In the Matter of the Interest Arbitration

between Amalgamated Transit Union Local 1765, AFL-CIO ("ATU" or "Union"),

and

Intercity Transit of Olympia, Washington ("IT").

Findings, Discussion and Award.

Case Numbers:	PERC #25144-I-12-0609 & 24556-12-7415. Arbitrator's NB2.
Representing the Union:	Edward Earl Younglove III and Younglove & Coker, P.L.L.C., PO Box 7846, Olympia, WA 98507-7846.
Representing the Company	Bruce L. Schroeder and Summit Law Group, 315 Fifth Avenue S., Suite 1000, Seattle, WA 98104.
Arbitrator:	Howell L. Lankford, P.O. Box 22331, Milwaukie, OR 97269-0331.
Hearing held:	In the Company offices in Olympia, Washington, on June 17 & 18, 2013.
Witnesses for the Union:	Karen Stites, Chuck Graham, David Plummer, Rusty Caldwell, and Debra Solomon.
Witnesses for IT:	Cathy Silins, Jim Merrill, Kathleen Perkins, Heather Stafford, Ann Freeman-Manzanaras, Ben Foreman, and Cynthia Fisher.
Post-hearing argument received:	From both parties by email on August 2, 2013.
Date of this award:	August 31, 2013.

This is an interest arbitration authorized and conducted under RCW 41.56.492 (and the other provisions of RCW 41.56 which section 492 makes applicable). The parties agree that the preliminary statutory procedures have been completed[1] and that I am the "arbitration panel" contemplated by RCW 41.56.492(2). They also agree that they had adequate advance notice of the issues in dispute and that each other's proposals are within the issues certified to interest arbitration by PERC. Finally, they agree that the court reporter's transcript of testimony, along with the exhibits, shall be the official record of this proceeding, that the Company shall be the official guardian of that record, and that the parties shall hold me harmless in that regard.

The hearing was orderly. Each party had the opportunity to present evidence, to call and to cross examine witnesses, and to argue the case. Both parties filed timely post-hearing briefs, and those briefs have been considered. The parties agreed at hearing that I shall be *functus officio* and shall retain no jurisdiction whatsoever in this matter after the issuance of this award. To the extent legally possible, the parties agree that the usual retention of jurisdiction detailed in *Teamsters v. Silver State Disposal Service*, 109 F.3d 1409 (CA9, 1997) does not apply in this case.

PERC certified to interest arbitration are (quoting the certification notice):

- Article 12(A)(5): daily guarantee
- Article 12(A)(7): posting deadline
- Article 14(C)(5): floating holidays
- Article 14(E): number of vacation slots
- Appendix A and B: wages for 2012, 2013, and 2014
- Appendix D: active period for Category B offenses.

Wages are the core of this dispute. The Union proposes increases of 2% for 2012 and a CPI-based COLA for each of the years 2013 and 2014 with a minimum of 2% per year and a cap of 5% each year. Because we know the 2013 CPI numbers, the second year proposal would be 2.54%. At hearing, without objection, the Union amended its 2014 pay proposal to be based on the June, 2013 release of the CPI index. The parties agree on the use of the Seattle-Tacoma-Bremerton CPI-W index. The Employer proposes no wage increase for 2012, 1% for 2013, and 2% for 2014, except that for the last two years the Employer proposes special rate increases for employees in the classification Van Operator V: 1.13 %—rather than 1%—for 2013 and 2.29%—rather than 2.0%—for 2014.

The factors to be considered under RCW 41.56.294(2): The statutory enumeration of factors for consideration in the interest arbitration of a transit contract is not very restrictive:

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1. Those procedures are set out at WAC 391-55-200 *et. sec.*

*** In making its determination, the arbitration panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

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

(b) The stipulations of the parties;

(c) Compensation package comparisons, economic indices, fiscal constraints, and similar factors determined by the arbitration panel to be pertinent to the case; and

(d) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment.

The Employer and the Bargaining Unit. IT serves the urban growth areas surrounding Olympia, Lacey, Tumwater, and Yelm.[2] It currently operates from 04:47 to 23:30. The 2012 fixed-route trips were about 4.6 million (with an additional .9 million on the dial-a-ride, paratransit service). The fleet consists of about 102 buses, and there are five transit centers in addition to the headquarter facility. Of the total workforce of just over 300, ATU represents about 192, 145 fixed route operators—including 41 Extraboard operators—32 Van Operators, eight dial-a-ride dispatchers, and seven Customer Service representatives. Of the remaining employees, IAM represents about 36 in the shop, and just over 70 are unrepresented.[3]

The parties' bargaining history is significant in this dispute. They have never before resorted to interest arbitration, although the Company has twice been to interest arbitration with the IAM local which represents its mechanics, first for IAM's initial contract, in 1995 before arbitrator Alan Krebs (NAA), and again in 2008 before arbitrator Gary Axon (NAA).

The prior ATU contract covered 2009-2011and included a 3.5% wage rate increase for its final year (part of an overall 11% increase). 2011 was not a good year for public employers, and IT asked the Union to forego its 3.5%. Union leadership put that request to the members, who voted it down; and the General Manager—who is not the current General Manager—told the Union that any increase in 2012 would be "very difficult" in light of that rejection. The Union considers IT's current first year wage rate freeze proposal to be IT's reprisal for that vote, particularly in comparison to the 1% average "market adjustment" received by unrepresented employees in 2012 along with 2% increases for those employees in 2012 and again in 2013. Indeed, the Union argues that the first year freeze proposal here is exactly what IT threatened when the Union declined to roll back its third year increase under the prior contract. After ATU declined to forego its third-year increase for 2011, IT bargained for a three-year contract with IAM, which included a freeze for 2011. The second and third years of that contract, 2012 and

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2. The governing board consists of one council representative of each of those cities, one Thurston County Commissioner, and three public members and a labor representative.

3. The hearing record leaves the size of the IAM unit unclear, but Arbitrator Krebs' 1995 Award noted 32 employees in the unit at that time, and there is no reason to suppose the unit size has declined.

2013, provided for increases of, respectively, "the amount of the January 1, 2012 ATU wage increase plus 2%." and "the amount of the January 1, 2013 ATU wage increase plus 1%."

