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September 20, 2008

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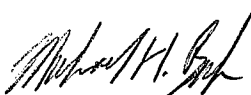
Re: Washington State Department of Transportation, Ferries Division and
Inland Boatman's Union of the Pacific
Interest Arbitration

Dear Mr. Slown and Mr. Lavitt:

Enclosed is my Interest Arbitration Opinion and Award in the above referenced matter. Also enclosed is my statement which has been billed one half to each party.

Thank you for the opportunity to serve as your Interest Arbitrator.

Yours very truly,



Michael H. Beck

MHB:cac
Enclosures

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HUMAN RESOURCES

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Re: Washington State Department of Transportation, Ferries Division and
Inland Boatman's Union of the Pacific
Interest Arbitration
Michael H. Beck's TIN: 91-1199496

FEES

August 18 – 21, 2008: Hearing dates. Four
days at \$1,400 per day. \$ 5,600.00

August 22, 2008: Hearing date. One-half day
at \$1,400 per day. \$ 700.00

Pre-hearing motions, including review of
materials submitted, conference call and
correspondence. One and one-half days at
\$1,400 per day. \$ 2,100.00

Research, study and drafting time. Thirteen
days at \$1,400 per day. \$18,200.00

TOTAL FEES \$26,600.00

**AMOUNT DUE FROM WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION, FERRIES DIVISION \$13,300.00**

**AMOUNT DUE FROM INLANDBOATMEN'S UNION OF
THE PACIFIC \$13,300.00**

IN THE MATTER OF THE INTEREST)
ARBITRATION BETWEEN)
)
WASHINGTON STATE DEPARTMENT)
OF TRANSPORTATION, FERRIES)
DIVISION)
and)
)
INLANDBOATMEN'S UNION OF)
THE PACIFIC)
_____)

OPINION AND AWARD

**Interest Arbitration: 2009-11
Agreement**

Date: September 20, 2008

**OPINION AND AWARD
OF THE
INTEREST ARBITRATOR**

Interest Arbitrator
Michael H. Beck

Appearances:
Washington State Department of Transportation, Ferries Division
David J. Slown
Inlandboatmen's Union of the Pacific
Robert H. Lavitt

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION,
FERRIES DIVISION

and

INLANDBOATMEN'S UNION OF THE PACIFIC

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IN THE MATTER OF THE INTEREST)
ARBITRATION BETWEEN)
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WASHINGTON STATE DEPARTMENT)
OF TRANSPORTATION, FERRIES)
DIVISION)
and)
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INLANDBOATMEN'S UNION OF)
THE PACIFIC)
_____)

OPINION AND AWARD

**Interest Arbitration: 2009-11
Agreement**

Date: September 20, 2008

OPINION OF THE INTEREST ARBITRATOR

PROCEDURAL MATTERS

The Interest Arbitrator, Michael H. Beck, was selected by the parties to resolve various issues that the parties were unable to resolve through collective bargaining with respect to the 2009-11 Collective Bargaining Agreement, hereinafter the Agreement. The Employer, Washington State Department of Transportation, Ferries Division (WSF), was represented by David J. Slown, Assistant Attorney General. The Union, Inlandboatmen's Union of the Pacific (IBU), was represented by Robert H. Lavitt of the law firm Schwerin Campbell Barnard & Iglitzin, LLP. A hearing in this matter was held at Seattle, Washington on August 18 – 22, 2008.

At the hearing the testimony of witnesses was taken under oath and the parties presented substantial documentary evidence. A reporter was present during the proceedings and a transcript was made available to the undersigned Arbitrator for his use in resolving the issues before him.

The parties waived their usual practice of filing posthearing briefs and instead presented oral closing argument at the conclusion of the hearing. This change in practice resulted from changes to RCW Chapter 47.64 made during the 2006 regular session of the legislature. In particular, RCW 47.64.170(c) now requires that the resolution of all collective bargaining agreements between WSF and the unions representing ferry employees, whether resolved by negotiations or arbitration, be concluded by October 1 of each even numbered year. Additionally, your Arbitrator was scheduled to hear two additional interest arbitrations that under the new law also have to be concluded by October 1.

RCW 47.64.320(3) provides that in making his or her determination the arbitrator shall take into consideration the following factors:

- (a) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;
- (b) The constitutional and statutory authority of the employer;
- (c) Stipulations of the parties;
- (d) The results of the salary survey as required in RCW 47.64.220;
- (e) 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 classification involved;
- (f) Changes in any of the foregoing circumstances during the pendency of the proceedings;

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

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

RCW 47.64.200 provides that the arbitrator:

. . . is limited to selecting the most reasonable offer, in [his/her] judgment, of the final offers on each impasse item submitted by the parties.

The parties are in dispute regarding what constitutes an “impasse item.” The Employer contends that the phrase “impasse item” refers to those issues which relate to a specific matter. Thus, the Employer would group together as an impasse item the general wage increase proposals and the targeted wage increase proposals regarding various classification with respect to Rule 17, Classifications and Rate of Pay. Furthermore, the Employer takes the position that with respect to each impasse item, the Arbitrator should consider each party’s proposal on the basis of the full biennium and not on a year by year basis during the biennium.

The Union, on the other hand, takes the position that each and every item in dispute is a separate impasse item and that each proposal with respect to each of the two years of the biennium should be considered as a separate impasse item.

At the hearing, I ruled that with respect to wages, there were two impasse items. The first impasse item related to the proposals for a general wage increase and the second impasse item related to additional increases proposed by the Union with respect to various classifications. Furthermore, I ruled that the Union’s proposal regarding each separate classification could be considered as a separate impasse item.

I did not rule at the hearing on whether or not I would consider each impasse item on a biennial basis or on a yearly basis. Since the Union's proposals had been on a yearly basis, I permitted the Union to make an alternative proposal on a biennial basis in the event that I ruled that impasse items should be considered on a biennial basis. In this regard, the Union made an alternative biennial proposal regarding the general wage increase and also regarding vacation accrual.

The last interest arbitration between the parties was for the 2005-07 biennium. The parties were also in dispute during that arbitration regarding what constituted an impasse item. Arbitrator John Byrne agreed with the Union that each item proposed should be considered as a separate impasse item. Additionally, Arbitrator Byrne considered each impasse item on an annual basis rather than on a biennial basis. Furthermore, I note that the parties did go to arbitration with respect to the collective bargaining agreement for both the 2001-03 biennium and the 2003-05 biennium. Your Arbitrator served as the arbitrator for these interest arbitrations. The parties agreed with respect to both of those interest arbitrations that the Arbitrator should consider as an impasse item each individual proposal regardless of whether several proposals could be considered to address the same subject matter. Furthermore, the parties also agreed that the Arbitrator should consider impasse items on an annual rather than on a biennial basis.

