's current Range and Step proposal includes a solution to this problem: Create an entirely separate Range and Step schedule for the IBU bargaining unit. But one main argument for the award of a Range and Step schedule in the first place was that since the State argued that IBU employees should be similar to other State employees in various other respects, the State should be required to place them on the same Range and Step schedule as those other State employees with whom they were being compared. The substitution of an entirely separate Range and Step schedule may not quite throw that baby out with the bath water, but it certainly deprives the Union's underlying argument of much of its punch. Moreover, WSF insists that I keep in mind exactly *why* IBU rates cannot readily be “dovetailed” into the SGSS: Bluntly, employees in this bargaining unit are paid at rates substantially higher than any rates they could be placed into on the SGSS on the basis of a comparability analysis.

The next problem is initial cost concentration. OFM objected to the entire bargaining unit sharing a single step movement date. But the Union offers a quite creative solution to that concern: Spread out the entry onto the schedule by dividing the bargaining unit by seniority and bringing employees onto the new schedule gradually, with the most junior employees being added only in the second year of the contract.¹⁹ The Union would also somewhat soften the blow of the Step costs by designing the separate schedule with 3.5% steps, unlike what are essentially 5% steps—2.5% steps taken two at a time—in the SGSS.

But when it comes to the heart of the Step placement problem, the parties are utterly and fundamentally opposed over initial step placement. The Union sees employees moving to the *base* step of any new schedule, which implies a series of more-or-less automatic step increases for the next seven years; and WSF sees the employees' current “mature” wage becoming the *top* step of any new schedule, which implies that new hires will have to work their way up to the current journey rate. That fundamental difference between the parties

¹⁹The most senior third of the bargaining unit—those with twenty years seniority or more—would go onto that schedule on the first day of the new contract, each with his or her own anniversary date; those employees with ten to twenty years of service would go onto the schedule, still with each employee's own anniversary date, six months later, and the final, junior third of the bargaining unit would not go onto the schedule on that basis until July 1, 2016.

was immediately apparent in the bargaining under the MOU: Each party demanded step placement which the other party found fundamentally unacceptable. They still do.

It is not possible to resolve this dispute over initial step placement by looking at comparable employers. Among the employers used for the OFM survey, the only step schedules are in the public sector, i.e., King County Ferries, and the State's own McNiel Island Ferry and Keller Ferry.²⁰ So there is no reason to dispute WSF's claim that step schedules are not a common part of the industry. The Union's own survey of local private sector tug and ship operators did not claim that those employers paid on a step schedule, and as far as the record shows, they do not.

One possible middle path between these two approaches would be to distribute employees on a step schedule based on each employee's time in class, which is what a step schedule usually represents. That solution has four obvious problems. First, this is a bargaining unit with 15 years average seniority, so many employees would be topped out and would not benefit from the change; second, it would be necessary to red-circle many junior employees' rates until the schedule caught up with them; third, the net effect would be to lower the rates for new hires, which is the only place that this unit shows substantial issues of comparability and retention; and finally, such a solution would please neither party and would not particularly serve the public policy I am directed to keep in mind.

It is this dispute over step placement that finally brings into focus the the long term cost consequences that led OFM to find the prior arbitration award financially unfeasible. One traditional way of estimating step costs is to count the number of employees on the top step, subtract that from the size of the workforce, and cost out the number of employees still eligible for a step in each year of a proposed contract. That provides a prospective of the State's current step cost for operating the SGSS: Such a large percentage of State employees are at the top regular step—and therefore had no step cost at all—that the legislature added an additional, longevity step which applies after six years at the prior top step. SGSS steps are worth 2.5%, so the new longevity step costs about 0.4% for employees at the prior top (.025 x 1/6), and that cost goes on for no more than six years. In short, even with the new longevity step, the mature seniority of the Washington work force generally means that step costs are largely contained. The proposal to put IBU employees at the beginning of a step schedule, on the other hand, guarantees a 3.5% cost increase every year for seven years.