Comparable employers: history and positions of the parties. Although IT has not previously been to interest arbitration with ATU, it *has* twice used this process with IAM over its mechanics. In 1995, IAM proposed comparison with five Washington transit agencies: Pierce Transit, Community Transit (covering most of Snohomish County except for Everett), Kitsap Transit, Ben Franklin Transit and Grays Harbor Transit. IT agreed to the comparability of Ben Franklin Transit and Kitsap Transit but proposed five alternative employers, all within the 50%-150% band of service area population: C-Tran (in Clark County), Lane Transit, Salem Transit, Rogue Valley Transit, and Whatcom Transit. Arbitrator Krebs found the comparables to be Kitsap Transit and Ben Franklin Transit—which the parties agreed to—and C-Tran, Lane Transit, and Salem Transit, all proposed by IT. In 2008, IAM and IT bargained against the background of that group of previously determined comparables, but in interest arbitration IAM again proposed to add Pierce Transit. IT again objected to the addition of the larger employer, and Arbitrator Axon adopted "the five transit properties used by arbitrator Krebs and the parties during bargaining..." Here is the heart of arbitrator Krebs' 1995 discussion explaining his choice of the comparables now urged by IT:

> ...interest arbitrators will generally try to find the most relevant comparisons, comparisons that the parties themselves would be likely to consider during their collective bargaining negotiations. Thus, comparisons with similar types of employers would be more relevant than comparisons with very different types of employers. Comparisons with other employers which are geographically proximate would be more relevant than comparisons with distant employers.
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> Here, the parties agree upon two transit agencies which they believe are comparable. Those two, Ben Franklin Transit and Kitsap Transit, will be adopted here. Of the remaining transit agencies which the parties proposed and for which they provided comparability data, I have selected the following three as appropriate for comparison with Intercity Transit: C-Tran, Lane Transit, and Salem Transit. Each of these transit agencies fall within a population band of 50 percent over or under the population of Intercity Transit. They, like Intercity Transit, are also on the I-5 corridor and reasonably close to larger urban centers. Salem Transit, like the employer here, is headquartered in a small city which serves as the state capitol. While it would be desirable to have a few more comparable jurisdictions for the reasons described below, I am not convinced that the other transit agencies suggested by the parties are appropriate for consideration.
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> *** Whatcom Transit cannot be used as a comparable agency because the undisputed testimony indicates that that agency does not employ mechanics, but rather has subcontracted its maintenance functions to the city of Bellingham. *** [I]nclusion of Whatcom Transit and Rogue Valley Transit would lead to an imbalance among the comparators, in that a large majority would be smaller than Intercity Transit. ***

In the case at hand, the parties agree to Kitsap Transit and C-Tran. The Union proposes to add Everett Transit and Whatcom Transit (for a total of four); and the Agency proposes to continue the list selected by the arbitrators in the two prior interest arbitrations with IAM.

IT argues that the considerations driving Arbitrator Krebs' determination of comparables still apply, that the parties bargained in terms of those comparables, and that Arbitrator Krebs' award served to settle the relationships between IT and its unions and should not be disturbed. ATU points out that this is the first time *it* has used the interest arbitration process, so there is no prior determination of comparables for ATU and IT. The Union urges the pattern of analysis used by arbitrator Alan Krebs in his 2010 *Kitsap Transit* decision. (Interestingly, it was arbitrator Krebs who determined the comparables—in the 1995 IAM case—which the Union now objects to.) In *Kitsap Transit*, arbitrator Krebs enumerated these factors as potentially relevant to the identification of comparable transit employers: service area population, workforce size, sales tax revenue, and location (along with, of course, the systemic mandate of identifying an adequate number of comparables to resolve the issue at hand). In those terms, ATU argues that Whatcom County Transit and Everett Transit are appropriate comparables while Ben Franklin Transit, Lane Transit and Salem Transit are not. Here (from the Union's Post-hearing brief at 17) are the Union's numbers for service population, workforce size, sales tax revenue—the factors mentioned by arbitrator Krebs in *Kitsap Transit*—along with vehicle hours, revenue miles and operating costs.

Transit System	IT	C-Tran	Kitsap	Whatcom	Everett	Salem	Lane	Ben Franklin
Population Serviced	161,407	362,175 224%	253,900 157%	201,923	103,100	236,632	247,421 153%	232,178
Number of Employees	300*	295	155	104 34%	171 40%	?	?	110 37%
Sales tax Revenue	27,828,553	22,724,638	25,942,042	18,827,426	14,923,050	None	None	22,297,082
Location	Olympia, WA	Vancouver, WA	Kitsap Conty., WA	Western WA	Everett, WA	Willamette Valley, OR	Willamette Valley, OR	Benton & Franklin Cnties. WA
Region	Puget Sound	Western WA	Puget Sound	Western WA	Puget Sound	Willamette Valley, OR	Willamette Valley, OR	Columbia Basin, WA
Vehicle Hours	199,060	282,552	137,647	125,386	121,353	157,355	223,597	132,872
Vehicle Revenue Miles	2,702,974	3,939,455	1,952,366	1,735,209	1,448,791	1,990,530	2,914,830	2,246,232
Operating Costs	22,003,668	29,952,369	18,370,078	14,259,747	13,798,069	?	?	11,731,345

Table #1

(* 300 is the workforce size from the record here, rather than the 223 in the Union's chart.)
Shaded boxes show a factor to be above the usual 150% comparability band (and by how much), and hatched boxes show a factor to be below the usual 50% comparability band (and by how much).

Comparability: discussion. An interest arbitrator's determination of comparables is never preclusive of that issue for later interest arbitrations in the technical, legal sense, even in a series of cases between identical parties. On the other hand, most mainline interest arbitrators take seriously their responsibility under the *Steelworkers Trilogy* to settle the relationship between the parties, and most mainline interest arbitrators therefore do their best to put future interest arbitrators out of business. Nothing could be more inimical to that goal than to introduce uncertainty about the comparables identified in a prior proceeding. But part of the strength of the foundation on which that deference rests is the assumption that a prior determination was based on the positions and arguments of the very parties now at the bar.[4] When an employer has multiple bargaining units which are eligible for interest arbitration and that employer offers the comparables determined in prior cases with an entirely different bargaining unit, that part of the foundation of the determination of comparables is stripped away. A union that is second to use the interest arbitration process can never be simply saddled with the results of prior cases in which it was not a party. But it is, after all, the employer, the party common to the earlier proceedings and the current one, for which we seek comparables; and the results of prior searches for comparables for the very same employer should always be given some weight. That policy, too, comes directly from the arbitrator's responsibility to the parties under *Steelworkers*, because multiple sets of union-dependent comparables for the same employer certainly would not encourage the parties to consider the issue of comparables to have been reliably settled.[5]

In the case at hand, RCW 41.56.294(2)(b) bids me pay attention to the stipulations of the parties, and though partial agreement about comparables is not quite a stipulation, there is no reason to disturb the parties' agreement that Kitsap Transit and C-Tran are appropriate comparables here, even though both of those employers are outside the traditional 150% cutoff range in service area population (and C-Tran is outside the "half to twice" range sometimes offered as an alternative to ±50%).