In view of all of the foregoing, I shall consider the general wage increase proposals on a yearly basis.

THE PROPOSALS OF THE PARTIES

1. Rule 17.01 – Wages, the General Wage Increase

The Employer proposes that effective July 1, 2009 each classification represented by the Union will be increased by 1.6% and that effective July 1, 2010 each classification represented by the Union will be increased by 1.7%.

The Union proposes that effective July 1, 2009 each classification represented by the Union will be increased by 4.2% and that effective July 1, 2010 each classification represented by the Union will be increased by 4.2%.

The parties are in dispute regarding the appropriate data for the Arbitrator to consider in connection with the State of Washington Marine Employees' Commission 2008 Salary Survey Report (Salary Survey). The Salary Survey received relevant data from four ferry systems regarding positions represented by the IBU. Those four systems are Black Ball Transport (Black Ball), Alaska Marine Highway System (AMHS), British Columbia Ferry Corporation (BC Ferries), and Golden Gate Ferry Corporation (Golden Gate). To account for differences in employee population, the Salary Survey contained various charts using a weighted hourly base pay figure when comparing a particular job classification with the WSF hourly base pay. The purpose of using a weighted hourly base pay figure is to adjust for a ferry system with a small number of employees that might have a considerably higher or considerably lower rate of pay than the WSF hourly base pay.

The Employer contends that the weighted hourly base pay figure is the appropriate figure for your Arbitrator to use in making comparisons with the WSF hourly base pay. However, only two of the four ferry systems provided data from which those

individuals compiling the Salary Survey could establish the weighted average, namely AMHS and Black Ball. With respect to the BC Ferries and Golden Gate, the data from these employers was not sufficient to compute a weighted average. Therefore, the Salary Survey provides in Exhibit IV Addendum, a comparison using the simple mean hourly base pay of the four comparables, which is then compared to the WSF hourly base pay. The Salary Survey defines "simple mean" as follows:

Gives equal weight to the employer's data submission regardless of the number of employees. (Joint Exhibit No. 4, pg. 13.)

I agree with the Union that in the circumstances here, the Exhibit IV Addendum is the appropriate chart to use with respect to the requirement at RCW 47.64.320(3)(d) that the arbitrator consider the results of the Salary Survey.

Before making a wage rate comparison two matters need to be addressed. First, the exchange rate regarding the payment to BC Ferry workers. In this regard, the Survey states that Canadian pay rates have been adjusted to the US dollar at \$1 US equal \$1.025 Canadian. Therefore, I have not made any separate adjustment. Secondly, is the question of the cost of living differential (COLD) at AMHS described as a geographical differential:

. . . which reflects the difference in the cost of living in Alaska and Seattle, Washington. An employee establishes eligibility for COLD payments by establishing and maintaining their principal place of abode within the state. (2008-11 Collective Bargaining Agreement between the State of Alaska and the IBU. Joint Exhibit No. 2, Rule 17.01.)

The Union provided evidence, including the testimony of an expert witness, Dan Jacoby, in an attempt to establish that the COLD provided by AMHS to Alaska residents was greater than the actual cost of living differential between Alaska and Seattle,

Washington. Exactly why the Union makes this argument is not clear. Apparently the Union is concerned that I will use the non-resident rate in making comparisons between wage rates at AMHS and WSF. I have used the rates set forth in the Salary Survey at Exhibit IV Addendum, which the Union contends is the Exhibit I should use in making comparisons. Therefore, it is unnecessary to consider adjusting the COLD.

There are eight benchmark positions contained on Exhibit IV Addendum which are also positions at WSF that are held by employees represented by the IBU. These positions are Able Seaman/Bos'n, Able Seaman (AB), Ordinary Seaman (OS), Ticker Seller (Auto), Ticket Taker, Terminal Attendant/Watchman, Information Agent and Shoregang Worker. The average WSF hourly base pay for the eight benchmark positions comes to \$22.56 while the average for the eight benchmark positions based on the simple mean comes to \$23.47. The simple mean hourly base pay for the eight classifications is 4% greater than the WSF hourly base pay.

A factor traditionally taken into account in resolving wage disputes in interest arbitrations is changes in the cost of living as measured by the Consumer Price Index. Based on the testimony of Professor Jacoby, the CPI-W U.S. City Average is the appropriate measure to use. In this regard, I note that your Arbitrator used this index previously with respect to these parties (see Interest Arbitration Opinion and Award dated September 9, 2005). The latest figures available show this index increased 6.2% July 2008 over July 2007.

From the foregoing it appears that the most reasonable offer is the Union's offer of 4.2%. However, a final decision awaits my consideration of the Employer's financial situation discussed later in this Opinion.

I now turn my attention to the second year of the biennium. I note that the effective date of the data contained in the Salary Survey is September of 2007. The record also contains evidence regarding wage increases for years beyond 2007 for four ferry systems that comprise the survey.

With respect to Black Ball, the wages will increase each April and October by 1% or by the cost of living, whichever is greater, and that the increase for April 2008 was 1.8%. The record contains a letter dated March 18, 2008 from David Booth, Senior Vice President, Finance & Administration for Black Ball, to Dennis Conklin, Regional Director of the IBU. The figures reported in that letter indicate that the index used to compute the 1.8% were the CPI-W for Seattle-Tacoma-Bremerton, comparing the second half of 2007 to the first half of 2007. I note that the Black Ball contract in evidence is the 2003-06 Agreement. Dennis Conklin testified that the 2008 contract just settled, although it is not in evidence. He testified, however, that a cost of living increase amounting to 6.2% is what the parties negotiated, apparently for the October 1, 2008 increase, although this is far from clear from his testimony. Also, as I understand Mr. Conklin's testimony, the 6.2% is going to be used for pension contribution, on a one time basis, in addition to the 3% he testified was specifically negotiated for pensions.

With respect to BC Ferries, the Salary Survey indicates that employees will receive a wage increase of 3% on April 1, 2008, another 3% on April 1, 2009, and 3.9% on April 1, 2010. The collective bargaining agreement between BC Ferries and the BC Ferry and Marine Worker's Union provides the same figures for 2008 and 2009 but indicates only a 3% raise in 2010. The difference with respect to 2010 is not explained in the record. According to Lynda Ruhl, Business Agent for the BC Ferry and Marine

Workers Union, employees receive a premium or differential of anywhere from 0.2% to 27% depending on the route.

With respect to the Alaska/IBU Agreement, it provides that in July of 2008 employees will receive a one-time lump sum payment of \$2,137. Darrel Tseu, the Regional Director of the IBU for the Alaska Region testified that this amount provided a 4% increase on average. Effective July 1, 2009 all classifications will be increased by 5% and effective July 1, 2010 all classifications will be increased by 4%.

