BEFORE THE NEUTRAL ARBITRATOR

In the Matter of the Interest Arbitration Between	)	
	)	
Washington State Ferries	)	**ARBITRATOR'S OPINION AND AWARD**
the State	)	
and	)	PERC No. 25065-I-12-0604
Puget Sound Metal Trades Council	)	(Joint Crafts Bargaining Unit)
the Union	)	

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Date of Award: September 16, 2013

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For the Union:
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Charles Justin Rayburn, Electrician
Tim Kessler, Boilermakers Local 104, Assistant Business Manager

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I. PROCEEDINGS

This interests dispute is between the Washington State Department of Transportation (WSDOT), and specifically the Washington State Ferry System (WSFS), which together shall be referred to herein as the "State," and the Puget Sound Metal Trades Council (the "Union").[1] It concerns bargaining unit wages under a two-year labor agreement starting July 1, 2013, and ending June 30, 2015. The Union represents a bargaining unit of journey-level electricians, boilermakers, pipefitters, sheet metal workers, machinists, one truck driver, and three warehouse workers, along with their leads and foremen. Approximately 84 employees comprise the bargaining unit, and they work out of the WSFS's Eagle Harbor Repair Facility on Bainbridge Island. Although the parties tentatively agreed to most provisions of their new contract, they reached an impasse in their negotiations on wages. Pursuant to RCW 47.64.300(1), the Public Employment Relations Commission certified the wage issue for interest arbitration and the parties submitted their dispute to neutral Arbitrator Jane R. Wilkinson for resolution. The Arbitrator conducted evidentiary hearings, in Seattle, Washington, on August 16 and 17, 2013. Each party had the opportunity to present evidence, examine and cross-examine witnesses and argue its case. At the conclusion of those proceedings, the Arbitrator closed the hearing.

II. PARTIES' FINAL OFFERS ON WAGES

A. State's final offer

The State proposed no wage increase for the term of the new agreement. The bargaining unit agreed to a pay cut of 3% under the previous agreement (2011-2013) so long as the pay cut was restored on last day of the contract. Initially, the State proposed extending that pay cut, but by the time the parties reached arbitration, it had agreed to honor the restoration of the 3%. The State's wage proposal is shown next:

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1 The International Brotherhood of Electrical Workers, Local 46, International Association of Machinists and Aerospace Workers, Local 79, Sheet Metal Workers International Association, Local 66, International Brotherhood of Teamsters, Locals 117 and 174, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local 104 and United Association of Journeymen & Apprentices, of the Plumbing and Pipefitting Industry, of the U.S. and Canada comprise the Puget Sound Metal Trades Council under the parties' Collective Bargaining Agreement.

Table 1
State's Wage Offer

Classification	Proposed Wage 7-1-13
Journeyman (all crafts)	$26.14
Leadperson (5% over Journeyman)	$27.45
Foreperson (7% over Journeyman)	$27.97
Health & Safety Supervisor (5% over Journeyman)	$27.45
Planner (7% over Journeyman)	$27.97
Vessel General Foreperson (9.5% over Journeyman)	$28.62
Terminal General Foreperson (9.5% over Journeyman)	$28.62
Helper - starting rate: 65% of Journeyman rate[2]	$16.99

B. Union's final offer

For current employees, the Union proposed two 6% across-the-board wage increases that will take place on July 1, 2013, and again on July 1, 2014. The cumulative percentage of this increase is 12.36%. The Union's proposed rates are set forth on Table 2 below. For new employees (that is, employees hired after June 30, 2013), the Union proposes two six-percent increase equivalents that are spaced quarterly as set forth on Table 3 below.

Table 2
Union's Wage Offer, Existing Employees

Classification (Existing Employees)	Proposed Wage 7-1-2013	Proposed Wage 7-1-2014
Journeyman (all crafts)	$27.71	$29.37
Leadperson (5% over Journeyman)	$29.10	$30.84
Foreperson (7% over Journeyman)	$29.65	$31.43
Health & Safety Supervisor (5% over Journeyman)	$29.10	$30.84
Planner (7% over Journeyman)	$29.65	$31.43
Vessel General Foreperson (9.5% over Journeyman)	$30.34	$32.16
Terminal General Foreperson (9.5% over Journeyman)	$30.34	$32.16
Helper - starting rate: 65% of Journeyman rate	$18.01	$19.09

2 The State currently does not employ any workers in the Helper classification in the bargaining unit.

Table 3
Union's Wage Offer, New Employees

Classification (New Employees)	Prop Wage 9-30-13	Prop Wage 12-31-13	Prop Wage 3-30-14	Prop Wage 6-30-14	Prop Wage 9-30-14	Prop Wage 12-31-14	Prop Wage 3-30-15	Prop Wage 6-30-15
Journeyman (all crafts)	$26.52	$26.91	$27.31	$27.71	$28.11	$28.52	$28.94	$29.37
Leadperson (5% over Journeyman)	$27.85	$28.26	$28.68	$29.10	$29.53	$29.96	$30.40	$30.85
Foreperson (7% over Journeyman)	$28.38	$28.80	$29.22	$29.65	$30.09	$30.53	$30.98	$31.43
Health & Safety Supervisor (5% over Journeyman)	$27.85	$28.26	$28.68	$29.10	$29.53	$29.96	$30.40	$30.85
Planner (7% over Journeyman)	$28.38	$28.80	$29.22	$29.65	$30.09	$30.53	$30.98	$31.43
Vessel General Foreperson (9.5% over Journeyman)	$29.04	$29.47	$29.90	$30.34	$30.79	$31.24	$31.70	$32.16
Terminal Gen. Foreperson (9.5% over Journeyman)	$29.04	$29.47	$29.90	$30.34	$30.79	$31.24	$31.70	$32.16
Helper - starting rate: 65% of Journeyman rate	$17.24	$17.49	$17.75	$18.01	$18.28	$18.43	$18.82	$19.09

The Union maintains the 3% increase as of June 30, 2013 that is specified in the parties' current agreement (2011-2013).