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4. IT quotes my discussion in *Kitsap County Corrections Guild* (2013): "One very important consideration in the choice of comparables is, What jurisdictions have these parties looked at in the past? Or, What jurisdictions have interest arbitration panels found to be appropriate comparables in the past?" And arbitrator Amedio Greco (NAA) similarly noted that "it is well recognized that comparables established in a prior arbitration proceeding between the same parties should not lightly be disregarded because parties need the stability and predictability that fixed comparables bring over time." Other noted Northwest arbitrators have voiced that same rule. But the rule applies to "prior arbitration proceedings[s] between identical parties...," and, as ATU is quick to point out, there is no such proceeding ever between these parties.

5. Where two parties have jointly referenced a set of other employers during negotiations, interest arbitrators are frequently quick to adopt that set as comparables. In the case at hand, however, the record does not show that to have been the case. Rather, IT repeatedly referenced the comparables it now champions, and ATU neither accepted them nor advanced its own alternative proposed set until mediation. That record does not provide a basis for holding ATU to IT's proposed list.

Whatcom Transit's comparability—which ATU now champions—is greatly supported by the fact that IT proposed Whatcom Transit in the 1995 interest arbitration with IAM and saw it rejected, not because it was dissimilar, but because it employed no mechanics. On its own merits, Whatcom Transit is reasonably close to IT in service population—200,000 to IT's about 160,000—and sales tax revenue—about $19 million, well within the traditional ±50% range of IT's about $28 million, and revenue vehicle miles—1.7 million to IT's 2.7 million. It is barely below the 50% range of IT's workforce size.

Everett Transit, on the other hand, is classified as an urban, not a small urban transit system. But the proposal to include Everett Transit presents another difficulty, which I find insurmountable on this record. RCW 41.56.294(2)(c) contemplates "compensation *package* comparisons." Even when the governing statutory language does not require a package-based comparison, it is not uncommon for police or fire interest arbitration disputes to include the parties' calculation of something like a "net hourly wage" or "net monthly wage," where the "net" refers to a careful attempt to adjust schedule pay rates to reflect differences in holiday and vacation accrual, employer and employee health insurance costs, retirement contributions (particularly when the employer group crosses state lines), etc., in short, a "compensation package" comparison. On the other hand, it is not uncommon for parties to agree that certain features of the compensation package do not significantly affect the bottom line and to leave those features out. Here, despite the statutory language, both parties proceed in terms of "top step hourly base wage," and I conclude from that they agree the complexity of a fuller examination of "compensation packages" would not affect the results.[6]

That conclusion stumbles when we come to Everett Transit. The only record I have is the most recent but now long expired *2009-2011* CBA itself. That agreement includes a dual track salary provision which divides at the employee hire date of January 1, 1999. In 2009, there was a $3.58 difference between the two tracks in the top step for paratransit operators. What is the top step hourly base wage on that record? The record does not show what percentage of the workforce falls into each track. Moreover, for 2010 and 2011 the Everett contract sets out a fairly complicated CPI formula for wage rates and, of course, that CBA does not extend into the period at issue in the case at hand. In the face of that record, I will not address the comparability of Everett Transit because it is not clear how to apply the term "top step wage," because the CBA by itself does not support the supposition that top step rate is indicative of the "compensation package," and because the available raw numbers are, in any event, unhelpful.

IT notes that the Union offers no systematic methodology for the determination of comparable employers, and it is true that the traditional first step in a comparability

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6. ATU protests IT's omission of longevity pay; and, as the discussion below indicates, I have added longevity pay for purposes of comparison. Where the statutory language is "compensation package comparisons," it seems to me that any party proposing a more detailed examination of the financial benefits of employment—and showing its analytical work—should carry the day when it comes to choosing which set of data to use.

analysis—showing how that party initially narrowed down to the candidates it analyzed in detail—is nowhere to be found. At hearing, the Union had no real answer to the question, "Why not Ben Franklin?" other than that the wages were lower and the operation was somewhat smaller. But the Union's Post-hearing Brief does include ATU's objections to three of IT's proposed comparables: Ben Franklin is in the Eastern half of Washington, and both Lane Transit and Salem Transit are in Oregon, are a considerable distance away, and are in a different State with different funding sources.[7] But, as Table 1 shows (on p. 5, above), the Krebs comparables still generally pass the traditional tests of comparability. (With respect to the important characteristic of service population, Lane Transit, although outside the traditional 150% band, is well within the limits demonstrated by the parties' agreement to include C-Tran and Kitsap Transport.)

It makes sense, however, to balance the distant Lane Transit and Salem Transit with Whatcom Transit, which was not considered by arbitrator Krebs simply because it employed no mechanics. IT objects to inclusion of a comparable from the heart of the Puget Sound complex and the greater Seattle metropolitan area, but that inclusion does not interfere with arbitrator Krebs' prior determination for the mechanics unit and makes sense here in light of the three quite distant comparators in the set.

I find the appropriate comparables for these parties to be Ben Franklin Transit, C-Tran, Kitsap Transit, Salem Transit, Lane Transit, and Whatcom Transit. That conclusion is entirely consistent with arbitrator Krebs' determination, since Whatcom had no mechanics and is therefore significant only for the Operators unit.

Appendix A & B: Wages for 2012, 2013, and 2014. *Fiscal constraints:* Just as it is not clear that ATU ever appealed to comparability in bargaining, so it is not clear that IT appealed to issues of fiscal constraint during two-party negotiations; but the evidence of substantial fiscal constraint is uncontested in the arbitration record.