The Golden Gate collective bargaining agreement in evidence provides that effective July 1, 2008 employees will receive a 3% increase. There is no evidence in the record to indicate what, if any, raises Golden Gate employees will receive in 2009 or 2010.

Finally, I note that the WSF employees received a 2% increase effective July 1, 2008.

I have set forth below a chart displaying the wage increase figures described above. In doing so, I have not included the 6.2% at Black Ball, which was not used for a wage increase. With respect to the BC Ferries for 2010, I have used the 3% figure listed in the BC Ferries Agreement rather than 3.9% listed in the Salary Survey at page 59.

Also, I have not added in the premium or differential, which varies from 0.2% to 27%.

WAGE INCREASES 2008 - 2010

Year	Back Ball	BC Ferries	AMHS	Golden Gate	Average	WSF
2008	1.8%	3%	4%	3%	3%	2%
2009	?	3%	5%	?	4%	?
2010	?	3%	4%	?	3.5%	?

The Salary Survey, as described above, indicated that as of September 2007 the average of the four comparable ferry systems was 4% higher than WSF. The wage increases in 2008 received by the employees in the four ferry systems, as the chart above shows, averaged approximately 3%. When this figure is compared to the WSF increase of 2% in 2008, the result is that the four comparable ferry systems moved to 5% higher than WSF (4% + 1%). Thereafter, as we can see from the chart, the average increase in 2009 is 4% and 3.5% in 2010. While we only have figures for two of the four ferry systems subject to the Salary Survey for 2009 and 2010, it must be noted that AMHS and BC Ferries are much closer in size to the WSF than are Black Ball and Golden Gate.

Therefore, based on all of the foregoing, it does appear that the most reasonable offer for the general wage increase for the second year of the biennium is the Union's offer of 4.2%.

The financial situation of the State of Washington must be considered before a final award for each biennium can be made. Wolfgang Opitz holds the position of Deputy Director of the Washington State Office of Financial Management (OFM) and has held that position for approximately eight years. He testified before Arbitrator Anthony Vivencio on August 20, 2008 at an interest arbitration hearing between WSF and the Marine Engineers Benevolent Association. The parties to the instant arbitration stipulated that Mr. Opitz's testimony would be incorporated as part of the instant proceedings.

Mr. Opitz testified that the State of Washington offered to all bargaining units a 1.6% increase for the first year of the 2009-11 biennium and a 1.7% increase for the second year of that biennium based on certain economic forecasts made by the State of

Washington Economic and Revenue Forecast Council (Council) in June of 2008. In this regard, the Council forecast that the change in the Implicit Price Deflator would be 1.6% for the year 2010 and 1.7% for the year 2011.

Mr. Opitz explained that based on a document prepared by the staff of the Senate Ways and Means Committee in June of 2008, it is predicted that by the conclusion of the 2009-11 biennium the unrestricted balance of the general fund would show a deficit of approximately \$2.7 billion based on estimated revenues of approximately \$31.8 billion. Despite this forecast, Opitz explained that the State of Washington determined to offer what amounts to a 3.3% increase for the 2009-11 biennium (not counting the affects of compounding) as follows:

To be honest, we feel that there's obvious need to acknowledge that our employees are bearing new costs and are bearing the weight of inflation, and are dealing with higher food and fuel prices just like everybody else. We can't do everything but we can do something, and we can find a responsible way to put something forward that tries to account for that, tries to make good on that need, and see to that need going forward, as we have done across all the bargaining tables based on that implicit price deflator. (Tr. pg. 265.)

Beginning with the 2009-11 biennium, the legislature has set forth a new statutory framework with respect to settlements between WSF and the various unions representing WSF employees. The new statute provides that requests for funds necessary to implement the collective bargaining agreements, reached either by negotiation or interest arbitration, shall not be submitted to the legislature by the Governor unless such requests have been submitted to OFM by October 1 before the legislative session at which the requests are to be considered and those requests have been certified by OFM "as being feasible financially for the state." (RCW 47.64.170(8)(a)(ii).)

After submission by the Governor that statute provides:

The legislature shall approve or reject the submission of the request for funds necessary to implement the collective bargaining agreements or arbitration awards as a whole for each agreement or award. . . . If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement and award. . . . (RCW 47.64.170(c).)

* * *

If, after the compensation and fringe benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed modification of the agreement. (RCW 47.64.170(9).)

It should be noted the June 2008 State Senate Ways and Means Committee report referred to above is not in a current period shortfall. In this regard, that report forecasts a \$359 million surplus at the end of the current biennium.

Robin Rettew is employed at OFM in the position of Senior Transportation Budget Advisor to the Governor. Both the WSF Operating Account and the WSF Capital Construction Account are part of the overall transportation budget of the state. The transportation budget supports 18 state agencies, including the Washington State Patrol, the Department of Licensing and the Department of Transportation.

Rettew explained that the transportation budget is subject to a 16 year plan in order for the legislature to have a basis upon which to track the cash flow from the gas tax increases which are used to support various transportation projects. Rettew explained that the ending balance for the 2007-09 ferry operating budget would be a deficit of approximately \$43 million and that the figure at the end of the 2009-11 biennium would be a deficit of approximately \$101.3 million. Rettew explained that the 2007-09 budget for WSF was established as a balanced budget of \$428.7, but that in June of 2008 there was a diminished revenue forecast because of the increase in the price of gasoline,

resulting in consumers using less gasoline thereby reducing the amount of revenue collected from the per gallon gas tax. Also, WSF would have to pay more for diesel fuel than it did at the time the 2007-09 budget had been constructed. Ms. Rettew explained that the increase in fuel costs was “the principal driver” of the change in both the revenue and expense forecast for the 2007-09 biennium. (Tr. Vol. III, pg. 435.)

Ms. Rettew did not specifically explain the \$101.3 million projected deficit for the 2009-11 biennium, but as I understand it, it is also a reflection of increased fuel costs. As Ms. Rettew indicated, fuel costs, especially several years in advance, are difficult to accurately predict. In fact, I note that since June of 2008 when oil prices hit approximately \$140 per barrel that price has come down to under \$100 per barrel, a very significant decrease in cost.

Chapter 47.64, as explained above, requires OFM to consider the settlements between the WSF and the unions representing its employees prior to submission of the budget by the Governor to the legislature. These settlements have not been completed and thus OFM has not made the statutory required determination of whether the settlements are “feasible financially for the state.” (RCW 47.64.170(8)(ii).)

It should be noted that here we are dealing with a relatively small amount of money. In this regard, I note the following from the Washington State Budget Process prepared by OFM in June of 2008 (Employer Exhibit No. 71). At page 5 there is a chart showing the distribution of 2007-09 State Operating Expenditures – All Funds. The total listed is \$59,951,000,000 and the amount listed for Transportation Operating Expenditures is \$2,279,000,000. Thus, the Transportation Operating Expenditures

constitute only 3.8% of the overall State Operating Expenditures for the 2007-09 biennium.