III. STATUTORY AUTHORITY AND CRITERIA

Particularly relevant statutory provisions are as follows:

RCW 47.64.005 Declaration of policy.

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

RCW 47.64.006 Public policy.

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

RCW 47.64.300 Interest arbitration — Procedures.

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(2) The parties may agree to submit the dispute to a single arbitrator, whose authority and duties shall be the same as those of an arbitration panel. …. The full costs of arbitration under this section shall be shared equally by the parties to the dispute.

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(5) …. Within thirty days following the conclusion of the hearing, or sooner as the October 1st deadline set forth in RCW 47.64.170(6)(c) and (7) necessitates, the neutral chair shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on each of the other members of the arbitration panel, and on each of the parties to the dispute. ….

RCW 47.64.320 Parties not bound by arbitration — Arbitration factors.

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(3) In making its determination, the arbitrator or arbitration panel shall be mindful of the legislative purpose under RCW 47.64.005 and 47.64.006 and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

(a) The financial ability of the department to pay for the compensation and fringe benefit provisions of a collective bargaining agreement;

(b) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;

(c) The constitutional and statutory authority of the employer;

(d) Stipulations of the parties;

(e) The results of the salary survey as required in RCW 47.64.170(8);[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;

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

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[3] RCR 47.64.170(8) (Collective bargaining procedures) states:
(8) The office of financial management shall conduct a salary survey, for use in collective bargaining and arbitration, which must be conducted through a contract with a firm nationally recognized in the field of human resources management consulting.

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

(i) The ability of the state to retain ferry employees;

(j) The overall compensation presently received by the ferry employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefits, and all other direct or indirect monetary benefits received; and

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

(4) This section applies to any matter before the respective mediator, arbitrator, or arbitration panel.

In resolving the issues in this dispute, whether or not fully articulated herein, the undersigned Arbitrator has been mindful of the above-listed criteria and has given consideration to all of the evidence and arguments presented by the parties that relate to these criteria.

IV. DISCUSSION OF STATUTORY FACTORS

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

This consideration is the principal driver of the State's proposal for no wage increase. Therefore, the evidence concerning the State's ability to pay will be examined in some detail.

1. Transportation budget process

The Washington State Legislature passes a biennial budget in the odd years. In the even years, it convenes to pass a supplemental budget as circumstances dictate. The budget, by law, must be balanced. The legislature can only budget for two years and it cannot bind a future legislature. However, in the interest of long-term planning, the legislature can indicate its intent for future spending and does so in the form of legislative budget notes. In transportation, the legislature produces a document called a long-term financial plan. It is currently a ten-year plan that apparently addresses only capital projects.

The transportation budget for the State of Washington is separate from the general operating budget. General operating funds are rarely used for transportation. Revenues to fund the transportation budget come from the gas tax, license fees, permits, ferry revenue and other dedicated sources.

For the current (2011-13) biennium, the transportation budget is about $10 billion. Of that $10 billion, over $1 billion is used for bond retirement and interest. Some of the remainder goes to agencies that are not part of WSDOT, such as the Washington State Patrol and Department of Licensing. WSDOT's budget for the biennium is $7.94 billion, or 79.4% of the transportation budget. The WSDOT budget is appropriated by program or division within that agency. These divisions have both a specified capital budget and separate operating budget.

For the WSFS, the appropriation for the current biennium is $475.1 million for operations and another $414.1 million for capital projects. By law, the WSFS is not allowed to take money appropriated for capital projects to fund operations and vice-versa.

The lion's share (about 75%) of WSDOT's budget is funded by the gas tax. The Washington Constitution specifies that the gas tax only can be used for roads and transportation. The gas tax is set at an amount per gallon. Currently, it is 37.5 cents per gallon of gas sold.[4] Of that amount, 13.5 cents is earmarked for capital projects. The problem with the gas tax is that it is a declining revenue source. Although gas prices rise, the gas tax remains the same. It does not adjust for inflation; therefore, it does not keep up with rising costs. Further, more fuel efficient cars have decreased gas consumption, relatively speaking, as has the recent recession. The gas tax currently funds 9.45% of the ferry system budget.

The State presented evidence that the transportation budget is failing to adequately address maintenance of roads and other transportation operating needs. The 2011 Connecting Washington Taskforce found:

4 The federal gas tax is 18.4 cents per gallon for gasoline and 24.4 cents per gallon for diesel.

> Without additional funding, the Washington State Department of Transportation cannot preserve the state's highways and bridges and maintain ferry service at current levels. During the next ten years, $3.1 billion in additional funding will be needed to keep at least 90 percent of the state's roadways in good or fair condition and operate the ferry system at current levels.

Exh. S-6.

2. Ferry system finances

As stated above, the 2011-13 appropriation for ferry system operations is $475.1 million. The ferry system's operating fund sources during this period are:

Gas tax	9.43%
License fees	3.23%
Fares, Misc.	68.31%
Transfers	19.00%

The "transfers" category is money transferred from projected surpluses in other DOT divisions, principally the Motor Vehicle Account and the Multi-Modal Account.