The revenue split in the past has been about 75% from sales tax, 10-12% from the fare box, and 13-15% from grants. A 1999 proposal to fund services (and slightly expand them) by a 0.2% sales tax failed, and IT was forced to reduce services by 8%. And in 2000 the initiative elimination of the motor vehicle excise tax (MVET) reduced operating revenues by 40% and

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7. IT replies, in part, that arbitrator Krebs "initially set [IT's proposed] comparables, and in doing explained that 'each of these transit agencies fall within a population band of 50% over or under the population if Intercity Transit. They, like Intercity Transit, are also on the I-5 corridor and reasonably close to larger urban centers." But there is no reason to suspect that arbitrator Krebs examined transit agencies which neither of the parties before him was proposing as a comparable. And to the extent that he examined and rejected Whatcom Transit when *IT* offered it as a comparable, that is outweighed, it seems to me, by the new development that the union side in the current dispute proposes a comparable once championed by the employer.

forced the layoff of 122 employees and a 42% reduction in service level.[8] The third fiscal blow in the series resulted from the 2008 national economic downturn, which reduced in a sales tax income reduction in the neighborhood of $3 million.

In August, 2010, on the other hand, IT won a 0.2% increase in its sales tax funding, up to 0.8% of the legally permissible 0.9%. The Agency's operating forecast, assuming IT's own proposal in this case, projects a decline below a 90-day operating cost ending cash balance beginning in 2018 and an outright fall into a negative ending cash balance beginning the next year. With the Union's proposed increases, the fall below a 90-day reserve would occur one year earlier. Those projections make modest assumptions about probable future increases in medical premiums and in PERS contributions.

The 13-15% of IT's past financial support from grants is in grave doubt. Federal grants for small urban transit systems such as IT require a 20% match for the allocation of 80% in federal funding. The continuation of that funding source is threatened on both sides: On the federal side, the DOT revised its public transit expenditure priorities effective October 1, 2012, and much of the funding for small urban transit systems will now go to rail capital equipment. On the State and local side, there is a State constitutional prohibition against the use of gas tax funds for public transit; and the current biennial support for agencies such as IT fell to $109 million, down from $113 million in the prior biennium. The projected 2014 State budget for small urban transit includes only $19 million for the entire state for the whole two-year period, and most of those funds are budgeted for handicap transit in King County.

The Agency has substantially depended on federal funding for its vehicle purchases. In that capital expenditure area, about 80% of the prior income flow appears to be drying up. In response, the Agency is running vehicles 15 years, well beyond their recommended 12 year lives, but repair costs will eventually close that option. IT also apparently has no budget item addressing the necessary replacement of ten massive underground fuel tanks which are 30 years old. The potential environmental cleanup cost of leakage from those tanks is an unknown but massive potential fiscal liability. In short, there are undeniable and substantial fiscal constraints in IT's current and projected financial condition and ability to fund pay increases.

IT also treats its "me-too" agreement with IAM as a fiscal constraint, and costs ATU's contract proposals as if the "me-too" increases which IT has agreed to pay to its mechanics are properly ascribed to subsequent increase for the Operators. They are not. An employer is, of course, free to enter into a "me-too" agreement in order to assure union No. 1 that it will not fall further behind union No. 2. But such an agreement does not turn any resulting required increases to union No. 1 employees into costs attributable to a subsequent union #2 contract. Such a "me-too" agreement is purely the employer's choice, regarding which union #2—in this case, ATU—had neither a voice in bargaining nor any benefit received.

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8. Technically, the initiative was struck down by the courts but the Legislature reinstated the elimination of the MVET.

Local Economy and Other Employers. IT's numbers show both that non-farm industry employment has increased substantially in Thursten County and that unemployment is down substantially from 2011, and most of those changes came in the last half of that two-year period. But "down substantially" still leaves an April 2013 unemployment rate of around 7%. Government is the driving employer in this area, and the Washington State budget is still unsettled, which makes local government employment prospects uncertain.

Unlike mechanics, who are to be found spread throughout the general workforce, Bus Operators are overwhelmingly employed by transit agencies. Neither party claims that private bus service data would be informative in this case.

Recruitment and Retention. Nothing in the record suggests any problems of recruitment or retention of employees in the past or any projection of such problems in the future.

CPI and Internal Comparability / Recent Percentage Compensation Changes. Since 2000 the agreed CPI index has increased by 32.16%. Against that background, fixed route Operators have seen a 36.5% wage increase and van Operators have seen an increase of almost 46%, compared with 31.5% for the mechanics and 31% for non-represented employees. In the more recent past, the changes since 2008 have been +11% for fixed route Operators and +12.71% for van Operators, compared to 7.0% for the IAM unit and 5.5% for non-represented employees. The CPI changes over those two periods (CPI-W, June to June) have been +32.15% since 2000 and only +2.93% since 2008. Over the life of the most recent, 2009-2011 contract, Operator wages increased by 11% while City of Olympia employees' wages increased by only 4% and Washington State employees' wages fell by 3%.

Discussion. It would be only a slight oversimplification to summarize the positions of the parties during negotiations this way: ATU argued that Operators have *always* received an annual wage increase and that IT's first year freeze proposal was retaliation for the Operators' rejecting IT's give back proposal for the final year's increase in their expired contract; and IT argued that Operators have always had an annual wage increase and that it has left them substantially ahead of all other IT employee groups, ahead of increases in the cost of living, and ahead of the operators at comparable employers. It is well established in Washington case law that interest arbitration should be a part and continuation of the collective bargaining process, but that does not necessarily mean that the interest arbitrator should focus on the same factors that led the parties to impasse in two-party negotiations.

In general, wage rate increases in interest arbitration are driven by three factors: problems of recruitment and retention, increases in the cost of living that have essentially devalued the current wage rate, or comparison with employees doing similar work for comparable employers. To a somewhat lesser extent, wage increases are occasionally driven—or resisted—by rate changes for other employees of the same employer.

Here, the record makes no mention of problems of recruitment and retention.

It is difficult to find support for any suggestion that changes in the cost of living have devalued the current wage rate. It is true that the CPI increased by 2.7% during 2012 after an increase of 3.7% during 2011' but those increases followed two years of *decreases*, -0.1% in 2010 and -0.7% in 2009. Over the life of ATU's most recent, three-year contract, the CPI increased only 2.9% while wage rates for Operators rose by 11%. Taking a longer view, since 2001 Operators on fixed routes are $1.41/hour ahead of the cost of living and van Operators are $2.63/hour ahead. Short term or long, cost of living changes offer little support to ATU here.