Employer Exhibit No. 23 is a series of charts which indicate that a 4.2% raise for bargaining unit employees for one year would come to \$1,926,261. The Employer did not provide cost figures for its proposal. However, using the figure \$1,926,261 as 4.2%, then a 1.6% increase comes to \$733,814 and a 1.7% increase comes to \$779,677 for a total for the biennium of \$1,513,491. Adding together the two 4.2% increases the total comes to \$3,852,522 for the biennium. The difference over the biennium (not counting the affect of compounding) comes to \$2,339,031. This amount is about 1/10th of 1% of the Operating Expenditures for Transportation during the 2007-09 biennium and about than 6/10th of 1% of the \$428.7 million Ferry Operating Budget for the 2007-09 biennium.

In view of all of the foregoing, I find that the Union's offer of a 4.2% wage increase effective July 1, 2009 and a 4.2% wage increase effective July 1, 2010 are the most reasonable offers.

2. Rule 17.01 – Wages, Additional Targeted Classification Increases

During the hearing the Union amended its proposal by eliminating the proposal for additional targeted increases in the second year of the biennium. Therefore, the Union proposal is that effective July 1, 2009 the following job classifications will be increased as follows:

AB/QM/Bos'n	2.0%
OS	3.0%
Ticket Taker	3.0%
Shore Gang Department	5.0%
Shore Gang Leadman	5.0%
Shore Gang Foreman	5.0%
Terminal Attendant/Watchman	3.5%
Auto Ticket Seller	1.0%
Passenger Ticket Seller	1.0%
Web Information Agent	2.6%

The parties list 14 job classifications in their Agreement. The Union is seeking targeted increases for 12 of the 14 job classifications. Although only 10 job classifications are listed above as those for which the Union is seeking a targeted raise, I note that with respect to AB/QM/Bos'n listed above, this includes two classifications, namely the AB job classification and the AB-Bos'n and AB-Quartermaster job classification. Furthermore, the Union's listing of Ticket Taker in its proposal encompasses two classifications listed in the Agreement, namely Auto Ticket Taker and Passenger Ticket Taker. Thus, the only job classifications for which the Union is not seeking a targeted raise are the Information Supervisor and Information Agent.

The average raise for the 12 targeted classifications comes to 3.1%. This 3.1% raise would really be in the nature of a general wage increase because almost the entire bargaining unit would be covered by these targeted raises. In this regard, I note the testimony of Web Information Agent Denise Heay who testified that the Information Department has approximately 22 employees. However, she also testified that there are only six year around, full-time positions in the Information Department, three of which are Web Information Agents for whom a wage increase is also proposed. She testified that during the summer when WSF is at its busiest, there are approximately 10 full-time

positions and, although not entirely clear from the record, apparently some additional part-time positions which, when taken together, might well add a few more FTEs.¹

What the Union is seeking here are not really targeted raises but an additional 3.1% raise on average for the bargaining unit. In view of the fact that employees will receive a 4.2% increase effective 7/1/09 and a 4.2% increase effective 7/1/10, none of the targeted increases are justified.

Based on all of the foregoing, I find that the Employer's offer of no raise for each of the Union's proposed targeted increases to be the most reasonable offer.

3. Rule 17.02 – Entry Level Rates

Presently the Agreement provides at Rule 17.02 that employees who have worked less than 2,080 straight-time hours will receive a lesser wage than the journey wage with respect to all of the classifications except AB, AB-Bos'n and AB-Quartermaster, Information Supervisor, Shore Gang Foreman, Shore Gang Leadman, and Shore Gang. That lesser wage is approximately 70% of the journey wage. Furthermore, the Agreement provides that once those employees have worked more than 2,080 straight-time hours but less than 5,200 hours for deck and terminal employees, and less than 4,160 straight-time hours for Information Department employees, the employees will receive a wage which is approximately 85% of the journey wage.

The Union proposes to eliminate the three tier system and create a two tier system, which would provide that employees who have worked less than 1,040 straight-time hours would receive 85% of the full-time wage.

¹ The exact number of IBU represented employees is not contained in the record, but the evidence is sufficient to conclude that the number of Information Department employees less the Web Information Agents would constitute a very small percentage of the number of employees in the bargaining unit.

The Employer proposes no change to the present system regarding entry level rates.

In support of its position the Union points to AMHS and the BC Ferries. In this regard, Darrel Tseu, the Regional Director of the Alaska Region of the IBU, testified that what he described as the "probationary wage" was 90% of the normal salary or hourly wage. Tseu testified that the average employee during the summer worked six months at an average of 168 hours per month which yields 1,008 hours. Tseu's testimony did not indicate how many positions are considered entry level positions. He did say in his testimony that there "are a number of different positions" that are entry level. (Tr., Vol. II, pg. 248.)

Lynda Ruhl, the Business Agent for the BC Ferry and Marine Workers Union, testified that new employees are usually university students who come to work for the summer as well as over the Christmas holidays and spring break which is the seasonal period. The first season they get 90% of journey pay and in the second season they get 95% of journey pay. Thereafter, as I understand it, they get 100%. Also, as I understand Ms. Ruhl's testimony, BC Ferries does not have separate entry level positions, but that the 90% and 95% rates apply to all positions within the unit represented by the BC Ferry and Marine Workers Union.

Furthermore, if a new employee comes to work during the seasonal period but has the Bridge Watch Certification, that employee will receive the full journey wage. Bridge Watch is a certification provided by Transport Canada. Additionally, if a seasonal employee is asked to work outside these periods, they are converted to a casual employee

and receive the 100% rate, provided they have successfully completed the probationary period, which is 120 working days.

Finally, the Union points out that the probationary period provided for in the WSF/IBU Agreement is 1,040 compensated hours. This provision is in line with the Union's proposal of a two-tier system with the top tier beginning after the completion of 1,040 hours.

Based on all of the foregoing, I find that the Union's offer is the most reasonable offer.

4. New Rule 17.04 Relating to the Use of Spray Painting Equipment and New Rule 17.05 Relating to Assigning OSs to Don Bunker Gear

Presently Rule 17.03 provides as follows:

The use of the following power tools entitles the user to one dollar (\$1.00) per straight time hour increments: chipping hammers, scrapers, wire brushes, spray painting equipment, jitterbugs, and deck grinders. The increment for overtime hours will be two dollars (\$2.00) per hour.

The new Rule 17.04 proposed by the Union would separate out spray painting from Rule 17.03 and then provide a \$2.25 per straight time hour premium in one hour increments while using spray painting equipment. The rate for overtime would be \$4.50 per hour.

With respect to new Rule 17.05 the Union's proposal would provide that:

If a qualified OS is assigned to a billet which requires he or she to don bunker gear and serve on a fire team, the OS will be paid at the AB wage rate. . . .