Thus the very heart of the appeal of the proposal from IBU's perspective is also the heart of OFM's objection that movement to a Range and Step schedule "creates a bow-wave of costs that cannot be sustained" and that "the bow-wave of additional funds required to

²⁰From WSDOT's Keller Ferry website, that ferry links the two sides of Washington Hwy. 21 and crosses the Columbia between the Colville Indian Reservation and Lincoln County, with a 20 car capacity and no farebox.

implement step increases from the award grows” as employees move up the steps. There is no way to accomplish IBU’s minimum expectations of a Range and Step schedule and avoid OFM’s fundamental reason for rejecting such a change. Both the MOU on its face and the statutory scheme of this interest arbitration require an award which OFM will not find financially unfeasible, and I cannot award a Range and Step schedule.

Elimination of Entry Level Rates. The Range and Step proposal includes a separable proposal to entirely eliminate the lowest tier, “Entry Level Rates (Employees who have worked less than two thousand eighty (2,080) straight time hours).” The most recent round of bargaining— after the 2012 determination of financial unfeasibility—resulted in an 18% increase at the bottom, which brought the entry rate up to about 79% of the journey rate, up from its prior 70%. The Union’s Range and Step proposal includes a proposal to begin with what is now the middle, 85% rate which is currently designated “Temporary Position Rates (Deck and Terminal Employees who have worked less than five thousand two hundred (5,200) straight time hours...).”

This change, too, has escalating cost consequences as future employees move to the full journey rate more quickly. On-deck, OFM calculates the first year cost *exposure* as \$104,309, but exposure increases in the second year to \$458,373, making a total biennial cost exposure of \$562,682. The shoreside numbers are roughly proportional (though not as detailed in the record). But these numbers are the total *cost exposure* rather than an estimate of probable costs, because the numbers assume that every existing bottom tier employee and every new hire over four years’ calculation period is still an employee at the end of that period, while, in fact, the OFM survey shows a current 29% turnover of the most junior deck employees and almost 18% for the most junior Terminal employees.

This is indeed a *Groundhog Day* issue: Every interest arbitrator who has looked at these rates since 2008 has awarded their elimination. The parties’ bargained compromise of substantially increasing the Entry Level Rates in the current contract failed to budge the turnover numbers. Even in a period of wicked unemployment, those rates actually increased substantially under the current contract. A 29% turnover rate at the base of the IBU schedule simply cannot be ignored under RCW 47.64.320 for two reasons. First, of course, I am required to consider the “ability of the state to retain ferry employees.”²¹ But even more importantly, I am required to serve the “continuous operation of the Washington state ferry system.” This is an employer and an industry with middle and top management— from Mates to Masters to the Captain of the Port—who “came in through the hawsehole” as Ordinary Seamen. A 29% turnover at the threshold of that process is unacceptable for the future of the ferry system, and I award the elimination of the Entry Level Rates and the redesignation of Temporary Position Rates as Temporary/Entry Level Rates.

²¹BC Ferries and AMHS have entry rates much closer to the full journey rates.

The Union's Range and Step proposal also includes by implication a proposal to shorten the hours in the middle tier to 1,040 hours. It may be necessary and financially feasible to make that change in the future if turnover at the entry rate continues to be substantial; but I cannot award it at this time.

ISSUE #4: Vacation Accrual

There seems to be no dispute that the legislature, or some faction of it, was not pleased at the award of substantially accelerated vacation accrual rates for this bargaining unit. Arbitrator Beck originally awarded the increase for the 2001-2003 CBA, under last-best-offer statutory language, when faced with a survey showing (p.16) "a substantial deficit in vacation benefits provided by WSF..." particularly "when WSF is compared only to the other two large public ferry systems." Of course, once IBU had achieved the enhanced accrual schedule, other WSF unions wanted it, too. In the interest arbitration for the 2005-2007 contract, MM&P argued that Mates should have the same schedule as the Deckhands they supervised, and arbitrator Michael Cavanaugh (NAA) awarded it. WSF and OFM convinced MM&P to sell that enhanced accrual schedule back in the 2008 negotiations for a 5% wage increase and one-time payments based on seniority, ranging from \$4,000 for seven year employees up to \$10,000 for employees with 21 years or more seniority.