That leaves comparability. Here (Table 2, below) are the Agency's top step numbers, on the basis of its own 0%-1.0%-2.0% proposal for fixed route Operators and 0%-1.13%-2.29% proposal for dial-a-ride Operators:

	Fixed Route Operators				Dial-a-Ride Operators			
	2011	2012	2013	2014	2011	2012	2013	2014
C-Tran[A]	23.79	24.27	24.27	24.27	20.85	21.27	21.27	21.27
Ben Franklin[B]	23.36	23.94	23.94	23.94	23.36	23.94	23.94	23.94
Kitsap[C]	22.90	22.90	22.90	22.90	20.61	20.61	20.61	20.61
Lane County[D]	22.16	22.61	23.07	23.07	("not available")	("not available")	("not available")	("not available")
Salem[E]	21.13	21.98	22.42	22.42	18.36	18.87	18.87	18.87
Average	22.67	23.12	23.32	23.32	20.80	21.17	21.17	21.17
Intercity	**24.19**	**24.19**	**24.43**	**24.92**	**21.19**	**21.19**	**21.43**	**21.90**
Difference	6.7%	4.63%	4.76%	6.86%	2.22%	0.09%	1.23%	3.54%

Notes to the table:
A. The most recent C-Tran contract ended August 31, 2012.
B. The current Ben Franklin contract runs through May 31, 2013.
C. The most recent Kitsap contract ended February 15, 2011.
D. The Lane Transit Lane Transit contract ends June 30, 2014. These numbers do not include longevity pay, which begins at $0.15 per hour at 15 years of service and tops out at $0.40 per hour at forty years of service. The CBA does not separately state dial-a-ride pay rates or give any indication that dial-a-ride operators are not included under the contract.
E. The current Salem contract runs through June 30, 2013. Salem numbers do not include longevity pay which begins at $0.35 per hour at ten years and tops out at $0.85 per hour at 20 years.

Table 2

Those numbers do not include longevity, as ATU points out; and longevity cannot reasonably be overlooked in a comparison based on top step wages. Table 3 (on the page below) sets out the Agency's top step numbers adjusted for the maximum longevity benefits for Lane and Salem Transit, and adds similar data from the 2013-2015 Whatcom Transit CBA. As in Table 2, above, I

have grayed the boxes which simply extend a prior rate into the future when the parties have not yet bargained over the rates in question.

	Fixed Route Operators				Dial-a-Ride Operators			
	2011	2012	2013	2014	2011	2012	2013	2014
C-Tran	23.79	24.27	24.27	24.27	20.85	21.27	21.27	21.27
Ben Franklin	23.36	23.94	23.94	23.94	23.36	23.94	23.94	23.94
Kitsap	22.90	22.90	22.90	22.90	20.61	20.61	20.61	20.61
Lane County	22.56	23.01	23.47	23.47	("not available")	("not available")	("not available")	("not available")
Salem	22.83	22.83	23.27	23.27	19.21	19.72	19.72	19.72
Whatcom		24.74	25.42	25.99		21.17	22.38	23.11
Average	23.09	23.39	23.57	23.97	21.01	21.34	21.58	21.73
Intercity	**24.19**	**24.19**	**24.43**	**24.92**	**21.19**	**21.19**	**21.43**	**21.92**
Difference	4.56%	3.31%	3.52%	3.80%	0.86%	-0.72%	-0.72%	0.87%

Table 3

On the basis of comparability, as Table 3 clearly shows, there is no support for a first year increase for the fixed route drivers, who are already 3.31% ahead of the comparable wage rate; but IT's proposed first-year freeze would leave the Dial-a-Ride Operators almost 1% behind. For 2013 and 2014, the primary moral of the table is how many boxes are grayed out showing that those rates are yet to be established and that the numbers in Table 3 are only carry-forwards from the prior year. IT objects to future wage increases driven by the CPI—noting that the parties have never previously used the CPI format approach for down-year wage rates—but when data is not yet available for three to five of the six comparable employers, the CPI approach is compelling.

IT's financial condition in 2013 and going into 2014 puts a very tight lid on what it can responsibly pay in wage increases during that period. But its meeting the market midpoint with respect to wages for its unrepresented employees in 2011 and 2012 shows that it can reasonably do the same (substituting "comparables" for "market") for its Van Operators for the first year of the new contract, and I will award them a 0.75% increase for 2012. For 2013 and 2014, I agree with ATU that a CPI increase is appropriate in order to keep the Operators' compensation unchanged in real dollars. But that consideration does not support the imposition of a floor for those years, and IT's financial condition requires a cap of 5.0% for those *two* years combined. Because the 2013 CPI increase was 2.54%, that leaves a cap of 2.46% for 2014.

Award: For 2012, there shall be no change in the wage rates for any employees in the bargaining unit except a 0.75% increase for Van Operators. For 2013, there shall be an across-the-board increase equal to the most recent June Seattle-Tacoma-Bremerton CPI-W, which is 2.54%. For 2014, there shall be a similar across-the-board CPI increase, except that the cap on that 2014 increase shall be 2.46% (making a 5% total cap for 2013 and 2014).

Article 12(A)(5): Extraboard daily guarantee. Within a seniority bid, Extraboard Operators are initially assigned in rotation at the beginning of each pay period, but §12,A,4 requires the Agency to "make every effort to equalize the active extraboard operator work hours on a two-week pay period...basis," and §12,A,5 already guarantees them "a minimum of forty (40) hours of work within the work week..." To that 40 hour weekly guarantee the Union proposes to add a guarantee of "six hours of work when an operator is called in..." The Agency opposes the addition.

The Union argues that the six hour minimum would even out the workload for extraboard operators. But IT called a scheduler as witness, and she testified convincingly that the added minimum would have no substantial effect on the number of long days. About 15% of the current bid assignments include a run of less than six hours. Given that operational context, IT argues that it has little control over the work-day fluctuation that results from the combination of the forty-hour guarantee and the requirement that Extraboard work hours be equalized within each two-week pay period. Some of the Extraboard work—extended illnesses or weeks of scheduled vacation, for example—can be determined in advance; but much of its work comes over the horizon with a single day's notice or less.

IT estimates the cost of this proposal at about $45,000 over the three years at issue. Of all the employers proposed as comparables by either party, only Lane Transit and Salem Transit have daily minimums, and both of those contracts require assignment in rotation rather than equalization of hours. The Union does not argue—and the record does not show—that the proposed minimum is necessary to attract Operators to the Extraboard: On the contrary, the average seniority of Extraboard Operators is nine years, and ten of the 36 Extraboard Operators have more than 14 years seniority. Finally, and most importantly, in the face of the testimony and explanation offered by IT's scheduler witness, this record does not show that ATU's six-hour minimum proposal would actually have the effect of reducing the periodic swing in the length of work days for some Operators on the Extraboard. In the face of that record, I cannot award the Union's proposal.