The Employer opposes the creation of these two new rules.

In support of its position for new Rule 17.04 the Union points to Section 21.02 of the BC Ferries Agreement which does provide a \$2.25 per hour premium for employees engaged in spray painting. That provision does not indicate that the BC Ferries provides any premium for the use of chipping hammers, scrappers, wire brushes, jitterbugs, or deck grinders as does the WSF Agreement. I note that Lynda Ruhl, the Business Agent for the BC Ferry and Marine Workers Union, was called as a witness by the Union but was not asked about this provision. Additionally Ronald Bunich who works in shoregang maintenance at WSF testified that several of the other pieces of equipment presently listed in Rule 17.03, such as the jitterbug and deck grinder, present hazards to the user of that equipment somewhat on a par with the use of spray painting equipment. Here the Union is asking for a premium which is more than twice as much as the premium provided by WSF to employees using this other equipment.

Based on all of the foregoing I find that the most reasonable offer is the Employer's offer not to implement the new Rule 17.04 as proposed by the Union.

With respect to the Union's proposal regarding Rule 17.05, I note that when the requirement to wear bunker gear, including the respirator mask was imposed, certain employees were excused from this requirement because they were unable to get a proper seal when donning a respirator mask. However, these employees, who became known as OS exempt, were not provided with a lesser wage rate. Therefore, it does not seem reasonable to now provide OS employees who don bunker gear, including a respirator mask, additional pay.

The fact that WSF agreed to provide wipers who don bunker gear and serve on a fire team the higher oilier wage rate does not require a contrary result. I note that there is

no evidence in the record indicating the basis upon which MEBA and WSF determined to include this provision in their Agreement

Based upon the foregoing, I find that the Employer's offer not to implement the new Rule 17.05 is the most reasonable offer.

5. Rule 1.27 – Early Call-out [New Definition] and Rule 10 – Minimum Monthly Pay and Overtime

Presently, Rule 10.03 provides that employees called to work prior to commencing their regular scheduled shift shall receive the overtime rate of pay in increments of one hour for early call-out. The Union proposes to add to this language the following:

All early callouts exceeding two (2) hours shall be paid a minimum of eight (8) hours pay at the overtime rate.

Additionally, the Union proposes a definition of early call-out in Rule 1, Definitions. That definition would be similar to the language which presently appears in Rule 10.03 but it would further provided that an early call-out shall not be more than two hours.

The Employer proposes no new definition of early call-outs to be placed in Rule 1, Definitions. However, the Employer proposes to add a new sentence at the end of Section 10.03 which would provide:

All call-outs exceeding four (4) hours shall be paid a minimum of eight (8) hours pay at the overtime rate.

The Union contends that over the past several years, the Employer has developed a practice that when an employee calls in sick or can't come to work for some other

reason, the Employer will holdover an employee from the prior shift for four hours and then make an early call-out of an employee on the following shift. The result is that a relief employee, or an on call employee loses an opportunity to work a shift.

Teri Hafie is the Operations Crew Research Manager for WSF and has held that position for five years. In that position, Ms. Hafie oversees the 24 hour operations center and the dispatch center. Captain Andrew Williams is the South Region Port Captain of WSF. However, due to the fact that Captain Saffle has returned to the fleet from his former position of Operations Center and HR Captain, Captain Williams has been overseeing dispatch, the movement of vessels, and employee issues. In this position, he also supervises Teri Hafie. Both Hafie and Williams testified that there has been no change of practice such as that alleged by the Union. Based on this testimony, I find that the evidence does not support the Union's claim of a change in practice regarding early call outs.

The Employer's offer is the most reasonable offer.

6. Rule 1.28 Terminal Lead Person [New Definition] and Appendix B, Rule 5 – Terminal Part-time and On Call Employees [New Rule]

The Union proposes a new rule which would be Appendix B, Rule 5.03 and would provide as follows:

When the Terminal Supervisor is not available, there will be a Terminal Lead Person designated to handle necessary duties normally done by the Terminal Supervisor. Compensation of pay, an extra \$5.00 more an hour to their salary.

The Employer opposes the change proposed by the Union.

There are several hours each day, depending upon the terminal involved, in which bargaining unit members working at the terminals are working without the presence of a Terminal Supervisor. Karen Paterson is an Auto Ticket Seller at Kingston. She testified that the Terminal Supervisor shifts run 10 to 12 hours but that ferry boats will be coming in and out of a terminal in the early morning hours or in the evening hours when a shift supervisor is not on duty. Paterson testified that if a problem arises when a shift supervisor is not on duty, she or other fellow employees will handle the problem. The Employer maintains an Operations Department that is staffed with Operation Supervisors 24 hours a day, seven days a week, 365 days a year. Paterson testified that if a problem does arise that cannot be resolved by the senior staff, in the absence of a Terminal Supervisor, she or other staff members can contact the Operations Supervisor who can provide them with assistance and, if necessary, contact the appropriate person who should be dealing with the problem.

I agree with the testimony of Paterson that it would be helpful to have a designated person to deal with problems which may arise in the absence of a Terminal Supervisor. Also, as Paterson explained, if a problem arises, the staff still have to do their immediate job as well as call and, if necessary, stay in touch with the Operations Supervisor at the Operations Center.

There are three pay rates with respect to Terminal Employees as of July 1, 2008. First, the rate for Auto Ticket Seller and Passenger Ticket Seller is \$23.83. Secondly, the rate for Auto Ticket Taker and Passenger Ticket Taker is \$21.37 and third, the rate for the Terminal Watch/Attendant is \$20.46. The average of those three rates is \$21.89. A

\$5.00 an hour increase as a lead would amount to a lead premium of almost 23% over the average rate received by terminal employees.

The Union analogized its proposal for creating a Terminal Lead to the AB Bos'n. However, I note that as of July 1, 2008 the AB Bos'n made \$25.17 while the AB made \$23.92 for the difference of \$1.25, resulting in a 5.2% premium for the AB Bos'n over the AB.

It may well be that it would be appropriate to establish a Terminal Lead position but the rate proposed by the Union is excessive.

Therefore, I find that the Employer's offer of no Terminal Lead position is the most reasonable offer.

7. Rule 7 – Crew Requirements

The Union proposes to man the Steilacoom Class Boats with two AB's and two OSs, and also proposes the addition of an OS for the Hiyu so that the required manning would include two OSs. The Steilacoom Class, according to the Union, consists of the Steilacoom II, which is not owned by WSF but is leased from Pierce County and a second boat named the Christine Anderson. As I understand it, the Christine Anderson is not presently being used by WSF but the Union believes that it may be used by the WSF in the future. Presently the Steilacoom II is manned with two AB's and two OSs. WSF has proposed to the Union a Letter of Understanding providing for the Steilacoom II to be manned with two ABs and two OSs. This memorandum has not been signed by the Union, apparently because it does not include the Christine Anderson.