As the above figures show, the ferry system is over 68% self-funding. It receives revenues from fares and to a lesser extent, from advertising and concessions. Fares are set by an independent body known as the Transportation Commission. It is not part of the WSDOT. Fare changes since the start of the recession have been:

FY 2008	No increase
FY 2009	No increase
FY 2010	2.5% increase
FY 2011	2.5% increase
FY 2012	2.5% fall increase, 3% spring increase
FY 2013	No increase
FY 2014	2.5% projected
FY 2015	2.5% projected

Ridership on the ferries has been rather flat for some time. The recession and higher unemployment have cut into the passenger load. On Whidbey Island, the demographics are changing as retirees, who are less apt to use the ferry system, move there. However, with the FY 2012 fare increases, fare revenues over the current biennium are projected to increase by about $15 million. See Exh. S-23.

The WSFS expenditures consist of mostly labor costs and fuel. The following shows the budget for the current biennium.

Labor:	$258.5 million or 54.5%
Fuel:	$143.6 million or 30.2%
Other:	$ 72.7 million or 15.3%

Labor costs make up over half of the ferry system budget, but fuel costs are gobbling an increasing share of the budget as fuel prices rise.

Labor costs for the ferry system have been reduced owing to the system-wide wage freeze of the 2009-11 biennium and the 3% pay cut of the current biennium.[5] (No exact information on the effect of these wage actions is of record, but presumably they were somewhat offset by increased health care premiums and similar costs). The Union presented evidence that its members have saved the State $1,629,336 by foregoing the 12% wage increase awarded in the 2008 interest arbitration and by agreeing to the current 3% reduction in wages. The Union understandably contends that the bargaining unit has made sacrifices since 2008 out of consideration to the State's fiscal woes. It believes that the State cannot continue to give its lowest priority to wage increases in the transportation sector in order to improve funding for other programs.

3. The near future

The key question is what is in store for the 2013-15 biennium. In 2012, the legislature passed a transportation revenue package that increased certain fees to generate additional revenue in transportation. Those increased revenues are being used to help pay for a second 144-car vessel for the ferry system and it included a $7 million proviso to pay for fuel in the current biennium. Significantly, a legislative note expresses an intent to allocate an increased $35 million for ferry operations in the 2013-15 biennium. The record indicates, but is not altogether clear, that a large part of that money will be used for fuel. There is no indication as to how much of that money will

[5] Unlike other state employees, this bargaining unit has not been subject to layoffs or furlough days since the start of the recession at the end of 2007. The record does not show whether other ferry employees have been laid off or furloughed.

be needed for fuel. Presumably part of the money from increased revenues will be used to fund restoration of the 3% pay cut taken by this bargaining unit as well as by other ferry employees.

As a final revenue source, Congress passed a new transportation funding bill on July 7, 2012 which locks in current federal levels of investment for an additional two years. The record does not show how much the State of Washington will receive, although there was mention of something in the vicinity of $20 million. OFM budget analyst Dwayne Hansen believed, but was not certain, that the federal funds must be used for capital projects. He also noted that federal funding beyond 2014 remains uncertain.

The Union argues that the State could fund its proposal, or a lesser wage increase, from new revenues. It notes that the bargaining unit has made sacrifices since 2008 out of consideration to the State's fiscal woes. It believes that the State cannot continue to give its lowest priority to wage increases in the transportation sector in order to improve funding for other programs.

On the other hand, new revenues are needed to fund escalating costs. In addition, a way must be found to make up the $90 million or so transfer money (19% of budget) that was used to fund the ferry system during the current biennium. This $90 million was obtained from surpluses in other WSDOT units. According to the OFM, it is unlikely these surpluses will exist in the next biennium.

4. Cost of proposals

The State's cost estimate of the Union's proposed wage increase is shown on the next Table:

Table 4
Cost of Union's Proposal

Union Wage Proposal Cost	FY 2014	FY 2015	Total
General Wage Increase on 7/11/13 (6%) and 7/11/14 (6%)	$325,926	$671,506	$997,432
Change to pay structure for new hires	undetermined		

The above calculation includes increased benefit costs associated with wage increases. The Union's costing analysis differs slightly from the State's. It does not appear to include associated benefit increases and it assumes 2080 working hours a year, as opposed to 2088 assumed by the State, per its accounting manual. The Arbitrator will accept the Table 4 figures as accurately reflecting the approximate costs to the State of the Union's proposal.

5. Arbitrator's conclusion on the State's ability to pay

It is uncontroverted that the recession which started at the end of 2007 hit numerous public sector employers, including the State of Washington, very hard. For that reason, the Union voluntarily agreed to forego the wage increase awarded in interest arbitration in 2008 for the 2009-2011 Collective Bargaining Agreement and agreed to a two-year wage cut of 3% for the 2011-2013 Collective Bargaining Agreement, so long as the cut was restored on June 30, 2013. The recovery has been slow and continues to be slow. State revenues are now increasing, but not dramatically. The State's transportation revenues will not increase to the point that they can comfortably address the State's important transportation needs. The Arbitrator takes notice of warnings from respected economists that 2013 could bring on another recession under certain scenarios, such as the failure of Europe to make headway with its debt problems or the failure of Congress to reach a budget agreement by the end of 2012, triggering the so-called "fiscal cliff." See discussion in Exh. U-19. Another recession would no doubt greatly impact the State's shaky recovery. For the above reasons, it is within the State's interest to proceed very cautiously with additional spending. Although the ferry system will probably receive about $35 million in new operating funds, a portion of that must be used for increase fuel costs and to fund the restoration of the 3% pay cut taken by all ferry system employees. In addition, the State must make up for the $90 million in transfer money (19% of ferry system budget) that the OFM predicts will not be available in the next biennium.