Award: No change in the language of Article 12(A)(5).

Article 12(A)(7): Moving posting time from 3:00 p.m. to 4:00 p.m. Operators must submit vacation requests by 09:00 each day in order to be effective for the following day. That deadline was moved up an hour in the most recent contract, at the Agency's request, in order to provide more time for the schedulers, which is exactly the reason the Agency now offers for delaying by an hour the posting time for the following day.

The scheduling process is complex and cumbersome and reflects vastly more than vacation leaves: vacant positions have to be determined from the vacation book, known sick leaves, temporary assignments, and all other known leaves. Vacant runs are then assigned to Extraboard Operators with an eye toward equalization over a two-week period. Any excess work beyond the available Extraboard at regular time is offered first to the Extraboard then to van and then to fixed route Operators by calling Operators in each of those groups in seniority order; and any remaining work after that is assigned to Operators on standby and then, occasionally, is involuntarily assigned by juniority. The complexity is increased when there are trainee Operators who must be assigned in addition to assigning Operator Trainers. Having Operators do training reduces the number of

available Operators; and during peak vacation periods there are more available routes to be covered and fewer Operators to cover them.

The schedulers are off the clock at 4:00 p.m., which is the time IT proposes as the new posting time. And the Union argues that there would be a significant loss in having schedulers issue the schedule and immediately leave the building, without being available for even an hour to address any problems that might arise under the new schedule. IT replies that there are dispatchers on duty to deal with any such difficulties, but the record before me does not offer much evidence, one way or the other, for the proposition that dispatchers have time and attention to deal with scheduling mistakes as well as the schedulers themselves could. Moreover, the Union argues, moving the scheduling deadline *back*—as distinguished from the prior shift of the request time *forward*—gives the Operators less time to deal with potential child care issues for the next day. Finally, the Union points out that some operators get off the clock between 15:00 and 16:00 and would have to call in to get their new schedule (rather than picking it up at the end of shift).

Turning to comparable employers, IT notes that it is alone of its proposed comparables in having the same posting time for fixed route and for dial-a-lift Operators. Table #4 sets out the comparables' posting times (including the times for ATU's proposed comparables).

IT	3:00 Fixed Route and DAL
Ben Franklin	1:30 Fixed Route 6:00-7:00 DAL
C-TRAN	3:00 Fixed Route 7:00 DAL
Kitsap	2:00 Fixed Route 6:30 DAL
Lane	4:45 Fixed Route (no DAL)
Salem	2:30 Fixed Route (no DAL)
Whatcom	6:00 Fixed and DAL

Table #4

The record includes compelling testimony that schedulers frequently work through breaks to get the work done by 3:00; but the proposed later time would work an obvious hardship on Operators who must adjust their schedules day by day and cannot do so until the schedule is released. The picture that emerges from the comparables offers little support for IT's proposal and seems to suggest the quite different approach of separating the posting times for fixed route and for dial-a-lift Operators. Neither party here proposes that solution, and I will not venture where the parties have not led; but the record does not support the remedy proposed by IT to cure the very real workload problems of the schedulers.

Award: No change in the existing language of Section 12(A)(7).

Article 14(C)(5): Floating Holidays. Bargaining unit employees get five floating holidays per year. IT proposes to turn those five holidays into five additional days of annual leave; and the Union opposes that proposal.

Under the current system, floating holidays are tracked manually by the payroll department. A floating holiday can be used on quite short notice, so it is possible for an Operator with an upcoming very long day to use a floating holiday on that day and get paid for more than eight hours.

On the other hand, floating holidays are now use-it-or-lose it, and 17 employees failed to use all their floating holidays in 2012. Because IT proposes to turn floating holidays into vacation time, lost vacation time is equally relevant, but the record does not show how many employees—if any—lost vacation time to the 620 hour cap during that same period. Part of the Union's original reason for objecting to this proposal was the prior 620 hour cap on vacation time.[9] But IT amended its proposal at the arbitration hearing—without objection by the Union—to include a 40-hour increase in the vacation hour cap, up to 360 hours.

The Union's main remaining objection is that it is currently possible for an Extraboard Operator to use a floating holiday to cover a 12-13 hour day, thus getting additional hours pay for the day off. Many very senior Operators bid onto the Extraboard because there is overtime built into the regular workweek and additional overtime opportunities are offered first to the Extraboard. Of 31 Extraboard Operators, the top six have 14 years seniority or more and the bottom eleven have two years seniority or less. The longest floating holiday in 2012 was 14.92 hours; and in 2009 it was 12.58. Many of the most senior drivers choose to be on the Extraboard. (Fixed route Operators could also use a floating holiday to cover a day of over eight hours, but only if such a day were part of their normal schedule. The longest regularly scheduled run—and only for part of the year—is ten hours thirty-five minutes.)

Of comparable employers, Ben-Franklin has eight floating holidays on a 'use-it-or-lose-it system ("UIOLI"). C-Tran expressly adds two days of vacation time as floating holidays for Martin Luther King, Jr.'s birthday and for Veterans' Day. Those two days do not carry forward into another year, but the employee may cash them out at the end of each year. Kitsap County Transit has two (UIOLI), Lane has three (UIOLI), and Salem has none. Whatcom has six (with a new Floating Holiday bank with a 48-hour cap). In the face of that record it is impossible to agree with IT's claim (Post-hearing Brief at 23) that "converting floating holidays to paid vacation hours is supported by...external comparables." On the contrary, C-Tran is pretty much alone in granting vacation time rather than floating holiday time, and even at C-Tran that special "vacation" time must be used or cashed out every year.

IT also argues (Post-hearing Brief at 24) that "converting floating holiday to paid vacation hours will lead to increased equality and fairness among ATU members." But ATU is the exclusive voice of overall equality and fairness among its members, particularly in areas which touch on the benefits of seniority, as this particular dispute does. There is no doubt that it would be more efficient for IT to have to track only one benefit rather than two (Post-hearing Brief at 24-25), but IT does not claim an actual cost savings for its proposal on this issue, and administrative convenience alone is not an adequate basis for the change in light of ATU's resistence and the very thin support for the proposal finds in the survey of comparable employers.

Award: No change in the existing language of Article 14(C)(5).

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9. Unrepresented employees have a 360 hour cap on vacation hours.