During the course of the testimony regarding crew requirements, the parties realized that there were in effect here two separate impasse items; mainly, the manning of the Steilacoom Class and the staffing of the Hiyu. During a discussion between the Arbitrator and counsel, I determined that I would resolve this matter as two separate impasse items. There is, however, one common thread regarding both of the Union proposals here and that is that the Union wants to insure that for firefighting purposes, there is sufficient manning to meet the two-in two-out rule. This rule was described by Union witness Jay Ubelhart as follows:

Two-in two-out is just – it's just you learned it in fire school. It's just whenever you have a structural fire, in particular when you're on the inside, two people bunker up and have to make entry into a space. And you're not supposed to even consider it unless you have two outside. Two go into the space, two go outside that could help feed hose or whatever, but be in constant communication in case things go sour and they have to rescue you or come in. (Tr. Vol. I, pg. 104.)

With respect to the Steilacoom Class, it appears that the Employer is already willing to meet the Union's proposal regarding the Steilacoom II as it has offered in writing to do so. With respect to the Christine Anderson, that boat is not presently in use by the WSF. Based on the foregoing, I find that the Employer's rejection of the Union's proposal is the most reasonable offer.

With respect to the Hiyu, the present Coast Guard Certificate of Inspection lists the following:

1 Master & 1st Class pilot
2 Able Seamen/ROANW
1 Ordinary Seaman
1 Lic. Engr.
(Employer Exhibit No. 19.)

Thus, there would be available for the two-in and two-out rule, the Licensed Engineer, the two AB's and the OS.

Based on all of the foregoing, I find that the Employer's offer of no change in crew staffing on the Hiyu is the most reasonable offer.

8. Rule 18 - Vacations

The Union proposes that for year one of the biennium there should be an additional day of vacation after 15 years, after 18 years, and after 22 years. With respect to the second year of the biennium, the Union would add an additional day of vacation after 24 years, after 26 years, and after 30 years. With respect to its biennial proposal, the Union makes the same proposal with one exception and that is it does not propose in the second year of the biennium an additional day of vacation after 24 years.

The Employer proposes no change in the vacation schedule for either year of the biennium.

A review of Arbitrator John Byrne's arbitration decision regarding the 2005-07 biennium, as well as my decision regarding the 2001-03 and 2003-05 bienniums, indicates that vacation accrual was considered on a biennial basis.

It is true as the Union points out that the vacation accrual schedules at the BC Ferries and at AMHS are more generous than those presently available to IBU members at WSF. However, I note that AMHS has actually been reducing its vacation accrual benefit. Thus, employees hired prior to April 1, 1985 had a more generous vacation accrual benefit than employees hired after April 1, 1985. Furthermore, employees hired on or after July 1, 2008 have a vacation benefit significantly reduced from that earned by

employees hired on and after April 1, 1985. Additionally, IBU represented employees at WSF have a more generous vacation benefit than do employees at Black Ball and Golden Gate.

Additionally, I note that the IBU represented employees received a substantial vacation increase during the 2001-03 biennium. While that biennium began more than seven years ago, the Award was not made until the issuance of my decision on September 9, 2005. Furthermore, in his decision issued in August of 2006, Arbitrator Byrne noted at page 24 that:

[M]uch of the hearing was focused on the problems involved in scheduling and using vacation that has already accrued.

I also note that during the 2001-2003 biennium, IBU represented employees were not awarded any additional increases beyond the 3.7% the legislature had provided for the first year of the biennium. In this regard, I sustained the Employer's proposal for no additional increase in either the first or second year of the 2001-03 biennium. In the instant case, employees will receive an 8.4% increase over the biennium, not counting the affect of compounding.

The Employer points to the fact that IBU represented employees have the most generous vacation benefit of any employees in the state. I agree with the Union that if internal comparisons are to be considered, it is most appropriate to consider employee groups that have been given the opportunity to proceed to interest arbitration. However, even if one limits the consideration of vacation benefits to employee groups at WSF entitled to interest arbitration, it is clear, from a review of Employer Exhibit No. 27, that

the IBU represented employees enjoy a significantly more generous vacation benefit than do other WSF employee groups entitled to interest arbitration.

Based on all of the foregoing, I find the Employer's offer of no change to vacation benefits to be the most reasonable offer.

9. Rule 25 – Maintenance and Cure

Presently maintenance is set at the rate of \$35 per day. In addition, the Employer is also obligated to pay a wage supplement of \$30 per day. The Union proposes to raise the wage supplement from \$30 per day to \$48 per day, for a total of \$83 (\$35 + \$48).

The Employer proposes no increase in maintenance and cure.

The Union placed in evidence a chart (Union Exhibit No. 14) indicating that five employers, namely Black Ball, Brusco, Foss, Manson, and Skagit provide a maintenance and a supplemental benefit which averages \$68.00. WSF is already paying \$65 which is much closer to this average than the total of \$83 in the IBU proposal. Furthermore, Arbitrator Bryne provided the \$30 wage supplement during the arbitration of the 2005-07 contract. Here, just a few years later the Union is seeking an additional \$18.00 increase in the supplemental wage, which is an increase of 60%.

Based on all of the foregoing, I find that the Employer's offer of no change to maintenance and cure is the most reasonable offer.

10. Rule 36 [New Rule] – Additional Union-Sponsored Defined Contribution

Retirement (401k) Plan

The Union proposes a new rule which would read as follows:

The Employer agrees to deduct salary deferrals from the wages of each of its eligible employees who authorize the deduction in writing in amounts allowed by the Plan which do not exceed legal limits, in accordance with the Plan Document governing the Inlandboatmen's Union of the Pacific National 401(k) Plan on behalf of the employee, and the Employer will transmit the salary deferrals so deducted to the IBU National 401(k) Plan on a monthly basis. (Joint Exhibit No. 6, pg. 47.)

The Employer opposes establishing this new rule.

Jerry Holder is the labor negotiator for the labor relations office of OFM. Holder testified that the State of Washington takes the position that there is only one available pension plan, which is the plan provided for by the State of Washington for all employees. Holder testified that the State of Washington has not, for any bargaining unit, offered any additional plans.

With respect to this matter, I find that internal equity is a relevant consideration. Additionally, the Union has not provided any justification for why unit employees need the opportunity to have available the additional plan sought by the Union.

Based on all of the foregoing, I find that the Employer's offer of no change is the most reasonable offer.

11. Appendix A, Rule 5 – Relief Deck Employees

Presently Appendix A, Rule 5.02 provides that there shall be a minimum of 40 deck department AB relief personnel and six OS relief personnel to provide relief coverage for the positions within the system. Presently there are nine OS relief personnel working for the WSF. The Union proposes to change Rule 5.02 so as to require ten OS relief personnel.