The Arbitrator, of course, is mindful that the State is not claiming an absolute inability to pay. Rather, as in nearly all such cases, in order to pay the Union's proposal, it would have to use money that it would prefer spending elsewhere. It does not anticipate sufficient revenues to fund high priority transportation programs and to pay for the Union's (and other employees') sought-after wage increases. As the State's witnesses observed, spending determinations are legislative, and the legislature is the body that sets the priorities.

In conclusion, the State's rather bleak fiscal outlook tells the Arbitrator to proceed cautiously with any wage increase, no matter how justified that increase might be in light of the other statutory considerations.

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

As stated previously, this bargaining unit has not received any wage increases since 2008.[6] Wages for the 2009-2011 Collective Bargaining Agreement were submitted to interest arbitration in 2008. Arbitrator Marvin Schurke awarded the Union two successive 6% wage increases[7]. However, the Office of Financial Management determined that this increase was not fiscally feasible and ultimately, the Union agreed to accept a wage freeze for the duration of that contract. For the current (2011-2013) Collective Bargaining Agreement, the Union agreed to a wage cut of 3%. That cut is scheduled to end on June 30, 2013. (In other words, the bargaining unit will receive a 3% increase on June 30, 2013).[8] As part of the 2011-2013 contract, the Union also agreed to eliminate double time (in favor of time and a half) and it made certain other financial concessions.

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6 In 2007 Union members received 4.8% plus 95 cents. They received a 2% increase in 2008.

7 At the time, the statute required the arbitrator to select one of the parties' final offers. He may or may not have awarded a different amount had he been at liberty do so.

8 It should be noted that for the 2009-2011 biennium, all State employees took a 3% pay cut. One witness testified that he thought all employees had their wages frozen in the 2007-2009 biennium, but the record is not otherwise clear on this.

C. The constitutional and statutory authority of the employer

The prior discussion of the State's finances included a discussion of the evidence concerning the constitutional and statutory of the State. Apart from that, no other evidence or argument was presented at hearing concerning this criterion.

D. Stipulations of the parties.

The parties stipulated to the admission of each other's exhibits and to the joint exhibits. They did not stipulate as to the accuracy or reliability of the other side's exhibits. There were no other stipulations of significance.

E. The results of the salary survey as required in RCW 47.64.170(8) and

F. Comparison of wages, hours, employee benefits, and conditions of employment "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 Arbitrator's consideration of these two sections is combined because most of the comparator evidence that was presented at hearing took the form of the statutorily required salary survey.

As it has done previously, the State retained an outside consulting firm (for 2012, the Hay Group) to conduct a salary survey applicable to all WSFS workers. For this bargaining unit, the consultant used the following comparators.

Foss Maritime Co.
Port of Seattle
Puget Sound Navel Shipyard
Vancouver Shipyards Co. Ltd.
Washington State-General Government and Higher Ed[9]

See Exh. Jt-3, at 16.

[9] This comparator Washington State-General Government and Higher Ed was not used in past salary surveys. It was included by the consultant in 2012 at the suggestion of the State. For ease of reference, this comparator group will be referred herein as the "Washington Gen/Ed" employees or group.

Table 5 on the next page shows the results of the salary survey. The percentages shown reflect the amount that bargaining unit wages are above or below comparator averages. The survey calculated simple averages and weighted averages. The weighted averages were based on the number of employees in the benchmark classification (e.g., electrician, etc.) relative to the whole. However, an employer that employed more than 50% of the employees in the benchmark was limited to a weighting of 50%. It should be noted that the survey did not give an average figure for all journeymen minimums or maximums. The minimum and maximum non-weighted average figures on Table 5 are per the calculation of the Arbitrator, based on the averages for each individual craft (which were shown in the salary survey). Also, the salary survey did not include the restoration of the 3% wage cut on June 30, 2013, that is required under the current Collective Bargaining Agreement. That was because the salary survey's target date was January 1, 2012.[10] (Also, as of early January, 2012, the State had not agreed to implement this restoration). Therefore, the next table shows the survey's results with the 3% increase excluded and with it included.

According to the salary survey, the weighted average total compensation for the bargaining unit rank-and-file was, with the 3% added back in, more than 3% *above* the average of the comparators. Excluding benefits, the rank and file weighted average was 2.7% below that average. The simple average maximum pay for this group lagged the comparator average by 9.6%. Minimum pay, however, was shown to be competitive. Foreman and lead pay trailed the comparator average by significant amounts.

[10] For the same reason, the salary survey did not include any wage increases that employees in the comparator group will receive between January 1, 2012 and June 30, 2015. The Union presented evidence that some such increases will occur. According to the Union, Foss boilermakers will receive a 1.9% increase on July 1, 2012. The Port of Seattle has offered its electricians a 2.8% benefit increase for June 1, 2012 (but no increase on wages) and 100% of CPI wage increases in 2013 and 2014. Vancouver Shipyard employees received a 3.67% wage increase on May 1, 2012, and will receive an additional 3.54% increase on May 1, 2013.