Article 14(E): Number of Vacation Slots. Management now sets the number of available vacation slots and more or less equalizes those slots over the year. Slots come in weekly and in daily form; and there are currently nine weekly and four daily vacation slots every week for fixed route drivers and an average of about 8 weekly and four daily slots for drivers of all sorts. The contract leaves the number of vacation slots to IT and there is no dispute that the current allocation rate allows all drivers to use their accrued vacation. But to do so requires some drivers to take vacation weeks at quite undesirable times of the year. There is no dispute that the number of vacation slots fell when the workforce was reduced after the implementation of I-695 or that the subsequent increase in the number of slots has not kept up with the general recovery of the driver workforce. There are currently 13 weekly slots for fixed route Operators and three for Van Operators. The Union proposes this change to §14.E:

* * * * *

~~The Employer shall determine~~ The number of vacation slots available for paid leave shall not be less than ten percent (10%) of the number of employees on the active roster.

* * * * *

As far as the record shows, 10% represented the Agency's common practice before the dip in the size of the workforce.

There has never been a contractual restriction on IT's allocation of vacation slots, and none of the contracts of IT's proposed comparables includes so sweeping a restriction as ATU proposes here (except the Salem Transit CBA, which requires a minimum of five and requires "a number sufficient to cover all accruals"). Turning to the comparables proposed by ATU, Whatcom Transit's contract requires nine daily weekday slots, five on Saturdays and two on Sundays for fixed route employees and requires "a ratio of one vacation slot for every nine assignments, including relief board assignments" for Paratransit Operators. (And Everett Transit's contract provides (§9.9) "Up to four (4) bus operators shall be allowed off for vacation at any one time except in emergencies, with provisions for increasing the number to five (5) as scheduling permits. Such scheduling shall be within the sole discretion of the Director of Transportation Services...")

IT claims that it would have to add four Extraboard Operators to cover the additional vacation slots at least during the most desirable vacation period. ATU disputes that claim and argues that the guaranteed hours of the existing 35-36 Extraboard Operators can cover the increased vacation days with the addition of no more than one FTE; but the Extraboard covers not only vacation time but sick leave, internships, Operators on LWOP, openings caused by training, and other sorts of release time. IT therefore costs this proposal at over $2 hundred thousand annually.[10]

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10. This particular cost estimate is unconvincing, since it is apparently based on the cost of *filling* additional slots, which IT itself convincingly argues would not happen based on the most recent vacation scheduling experience. IT also argues that the number of slots would constantly change with the changing size of the workforce, but that problem would easily be addressed by specifying a snapshot date or dates.

ATU's witnesses testified that the most important part of its proposal, from the Union's point of view, is the proposed increase in *daily* slots, which an Operator may request up to 9:00 p.m. of the prior day. I took a careful look at how each of the proposed comparables addresses that issue, if at all; and when we turn from *general* restrictions on vacation slot allocation and look for contract language dealing with short-term, daily vacation leave, the comparables shift somewhat. Ben Franklin Transit provides (§18.7) that "Accumulated vacation may be used on a daily basis. Single vacation days must be scheduled with the Employee's supervisor in accordance with the Daybook policies and procedures. Accrued vacation hours may be taken in two (2) hour or more increments subject to approval of the Operations Manager." C-Tran provides (at §25(1)(c)) that Vacation leave must be approved by the appropriate supervisor as established by Employer's rules and regulations. Normally, at least five (5) working days' advance notice of the absence will be required unless a mutually agreed upon shorter notice is provided. Vacation scheduling shall be in accordance with the Employer's rules and regulations..." The Kitsap Transit contract rolls most leaves—including sick leave and vacation—into "General Leave" and provides (§15.3.A) "The Employer has the right to determine the number of vacation slots open for bidding" and (§15.3.E)) that "Operators may request vacation days off that are available fifteen (15) days or more in advance of the requested day. Approval will be made on a first-come, first-served basis and days selected are guaranteed." Lane Transit's contract (§20.2.C.4) leaves the employer "the right to reasonably limit the number of employees by job classification and or work shift that may be on vacation at any one time." But the next subsection provides, "Employees who bank paid vacation hours may request to use paid vacation hours during the vacation year on a split or entire basis... Employee requests for such flexible vacation leave must be made at least forty-eight (48) hours in advance of the date of the proposed leave. Such requests will be reviewed without seniority priority on a 'first come, first served' basis. Employees shall have the right to determine this paid vacation time, subject to the employer's judgment as to the service and operational requirements for efficient public service. Such use of banked vacation requests from employees shall not be unreasonably withheld." And Salem Transit has a separate provision (§10.7) for "Use of Individual Vacation Days" which requires "Two Operators will be allowed off each day. At the discretion of the District, more than two Operators may be allowed off on the same day. Individual vacation days will be awarded on a 'first come, first served' basis." The contract details the procedure for requesting such a day off, including a timeline requiring the request to be "between the hours of 4:30 a.m. and 2:00 p.m. the workday preceding the day requested." And it makes it clear that "Approval by the DISTRICT will be subject to operational needs of the DISTRICT, and the availability of extra Operators to insure coverage of all scheduled runs."

Turning to ATU's two proposed comparables, Whatcom Transit, in addition to specifying the number of slots generally, also provides (§8.5.E, emphasis in the original) for "FOR BOTH FIXED ROUTE AND PARATRANSIT SERVICE: One additional vacation slot will be available each day, Sunday through Saturday during the summer markup." Finally, Everett Transit has no special provisions for the availability or scheduling of individual days of vacation time.

The problem with ATU's proposal here is that one of the most basic rules of interest arbitration is "if it ain't broke, don't fix it," and as far as this record shows, this part of the parties' relationship "ain't broke." The usual union presentation in a dispute over vacation slots includes evidence that the current practice deprives employees of their accrued vacation days or, at least, that it forces their vacations into very undesirable parts of the year. But in the case at hand, ATU admits

that no one has lost vacation days because of the availability of slots, and in 2013 only *a single week was fully bid up* after the annual vacation bidding, so multiple vacations slots were apparently available throughout the remainder of the year. That datum, all by itself, ordinarily makes it impossible to justify a tighter restriction on the current practice. When we turn from major blocks of vacation time to daily, short notice vacation availability, there are two problems with ATU's proposal. First, the proposed language is too broad to address specific problems with the availability of short notice, day by day vacation slots. The above review of other contracts suggests that there are various alternatives for addressing this specific problem, and I cannot reasonably draft such language on the basis of this limited record, nor would it be appropriate to do so in the absence of any indication that the parties have bargained about this specific part of the vacation availability issue. Second, ATU witnesses testified (Tr. 99) that the current manager has been "very generous" with vacation requests supported by good cause.