After IBU was forced to accept the current dual track vacation accrual language in the 2011 emergency renegotiations, MM&P proposed the same dual track provision in interest arbitration for 2013-2015. I was the interest arbitrator in that case and rejected the proposal, even though the difference in vacation accrual was a significant deterrent to Deckhands with Mate's licenses actually taking open Mate positions:

WSP's biennial cost estimate does not capture the ultimate cost of this proposal. The bill for an accrual rate increase does not come due until employees begin to actually take the additional vacation leave they have accrued after that increase went into effect. That focuses the costs on later years and makes proposed accrual rate increases look like good trades for a present pay rate increase. Thus, in his 2008 interest arbitration, Michael Beck (NAA) awarded the Mates a return to the IBU deckhands accrual rates in lieu of WSF's proposed 3.3% pay rate increase, which he found to be more expensive than the increased accrual rate. But in his 2010 interest arbitration Timothy Williams (NAA) declined to award their proposed return to the IBU deckhands accrual schedule because, in part, of his "substantial concerns over the financial impact of the Union's proposal" (Award at 80). I share those concerns.

It is a mathematical feature of vacation accrual proposals that the fiscal chickens do not come home to roost until the future contracts in which the accrued vacation hours are actually taken and must be covered.

The Agency points out that IBU employees get the highest vacation accrual rate of all Washington State employees and that the State's battle against the rich accrual provision would be seriously undercut by a new award of that language yet again. In light of the gloomy, hand-to-mouth financial future of WSF, I cannot reopen the vacation accrual bottle by awarding the Union's proposal.

ISSUE #5: Working Funds

Each Ticket Seller is issued a working fund from which to make change, and those funds are not often counted by WSF. The Union proposed to remedy that failing. The parties devoted considerable time to side discussions of this issue over the course of the arbitration hearing, and at the end of those discussions neither party objects to adding the following language to the new CBA, and I therefore award it.

The Agency may count each Seller's working fund along with his or her daily receipts. The Seller shall be informed of the result of any such count by the end of that Seller's next shift. If such a count is not made, no disciplinary action or demand for payment shall be based on irregularities in the working fund which might have been discovered in the omitted count.

ISSUE #6: Scheduling Terminal Vacations

This issue was resolved in discussions between the parties on the first day of the arbitration hearing. The tentative agreement reached in those discussions, like all other tentative agreements reached during negotiations, is part of the award in this case.

ISSUE #7: Terminal Lead

There are about 45 Terminal Supervisors in peak season in a Terminal Department of about 315 employees. There was once one terminal lead, and possibly more than one, at Point Defiance from about 1999 through 2001. She received a differential of \$1.00 per hour, but the record does not show how she was selected. The Union had sought to create a general Terminal Lead differential in the interest arbitration proceeding for that contract at a premium rate of \$5 per hour. Arbitrator Beck concluded (p.23) that "It may well be that it would be appropriate to establish a Terminal Lead position but the rate proposed by the Union is excessive" since the AB Bos'n, essentially the lead AB, was only about 5.2%, or \$1.25 based on the then-current rates. The Union now proposes a differential of \$1.32, which is the same as the differential for Bos'n. Under the prior proposal for 1999-2001 the Lead would have been "designated"—the proposal did not specify by whom but presumably by WSF or by the supervisor—while the current proposal would determine the Terminal Lead by seniority. OFM costs this proposal at about \$85,000 per year for a total of \$171,000 over the biennium, not counting the savings from the Union's explanation at hearing that it does not understand its proposal to require a Terminal Lead after the final vessel has sailed.

The Union's case was supported by the compelling testimony of a Terminal employee who has been assigned several lead duties by his supervisor: holding other employees on the clock or letting them go, deciding between competing reservations, dealing with no-call/no-show staff problems, and dealing with medical or police emergencies on the dock or with the consequences on the dock of such emergencies on an incoming vessel. The appeal of the proposal rests in the principle that such work is being done and that the greater responsibility should be recognized.