Table 5
Summary of Salary Survey Analysis

Group and Type of Average	**% WSFS is above or below comparators**	
	3% increase excluded	*3% increase included*
Average pay, all journeymen, minimum:	- 3.04%	-0.04%
Average pay, all journeymen, maximum:	-12.61%	-9.61%
Weighted average, all journeyman	- 5.70%	-2.70%
Weighted average w/ benefits, all journeymen	0.10%	Est. 3.10%*
Foreman	-29.70%	-26.70%
Lead	- 8.20%	-5.20%

*A wage increase may affect the value of certain benefits, so this figure is an estimate.

The Arbitrator was perplexed and a little frustrated by this salary survey evidence.[11] In 2008, the salary survey found that bargaining unit journey level wages lagged the weighted average of the comparators by 10%. When benefits were factored in, the lag *increased*, so that the total compensation was 15.8% below the comparator average. To this Arbitrator, a significant question is how, with wages frozen since 2008, bargaining unit journeymen wages went from 10% behind the weighted average of the comparators in 2008, to 2.7% behind in 2013. Even more puzzling is how when benefits are calculated in, the bargaining unit went from a whopping 15.8% lag in 2008 to over 3% above the market in 2013.[12]

None of the surveys provide underlying wage-specific data for each comparable employer, so it was difficult for the Arbitrator to ascertain whether comparable employers initiated wage or benefit cuts. There was no testimony presented at hearing indicating that comparable employers had cut wages or benefits (except for, presumably, the Washington General/Ed employees). The

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11 Some annoyances were: (1) there was little raw data from which the Arbitrator could use to test methodology. This is the first interest arbitration this Arbitrator had conducted where this kind of data was unavailable. (2) No overall average figures were provided for the minimum and maximum columns of the survey. This last omission is odd given that Kamaron Durocher, who performed the survey for the Hay Group, testified that both weighted average and simple average are valid considerations. (3) It is not clear whether the leadman, foreman, apprentice and helper figures are simple or weighted averages.

The Arbitrator recognizes that the Hay Group has a huge task in completing a salary survey for all Washington State Ferry bargaining units and she commends the employees involved for their efforts. However, the inclusion of underlying data for each employer would not have been unduly burdensome, given that the Hay Group already had that information.

12 The 2010 survey performed by the Hay Group also showed a significant gain for this bargaining unit over 2008. This was the first survey performed by the Hay Group. A different consultant performed the 2008 survey. The Arbitrator did not delve into the 2010 survey in an attempt to ascertain whether there were changes in methodology that could account for the bargaining unit's significant gain in standing relative to the comparator group.

Arbitrator reviewed the current collective bargaining agreements of the shipyard comparators, which the Union placed into the record, and could not discern any cuts taking place. However, the Arbitrator had difficulty deciphering specific provisions of some of those agreements and no testimony was presented explaining them.

The most obvious change in the survey methodology between 2008 and 2012 is with the selection of comparable employers. Todd Shipyards was a comparator in 2008, but it declined to participate in both 2010 and 2012. Apparently in response to this, the Port of Seattle was added as a comparator in 2010 and used again in 2012. However, the CBA of the Port of Seattle shows it to be the highest paying employer for electricians. (Any CBAs of the other Port of Seattle skilled craft employees are not evidence.) It is doubtful that the substitution of the Port of Seattle for Todd Shipyards improved the relative standing of this bargaining unit among the comparators.

The key difference between the 2012 salary survey and the 2008 survey is the inclusion of the State of Washington itself (General Government/Higher Ed) as a comparator in the 2012 salary survey. This had not been done previously. In other words, the Hay Group used the craft, truck driving and warehouse employees of the State of Washington in its non-ferry units as comparables, so long as those employees met the criterion that the job description be an 80% match.[13]

The Union objected to the use of Washington Gen/Ed employees as a comparator group. It had good reason to do so. First, it is quite unusual to include the same employer as a comparable employer in interest arbitration.[14] Second, all other comparable employers are shipyards or shipping facilities, and

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13 The consultant considered positions comparable when the job description for the comparable employer had an 80% match to the job description of the bargaining unit position.

14 The legislature implicitly recognized that a wage comparison with only employers located in Washington State might not be sufficient. RCW 47.64.320 allows the comparison of the ferry system with employers "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." There is no scarcity of employers employing machinists, electricians, pipefitters, boilermakers, sheet metal workers, truck drivers and warehousemen within Washington State or even within western Washington. Had the legislature believed that ferry system employees such as these could or should be easily compared with other Washington craft employees, it presumably would have narrowed the geographic range for the selection of comparable employers. It did so previously, for instance, in the interest arbitration statute pertaining to firefighter units, limiting the comparator selection to jurisdictions on the west coast of the United States with the proviso that "when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered." RCW 41.56.465(3). It did not impose such a limitation in the ferry system current statute.

this has been true in the past. Shipyard craft employees have special skills and presumably this is why the salary surveys in the past have limited the comparator list to shipyards. The Arbitrator questions how an 80% job description match could be found when this bargaining unit's crafts' job descriptions are replete with references to "marine" and "vessels." The job descriptions of the Washington Gen/Ed employees were not in evidence, so that the Arbitrator could not make the comparison herself.[15] Third, the State presented no explanation to why Washington Gen/Ed employees were added as comparators. The State's witness, Kamaron Durocher from the Hay Group, said only that Washington Gen/Ed employees were included at the suggestion of the State. In many interest arbitration proceedings, arbitrators have looked askance at proposed new comparators absent a compelling reason, such as changed circumstances. Experienced arbitrators know that parties to interest arbitrations can be quite inventive at finding ways to add or delete comparator groups to bolster their cases. Interest arbitrators resist such attempts when they lack sound footing. Further, when a party seeks to use a new comparator that has a substantial effect on the comparator average, arbitrators are particularly insistent that the proponent produce evidence and argument justifying the addition. Presumably the Washington Gen/Ed employees have been subject to a wage freeze or cuts since 2008. The analysis at Table 6, below, shows that the inclusion of this proposed comparator group brings the comparator average down substantially.[16]

The Arbitrator concludes that it was not proper to include the State of Washington General Government and Higher Ed employees as a comparator in the salary survey. The exclusion of the Washington Gen/Ed employees' comparator group shows that bargaining unit wages are significantly behind the market, even with benefits included.