There is an obvious difference between getting a day's vacation at management's discretion when you have good cause and having a right to a day's vacation upon request. But the record before me does not leave me with adequate support for any adjustment to the contract in this regard or give me language clearly addressing this perceived problem.

AWARD: No change in the existing language of Article 14(E).

Appendix D: Discipline Guide. The parties have bargained in detail about the discipline process. They have agreed to divide offenses into four categories: Category A infractions, which have "the potential for dismissal on a first (or any) occurrence;" Category B infractions, which have "the potential of a suspension or causing an employee to be placed on decision-making leave;" Category C infractions which are "less serious...nevertheless, warranting discipline up to and including a written warning;" and Late Reports, i.e., failing to be at the proper place and time to go on the clock. The contract includes a matrix of over 60 offenses and the category or categories each offense should fall into. Each of these disciplinary categories has a bargained sunset provision for the purpose of progressive discipline: Category A discipline remains alive for 36 months (except Prohibited harassment, Prohibited discrimination, Fighting or violence in the workplace, Theft, and Gross insubordination, which never sunset). Category C and Late Report discipline remains alive for 12 months. The dispute in the case at hand is over the sunset period for Category B discipline. Here is the contract's general characterization of Category B infractions:

> A category B infraction is a serious infraction having the potential of a suspension or causing an employee to be placed on decision-making leave. Examples of Category B infractions include:
> - Insubordination
> - Responsibility for a serious incident
> - Failure to follow accident procedures
> - Falsification of or failure to file a report
> - Falsification of any employment record
> - Reckless driving
>
> If an Operator has no active disciplines, the first infraction falling under Discipline Category B results in a Written Warning or Suspension without pay and/or Warning of dismissal. A second

Category B in the next thirty-six (36) months constitutes grounds for dismissal. Category B disciplines will remain active for a period of 36 months.

If an Operator is currently at a Written Warning or above level of discipline a Category B infraction may result in termination of their employment at Intercity Transit.

The most recent, 2009-2011 CBA extended the sunset period of Category B discipline from the prior 12 months—the same as Category C discipline—up to 36 months, the same as Category A discipline. That change was part of a package which also included the Union's proposal to separate out Late Report discipline into its own category.[11] The Union now proposes to bring the sunset period for Category B discipline back down to 18 months, and the Agency wants to keep it at 36.

There was no change in the offenses listed in the 2009-2011 CBA, but the Union argued that since the increase in the sunset period for Category B, the Agency has recently further altered its allocation of offenses to the various categories —when offenses are shown to be, e.g., "C-B" of "C-A"—favoring the B rather than to the C Category. There were 17 Category B disciplinary actions over the three years of the most recent CBA, four in 2009, seven in 2010, and six in 2011. Twelve of those 17 were written warnings. In 2012, there were seven Category B disciplinary actions, five of which were written warnings. The record does not show the number of Category B disciplinary actions in the years before the most recent contract. But there is no dispute that at least some of that change has been the product of statutory changes focusing on, for example, texting and seatbelt use. Because of those statutory changes, it is difficult to conclude that the change in the sunsetting period may have encouraged the Agency to *choose* to characterize more violations as B rather than C.

Most of the comparators have not bargained a correspondence between particular sorts of offenses and an agreed range of disciplinary consequences. Most of the comparables sunset particular *levels of discipline*, except C-Tran and Salem Transit whose CBAs simply do not address the sunsetting issue. Ben Franklin Transit sunsets suspension without pay at 60 months. Kitsap Transit sunsets suspension at 18 months and Decision-Making Leave at 12. Lane Transit, takes the traditional Teamster-style approach, 'no discharge without prior written notice except...' and then sets out the exceptions, the 'deadly sins' that will support discharge without prior notice. But where there *is* prior notice, the notice sunsets at six months. Turning to the comparables proposed by ATU, Whatcom Transit sunsets verbal warnings in 12 months and written warnings in 18 "without a repeat violation," except for a deadly sins list for which disciplinary records never sunset; and Everett Transit's contract does not address the issue of discipline in any substantial detail.

IT points out that the record does not show an avalanche either of Category B discipline or of discharges under the language of the most recent Agreement. ATU's own exhibit (U. 14) shows no misconduct based discharges since 2009, and there were 17 Category B offenses over that entire period, despite statutory changes that made, e.g., texting or driving without a seatbelt more serious offenses than they had been previously and despite the installation of cameras in the buses, which made such misbehavior far easier to document.

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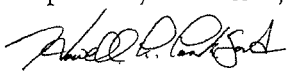
11. The Agency originally proposed 60 months, and the Union countered with 36 months as part of the package.

The reason that comparisons are difficult with respect to this issue is that IT is all alone in having bargained for a "bucket" approach to types of serious misbehavior. Some of the comparables have bargained for a list of *single*-offense-dischargable offenses. But none of the comparables has bargained for a bucket of serious offenses of which the *second* offense will support discharge regardless of whether or not those two serious offenses are related or similar. IT's Appendix recites that it is "based on the principle of uniformity and progression;" but that is apparently quite different from the traditional principle of progressive discipline: IT's characterization of the current disciplinary category system (Company Ex. 6.2) characterizes the 36 month agreement as "a reasonable period of time during which *additional* or repeat violations could result in progressive discipline" (emphasis not in the original). Under the traditional approach to progressive discipline, it would be far from certain that a second serious act of misconduct would support termination if that offense were of a quite different sort than the first. It appears that IT, at least, understands the basic bargain behind the Appendix to be that a second, Category B violation within the life of a former, entirely unrelated, Category B violation will support discharge. IT's claim about comparability here is frustrated by the fact that none of the comparables had any similar provision in its contract; and I will therefore award a part of ATU's proposal, as follows:

Award: Appendix Discipline Guide shall be changed as follows:

If an Operator has no active disciplines, the first infraction falling under Discipline Category B results in a Written Warning or a Suspension without pay and/or Warning of Dismissal. A second Category B in the next ~~thirty-six (36)~~ **eighteen (18)** months constitutes grounds for dismissal**, except that a second Category B of the same or very similar type in the next thirty-six (36) months constitutes grounds for dismissal.**

Respectfully submitted,



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