The Employer proposes to remove the requirement for a specific number of AB and OS relief personnel and instead substitute the following language:

The numbers of relief AB and OS personnel shall be determined by the Employer, based on operational needs.

During the hearing Dennis Conklin explained that the parties negotiated a new vacation bid system with respect to the 2005-07 collective bargaining agreement. Conklin further explained that under the new vacation bid system employees are guaranteed so many slots off per day for vacation and that there is a maximum of 50 slots. When a deck employee uses one of these vacation slots his or her shift is filled by a deck relief employee.

Additionally, Arbitrator Bryne awarded a Union proposal providing for the dispatch of relief personnel by seniority. In his decision, Arbitrator Bryne recognized that his decision in this regard was a "major change." He therefore directed that the parties "work together to make sure the change is correctly implemented within a reasonable amount of time. (Employer Exhibit No. 61, pg. 44.)

The parties did negotiate two addenda, Addendum H, entitled, "Regarding Deck Dispatch Rules by Seniority," which, among other things recognized the shortage of OS relief positions and provided that WSF agrees to have three permanent year around OS relief positions for a total of nine, commencing January 1, 2008 through the end of that biennium, namely June 30, 2009. Addendum H also established a pilot program for the dispatch of relief and on call employees for a three month test period. That pilot program is contained in Addendum I (also referred to as Attachment A) and is a detailed program set forth over five single spaced pages.

Addendum H at Section 3.2 provides as follows:

At or near the end of the 2007 Summer Schedule, the Parties will meet to determine whether the process outlined in Attachment A shall continue in effect as currently configured. If either Party desires to modify the test process, the Parties will meet and bargain suggested changes in the process until such matters are resolved. Until final resolution, Attachment A shall remain in effect. (Joint Exhibit No. 3, pg. A-40)

Conklin testified that the parties did meet after the summer of 2007 and agreed to keep Addendum I, the pilot program, in effect. Steven Rodgers is the Employer's Director of Operations. He testified that the Employer wanted to be able to review the number of relief positions and establish those positions based upon operational needs, keeping in mind the vacation schedules of deck employees. He testified that increasing the number of positions, such as OS reliefs, reduces the flexibility available to the WSF. In this regard, he pointed to the fact that under the Agreement no other class of employees is subject to a minimum employment requirement. However, there has been a long history of bargaining over the minimum number of deck relief positions going back to at least what the parties refer to as the Morvan Agreement (Morvan), which was entered into in June 1997. Morvan provided at Section 3.4 for nine additional year around and one summer IBU deck relief position for a total of 31 year around and four summer IBU deck relief positions. Finally, I note that Appendix A Rule 5.02 does provide:

In the event of a significant reduction of service caused by legislative restrictions or budget cuts, the issue of the numbers of relief will be reopened.

In view of the foregoing, I find that the Union's offer of ten OS personnel is the most reasonable offer.

12. Appendix A, Rule 6.03 – On Call Deck Employees

The Union has proposed various changes to this rule. The Union did not contend that these changes should be separately considered as an impasse item. I find, in agreement with the Employer, that the proposed changes to Appendix A, Rule 6.03 should be considered as one impasse item.

I have listed each of the Union's proposed changes below:

1. Presently the first sentence of Appendix A, Rule 6.03(5) provides as follows:

Acceptance/Refusal of Work. WSF Dispatch must give On-Call Deck employees a minimum of fifteen (15) minutes to respond to a page or message left on a message or answering machine before marking that employee as failing to respond, which shall constitute a refusal of offered work, unless that employee accepts a shift later that day. (Joint Exhibit No. 3, pg. A-11.)

The Union proposes to remove the period after the word "day" and add the phrase "or in the work period."

2. Appendix A, Rule 6.03(5) also provides:

Employees may not refuse more than two (2) times within a work cycle during the summer schedule, and not refuse more than three (3) times within a work cycle during the remainder of the year; . . . (Joint Exhibit No. 3, pg. A-11.)

The Union proposes to strike the limit of three refusals within a work cycle during the non-summer schedule.

3. Presently Appendix A Rule 6.03(5) provides as follows:

When dispatch cannot fill positions by calling on call employees and making offers, they will then have the right to assign an on call employee to vacancies within their thirty-five mile zone by assigning the least senior employee contacted. The employee will not have the right to refuse the assignment. (Joint Exhibit No. 3, pg. A-11.)

The Union proposes to change the 35 mile zone to a 25 mile zone and further proposes to add an additional sentence after the word in subsection 5, "assignment," which would provide as follows:

The assigned employee would be paid travel time and mileage.

4. Presently Appendix A, Rule 6.03(6) provides as follows:

An employee who refuses work outside a thirty-five (35) mile radius as described in Schedule A of the contract from the employee's designated home terminal shall not be considered unavailable. (Joint Exhibit No. 3, pg. A-12.)

The Union would remove the 35 mile radius and instead proposes that an employee who refuses work more than 25 miles or more than 45 minutes of travel time from the employee's designated home terminal shall not be considered unavailable.

5. Finally, the Union proposes what is in the nature of a housecleaning amendment which provides that the rule regarding refusals would only apply between June 10 to September 25 for the summer season. As Dennis Conklin explained, if the Arbitrator were to grant the Union's proposal, on call deck employees would have an unlimited right to refuse work outside the summer season and this amendment merely makes clear the exact dates which constitute the summer season.

I have carefully reviewed the testimony of Dennis Conklin regarding the reasons for the various changes the Union has proposed to Appendix A, Rule 6.03(5) and (6) and

am sympathetic to the Union's concerns. I have also carefully reviewed the testimony of Teri Hafie, whose responsibilities include overseeing the 24 hour operations center and the dispatch center. Regarding the Union's first proposed change, Hafie testified that dispatch must call by seniority each on call employee. Since employees have four free days in a 14 day work period it is possible that the on call employee, by working on a free day, would be able to work a full work cycle of 10 days. However, the discretion would be left to the employee on which one of those work-free days he or she would accept an assignment. Furthermore, as Hafie explained, this change in the refusal procedure might well result in a situation where on a particular day, no on call accepted an offered assignment and the assignment would have to be filled on an overtime basis.

Hafie testified that keeping track of refusals is a significant factor in assuring that a sufficient number of on calls accept assignments so that shifts that do become vacant can be filled. Therefore, she explained that removing from WSF the right to track refusals outside the summer season would be harmful to the dispatch system. In this regard, Hafie pointed to the fact that a great deal of training is done during the winter season and there is a need for on call employees during this period of time. Furthermore, she pointed out that dispatchers are still obligated to offer assignments by seniority to on call employees in the winter as well as during the summer season.