The Agency has two fundamental objections to this proposal: First, the Operations Center was created for more or less exactly the purpose of dealing with such issues when there is no supervisor on duty, and the Operations Center is just a phone call away. For example, no-call-no-show employees might be phoned by an on-duty employee as a courtesy, but the established procedure is to let the Operations Center deal with such staffing issues. Second, some of the duties and responsibilities recounted by the IBU witness are not supervisory at all, and some should not be delegated by a supervisor under the existing organization. WSF argues that *every* employee is trained to deal with disgruntled customers, and, presumably, such a customer who insists on talking to a supervisor could easily be put on the phone to the Operations Center.

WSF also argues that the selection of Terminal Leads *by seniority* would create mischief in two ways: First, there is a separate Terminal Supervisors bargaining unit which would be very likely to resist the assignment of supervisory responsibilities to IBU bargaining unit employees. And second, promotion from Ticket Seller to Terminal Supervisor is a managerial choice based on merit and is extremely competitive, which does not very well match Lead designation purely on the basis of seniority. The Union points out that Bos'n's and Quartermasters are selected by seniority; but the Union's star witness on this issue has apparently been assigned the responsibilities in question irrespective of his seniority.

OFM's cost estimate for this proposal is about \$171,500 for the biennium. The Union argues that the clarification at hearing—that no leads would be required after the final vessel had sailed for the day—brings that down to just over \$110,000, which amounts to over \$129,000 when benefit costs are added in.

In short, the record shows that some supervisors sometimes assign special duties to employees of the supervisor's choice in his or her absence. WSF is entirely free to put a stop to that, in which case the language awarded here will have no cost at all; but to the extent that it fails to do so, it is appropriate for the contract to set out a rate for those additional duties and responsibilities. I agree with WSF that there is no good reason on this record to base such assignments on seniority, and I award the following language to address that need.

If a supervisor chooses to appoint a Terminal employee to interface with the Operations Center and to perform other special, assigned, non-supervisory duties in the supervisor's absence, that employee shall be paid the same percent premium that an AB-Bos'n is paid over the AB rate.

AWARD SUMMARY

In Section 17.1, Wages, the references to “Entry Level Rates” shall be eliminated and the term “Temporary Position Rates” shall be changed to Entry Level / Temporary Position Rates. The hours specified for Temporary Position Rates shall be unchanged for the new Entry Level / Temporary Position Rates. Section 17.1 shall be changed as follows (with the subsequently listed rates recalculated appropriately):

Effective July 1 ~~2013~~ 2015, the wage rates for each classification represented by the Union, ~~with the exception of entry level rates~~, shall be increased by two and one-half percent (2.5%). ~~Effective July 1, 2013, all entry level wage rates for each classification shall be increased by eighteen percent.~~

Section 17.2 shall be changed as follows (with the subsequently listed rates recalculated appropriately):

Effective July 1 ~~2014~~ 2016, the wage rates for each classification represented by the Union, ~~with the exception of entry level rates~~, shall be increased by two and one-half percent (2.5%).

The following new language shall be added to Appendix B, Rule 2.03:

The procedures for administering overages and shortages in working funds will be completed pursuant to OFM and Department of Transportation procedures now or hereinafter in effect except that the Agency may count each Seller’s working fund along with his or her daily receipts. The Seller shall be informed of the result of any such count by the end of that Seller’s next shift. If such a count is not made, no disciplinary action or demand for payment shall be based on irregularities in the working fund which might have been discovered in the omitted count.

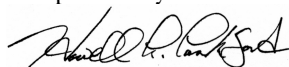
Appendix B, Rule 3, Terminal Vacations, shall be amended according to the parties’ agreement reached during the course of this interest arbitration.

The following language shall be added to Appendix B at an appropriate rule number:

If a supervisor chooses to appoint a Terminal employee to interface with the Operations Center and to perform other special, assigned, non-supervisory duties in the supervisor’s absence, that employee shall be paid the same percent premium that an AB-Bos’n is paid over the AB rate.

There shall be no changes with respect to the Union’s proposals on Wage Spread / Wage Compression, Range and Step Schedule, or Vacation Accrual.

Respectfully submitted,



Arbitrator