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15 Kamaron Durocher, the Hay Group consultant, testified that she did not perform the 80% match. Rather, she had the surveyed comparators perform this match.

16 The Washington Gen/Ed group's drag in a weighted average calculation will be exacerbated to the extent that Washington Gen/Ed employees are assigned a heavy weighting in any benchmark classification. The evidence was that the Washington Gen/Ed employees' comparator group had a 50% weighting in the machinists, truck driver and warehouse worker classifications. The record does not show its weighting in the other job groups.

Table 6, below, is the Arbitrator's analysis of comparable employers (with Washington Gen/Ed excluded). As stated previously, the Arbitrator lacks the raw data to perform an analysis based on the pay of each individual comparable employer. However, she does have an exhibit showing the average pay of Washington Gen/Ed employees. The Arbitrator devised a formula to calculate the simple maximum average pay of the shipyard/shipping facility comparators (that is, excluding the Washington Gen/Ed comparator group).[17] She also calculated an approximate average benefit package of that reduced comparator group.[18] The next table shows the results.

Table 6
Recalculated Average Max Comparator Wage, Excluding Washington as Comparator

Benchmark Classification	Ave Max per Survey	# Comps in Survey	WA Gen/ Ed Pay	New Ave w/o WA	New Ave w/ Benefits
Shipyard Machinist	$29.99	5	$22.38	$31.89	$ 37.89
Shipyard Electrician	$30.87	5	$22.38	$32.99	$ 38.99
Shipyard Boilermaker	$27.86	4	$22.38	$29.69	$ 35.69
Shipyard Pipefitter	$27.94	4	$22.38	$29.79	$ 35.79
Shipyard Sheet Metal	$31.54	5	$22.38	$33.83	$ 39.83
Shipyard Truck Driver	$27.49	5	$18.24	$29.80	$ 35.80
Shipyard Warehouse	$24.23	4	$15.81	$27.04	$ 33.04
			Overall Average	**$30.72**	**$ 36.72**
			Bargaining Unit Pay	$25.36	$33.38
			Bargaining Unit w/o 3% to New Ave	**-21.1%**	**-10.0%**
			Bargaining Unit w/ 3% to New Ave	**-17.1%**	**-7%**

The Arbitrator has no objection to calculating a weighted average that excludes the Washington General Government and High Ed group as comparator, but she lacks the data to

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17 That formula was: A=(B*C-D)/(C-1), where
A=average comparator maximum wage excluding Washington as comparable
B=average maximum wage per column 7 of salary survey, Exh. Jt-3, at 65
C= Number of participating employers, per column 4 of salary survey, Exh. Jt-3, at 65
D =Washington General Government and Higher Ed mean pay per column 6 of Exh. S-5

18 The same formula was used. However, the salary survey only shows the comparator benefit data as a weighted average. Since State of Washington benefits are above average, the formula may produce a comparator average benefit that is a little high. The formula produced a figure of comparator average figure for benefits of $6.04, and the arbitrator rounded it down to $6.

make that calculation. (The Arbitrator believes that if a weighted average calculation is made, that both the simple average *and* the weighted average results should be considered).

The above analysis, based on a simple average, shows experienced journey-level bargaining unit members' base wage will lag the Arbitrator's comparator average by 17.1% after the 3% is added back in on June 30, 2013. Their total compensation standing will be much better. The Arbitrator's analysis shows a lag of 7%. However, the Union has shown that some employees of comparable employers will receive an increase that is not shown in the Arbitrator's calculation on Table 6.[19] The evidence is too piecemeal to produce a definitive figure. It is clear, however, that with only the 3% restored and nothing more, the bargaining unit's pay lag during the term of the next agreement will be greater than the amounts shown on Table 6.

The Union presented information on the Lake Union Drydock as a comparable employer (over the State's objection). It did not present information as to whether its employees perform work that is materially similar to work performed by this bargaining unit. The Union's exhibit, Exh. U-23, states that the wage information is for boilermakers. Tim Kessler, Assistant Business Manager for Boilermakers Local 104, explained that not all the crafts have the same wage rates, but they are all negotiated by the Puget Sound Metal Trades Council. Each craft has different pensions and different health and welfare packages. Therefore, the employer offers a complete compensation package and it is up to the joint crafts union to figure out how to divide that package between wages and benefits. The Arbitrator is not certain how to extrapolate all craft wages from the boilermaker data. The Union did not explain why the Lake Union Drydock has not previously been used as a comparator and why it should be added now. Without further information, the Arbitrator will not add this employer to the comparator list, although it might be appropriate for future consideration. The Union is to be commended however, for not proposing a comparator whose wages raise the comparator average. The Lake Union Drydock journeymen boilermakers made, prior to July 1, 2012, less than the boilermakers in this bargaining

[19] See footnote 10, above.

unit. As the Arbitrator reads the Union's exhibit, the Lake Union Drydock boilermakers made $24.90/hour prior to July 1, 2012. Although negotiations are ongoing, that employer has proposed a 6.43% increase to take place on July 1, 2012, which would bring the hourly wage to $26.50. It has proposed additional annual increases of 3.38% and 3.27%, so that by July 1, 2014, the hourly wage will be $29.50. The contract has not been settled and perhaps the employees are holding out for more. The inclusion of the Lake Union Drydock as a comparator, even with wages extended to 2014, would probably lower the comparator average shown on Table 6, above.

The Arbitrator is not of the opinion that in interest arbitration, the wages of the employees at issue should necessarily be brought up to the average of the comparators. The market itself is not like that; someone will always pay above or below average. Further, targeting the average has a ratcheting up effect, since wages are rarely brought down to the average. When determining where wages should be relative to the comparator average, consideration should be given to the employer's fiscal outlook, cost of living differences, geographical location and historical ranking, among other factors. However, most arbitrators agree that the wages of the employer under consideration should not, if at all possible, be a statistical outlier.

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

The parties did not present evidence pertaining to this consideration, with the exception of some recent comparator changes or likely changes that were discussed in the preceding section.

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

As stated previously, the legislature has delegated the responsibility for setting ferry tolls and increases to the Transportation Commission. That entity eschewed fare increases in 2008 and 2009, but imposed 2.5% increases for both FY 2010 and FY 2011. For FY 2012, it increased fares twice. The first increase was 2.5% and the second was 3%. It perhaps wisely chose to impose no increase for FY 2013. It projects increases of 2.5% for each of FY 2014 and FY 2015. These increases do act as limitations, but there was no evidence suggesting these are unreasonable limitations.

Limitations on operating subsidies are discussed in section IV.A., above, concerning the State's financial outlook.

I. The ability of the state to retain ferry employees

The Union presented evidence of recent turnover which it maintains occurred because employees went on to better-paying jobs.

Electrician Charles Justin Rayburn testified that five electricians resigned in recent years and he personally spoke with each of them. These electricians went on to jobs that paid more, although one moved to New Jersey, well out of the labor market. He also explained that electricians do a broad range of work, some unique to ferries. For instance, the ferries range from vessels that are antiquated to state of the art. Electricians maintain Homeland Security systems and this requires certain specialized knowledge and skill. Recently, Rayburn testified, 25 applicants took a written and practical test for four ferry electrician positions, but only four electricians passed those tests. He opined that there is a shortage in general of qualified marine electricians for this kind of work.

The State presented evidence that the overall Ferry Division turnover rate for FY 2011 was 7.3% and for Metal Trades the rate was 7.1%. The State presented evidence that the bargaining unit turnover since 2007 has been as follows:

Table 7
Turnover Data

Year	Separation Count	Turnover Rate
2007	6	7.1%
2008	7	8.2%
2009	3	3.5%
2010	3	3.5%
2011	6	7.1%
2012 to date	1	1.2%

See Exh. S-21. See also Exhibits S-20, 22, 25 and 26. Exhibit S-21 also shows the reasons for an employee's departure. Reasons are categorized as involuntary, because of disability, retirement, or "resign-other." The exhibit does not indicate whether the "resign other" is to leave for a better paying job, but one can assume that at least some of those employees did leave to take a job that paid more. All employees who separated in 2011 are listed as "resign-other."

Assistant HR Manager for the Ferries, Leah Maurseth, opined that the 2011 turnover of 7.1% for this bargaining unit was low. In the Arbitrator's experience with employees covered by interest arbitration statutes (all of whom are under RCW 41.56 or similar statutes in other states and are quite skilled), this figure is somewhat high. In any event, it would not serve the State well to see it increase.

J. The overall compensation presently received by the ferry employees, …

This consideration, by statute, includes "direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefits, and all other direct or indirect monetary benefits received." RCW 41.64.320(3)(j). Total compensation was considered previously with the salary survey and wage comparisons and need not be discussed further.

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

1. CPI growth relative to wage growth

A traditional consideration in the determination of wages is whether wages are keeping up with inflation. This is done by comparing changes in the Bureau of Labor Statistics (BLS) Consumer Price Index (CPI) over a reasonable period to wage changes. The Union presented the following evidence of changes in the Consumer Price Index (CPI) for the past 10 years (Exh. U-11).

Table 8
CPI increases from June 2002 (Seattle-Tacoma-Bremerton)

Period	CPI-U		CPI-W
June 2002 to June 2003	1.21%		0.87%
June 2003 to June 2004	1.88%		2.53%
June 2004 to June 2005	2.30%		2.31%
June 2005 to June 2006	4.20%		4.62%
June 2006 to June 2007	3.51%		3.31%
June 2007 to June 2008	5.83%		6.19%
June 2008 to June 2009	0.00%		0.01%
June 2009 to June 2010	-0.01%		0.00%
June 2010 to June 2011	3.15%		3.70%
June 2011 to June 2012	2.70%		2.67%

The Union presented the following evidence concerning bargaining unit wage changes over the same period:

Table 9
Bargaining Unit Wage Changes from 2002

Year	Wage	Change from Previous Year
2002	$21.84	0.0%
2003	$22.50	3.0%
2004	$22.50	0.0%
2005	$23.22 (9-1-05)	3.2%
2006	$23.50	1.2%
2007	$25.62	(1.6% + $0.95 + 3.2%)
2008	$26.14	2.0%
2009	$26.14	0.0% [6% awarded, not received]
2010	$26.14	0.0% [6% awarded, not received]
2011	$25.36	-3.0%
2012	$25.36	0.0%
2013	$26.14	3.0% (return of pay cuts)

The above table shows that bargaining unit wages have grown by 16.1% between 2002 and 2012. That amount will increase to 19.7% on June 30, 2013. By comparison, between 2002 and 2012, according to the BLS, Seattle Tacoma Bremerton prices have increased by 26.5% using the CPI-U, and by 28.3% using the CPI-W.[20] This means that members of the bargaining unit have lost 10.4% to 12.2% of their theoretical buying power over the past decade, a rather

[20] The Arbitrator obtained these totals from the BLS website, and they are readily accessible at http://www.bls.gov/ro9/9251.pdf (CPI-U and CPI-W) or through this link: http://www.bls.gov/cpi/. One cannot simply add up the columns on Table 8 to get an accurate figure because of the compounding effect.

substantial amount. The Arbitrator is aware that inflationary trends do not affect people equally. Moreover, even though bargaining unit members contribute to their health care coverage (about 5.2% of the Journeyman wage for full family coverage, see Exh. Jt-3 at 70) the State also contributes significantly. According to the Arbitrator's calculation, for full family coverage, the State contributes about 30% of base Journeyman wage for medical and dental. For employee only coverage, the State contributes about 13% of that wage. Health care premiums for virtually all employer plans have increased by high single and double digits over the last decade. To the extent the State pays the lion's share of those costs, it relieves bargaining unit members of the brunt of these increases. Nevertheless, of the numerous wage disputes heard by this Arbitrator in interest arbitration, she has never seen a real wage decline, in terms of buying power, like that which this bargaining unit has endured. The 3% that the bargaining unit will receive on June 30, 2013, may or may not narrow this gap slightly. Both the CPI-U and CPI-W increased by 2.7% during the 12 months preceding June 30, 2012.

2. Internal equity

The parties did not present specific evidence or argument concerning the maintenance of internal parity with other ferry system employees. However, the Arbitrator is mindful that the State endeavors to treat employees fairly and equitably. Thus, a wage increase for this bargaining unit will or should be granted to other groups of employees whose wages similarly lag the market and cost of living increases. Large wage increases to all ferry system workers would severely strain the State's ability to pay. The Arbitrator notes that the Hay Group salary survey also addressed ferry terminal employees and ferry system administrative employees. Both groups' base wages and total compensation were found to be significantly behind the comparator average. The lag for administrative employees was the worst, at over 15%, even with benefits included.

3. Job security

The State presented evidence that there have been no layoffs in this bargaining unit during the recession and its slow-growth aftermath, nor have bargaining unit members been required to take furlough days. Steady work is important to employees, and this is something to take into consideration. This consideration would carry more weight if there was evidence of layoffs or furlough days among the comparable jurisdictions. However, no such evidence is of record.

V. AWARD

Both parties' final offers are within the range of reason, depending on the weight one gives to statutory factors. The State's continued poor financial condition, however, will be the principal consideration in fashioning this award. It appears from the Arbitrator's analysis of comparable employer data that the wages of this bargaining unit are approaching outlier status. That is, even with benefits considered, they have fallen significantly below the average of the comparators. See Table 6, above. They will fall even further behind as some of the comparators implement wage and benefit increases over the next biennium. Further, the buying power of bargaining unit wages has been steadily shrinking. Wages relative to CPI increases have lagged by 10% or more. Recent turnover has the potential for being a concern. A counterbalancing consideration is the job security enjoyed by bargaining unit members. Finally, the Arbitrator has kept in mind that the State must treat all of its employees fairly and no doubt its other employee groups also have grown weary of the wage freezes and cuts.

With the above considerations in mind, the Arbitrator has decided to award the bargaining unit modest wage increases over the next biennium. Without even a small increase, the wage lag to comparators and to the CPI will grow even worse. It is something that the State should not continue to ignore. The policy statement behind the interest arbitration statute includes a desire to prevent work stoppages and strikes by ferry employees and an desire to "promote just and fair compensation, benefits, and working conditions for ferry system employees as compared with" employees elsewhere performing similar work. RCW 47.64.006(7). A continued freeze on wages will undermine these policy objectives.

Accordingly, the Arbitrator's wage award is as follows:

> **FY 2013 Wage Award**: Effective July 1, 2013, the bargaining unit will receive a 1.5% wage increase.
>
> **FY 2014 Wage Award**: Effective July 1, 2014, the bargaining unit will receive a 1.5% wage increase.

The cost to the State will be modest. The Arbitrator calculates that the FY 2013 award will cost the State an additional $77,000, plus an increased contribution to social security and Medicare. For FY 2014, the added cost will be $155,153. The total increased cost over the biennium will be $232,153 over the State's final offer. Adding in the increased cost of social security and Medicare, the State's increased cost will be about $250,000 for the biennium.[21] This is an increase of about 4.87% in cost to the State over what it proposes to pay.

Date: September 16, 2013

Jane R. Wilkinson

Jane R. Wilkinson
Labor Arbitrator

[21] To calculate these costs, the Arbitrator used the classification distribution found on Exh. U-15 and assumed 2088 hours worked per year for each employee. She also assumed a continued 7.65% employer contribution to Social Security and Medicare. If there are other associated increased benefit costs, the Arbitrator does not have the information to perform a calculation.