With respect to the Union's proposal to reduce from a 35 mile radius to a 25 mile radius or more than 45 minutes of travel time regarding an employee's ability to refuse work, I note Employer Exhibit No. 47 prepared by Hafie. In that exhibit, Hafie reviewed Schedule A at page A-51 of the Agreement, which sets forth the number of terminals to which an employee can refuse an assignment without having a refusal recorded under the

present system as compared to that number if the 25 mile rule were put in place. Hafie did not in her testimony, nor does the exhibit, indicate if any additional terminals would be included if Hafie had also considered the 45 minute travel time limit.

There are 15 home terminals listed on Employer Exhibit No. 47.² Presently, for example, if an employee's home terminal is Bremerton that employee could be assigned to any of 10 other terminals by the Employer and his or her failure to accept that assignment would result in a refusal. However, under the Union's proposal, that number would drop to four terminals in which a failure to accept an assignment would result in a refusal. Two home terminals, namely Port Townsend and Keystone, presently have only two home terminals available within the 35 mile limit, which are Mukilteo and Clinton. These would be eliminated if the limit were reduced to 25 miles. Presently there are 87 home terminals available for assignment from the 14 home terminals. This figure would be reduced by 28 under the Union's proposal, which would amount to approximately a 1/3 reduction in the number of available home terminals for which a failure to accept an assignment would result in a refusal.

The additional proposal that assigned employees will be paid travel time and mileage would have a significant budget impact as Hafie testified.

Finally, it must be remembered that I have agreed to a significant increase regarding the entry level rate which will affect a significant number of on call deck employees.

² I note that Schedule A actually lists 16 home terminals. One terminal, Akwa, is not listed on Employer Exhibit No. 47 and I can find no reference to Akwa anywhere else in the record. Additionally there is no change to Anacortes as all other home terminals are outside the 25 mile radius. Thus, there are 14 home terminals possibly subject to change pursuant to the Union's proposal

Based on all of the foregoing, I find that the Employer's offer of no change is the most reasonable offer.

13. Appendix B – Terminal Department, Rule 1.05 – Filling of Vacancies Year

Around Positions

Presently, Rule 1.05(D) provides as follows:

Assign the most senior part-time/on call employee within the Terminal Department to the year around position, provided that no employee shall be compelled to accept an assignment based more than twenty-five (25) miles or more than forty-five (45) minutes of travel time, from his or her home terminal. (Joint Exhibit No. 3, pg. A-16.)

The Union proposes to strike the words "his or her home terminal" and substitute the words "the terminal closest to their residence."

The Employer proposes no change to this Rule.

Both parties agree that an on call employee in the Terminal Department after anywhere from four to six years will be located at the home terminal of his or her choice. This is because of the fact that bidding takes place system wide twice a year by seniority and after four to six years an on call employee will have enough seniority to bid for the terminal he or she prefers.

The question here is what happens when a year around position becomes available. If the year around position that becomes available is much further from an employee's residence than the terminal he or she has been working at as a senior on call employee but is still within the 25 mile and 45 minute limit, the choice is either to accept that year around position or remain as an on call employee.

Mr. Rodgers testified that an on call employee may decline to take the year around assignment and remain on call until another year around assignment becomes available. Furthermore, as Senior Terminal Manager Douglas Schlieff testified, where a person chooses to live is within their control and not within the control of WSF. Further as Schlieff testified, many on call employees choose to work at a terminal that may not be the closest to their residence for various reasons, none of which are under the control of the Employer, but rather are under the control of the employee through the bid system.

Based on all of the foregoing, I find that the Employer's offer of no change is the most reasonable offer.

14. Appendix C – Information Department, New Rule 6 – Parking Permits

The Union proposes the following new rule:

Information Web Agents will be provided parking at their place of employment.

Presently there are three Information Web Agents who work at the WSF office located at 2901 Third Avenue in Seattle. They work overlapping shifts which begin at 4:30 a.m. and end at 10:00 p.m. They are provided, presently, with parking permits in the building in which they work at no cost to each of the three employees. According to Denise Heay these parking permits were provided to them to assure their safety since they have to come to and leave work at hours in which the streets are relatively deserted.

Heay also testified that it was her understanding that management employees were going to be losing their parking permits and that the Information Web Agents were told that they would also be losing their parking permits. Ms. Heay did not supply any

details in her testimony regarding who in management so informed her or when such an action might occur. Ms. Heay testified that if Information Web Agents lost their parking permits they would have to pay \$218 a month each to park in the building in which they worked.

The proposed new rule does not set a limit on the number of parking permits. In this regard, I note that Ms. Heay testified that there was under consideration the hiring of a fourth Information Web Agent.

Counsel for the Employer stated that the Employer intends to have all three Information Web Agents continue to receive the parking permits as long as WSF remains at its present address. However, Mr. Slown also pointed out that WSF had changed offices twice in the last 10 years and it is possible that it might move the office to an area where safety was not a concern. In any event, as Mr. Slown also pointed out, the practice of providing the three parking permits is a mandatory subject of bargaining and if the Employer intended to change that practice, the Employer would have to bargain about that matter.

In view of all of the foregoing, I find that the Employer's offer of no change is the most reasonable offer.

15. Rule 19 – Seniority and Assignments

Presently Rule 19.01 provides as follows:

The Employer recognizes the principle of seniority in the administration of promotions, transfers, layoffs and recalls. The Employer shall dispatch Relief and On call bargaining unit personnel to all open positions throughout the fleet by seniority. In the application of seniority under this Rule, if an employee has the necessary qualifications and ability to perform in accordance with the job

requirements, seniority by classification shall prevail. (Joint Exhibit No 3, pg. 25.)

The Employer proposes to strike the phrase "Relief and" in the second sentence of this provision. Additionally, immediately before the last sentence of this provision the Employer would insert the following sentence:

Relief AB and OS personnel shall be dispatched by the Employer based on operational needs."

The Employer also proposes to eliminate Addendum H and I.

The Union proposes no changes to Rule 19.01 or to Addendum H and I.

Arbitrator Byrne granted the Union's proposal that relief employees be dispatched by seniority. In granting the Union's proposal, Arbitrator Byrne stated:

The demand was backed up by testimony of deep dissatisfaction from current relief ABs who believe that they are assigned the leftovers after the less senior on-calls have first choice. The Union's presentation established that there is a clear problem that is making the relief position – despite the 80 hour guarantee and the travel time – less desirable than it was. (Employer Exhibit No. 61, pg. 42.)

Captain Williams testified that prior to the Byrne decision, the main factors used in dispatching reliefs were the needs of WSF and the proximity of the employee to the assignment, although seniority was considered by dispatchers where possible. Captain Williams testified that under the previous system of dispatching reliefs there was always a feeling or perception among reliefs that one was getting better treatment than the other, and that the introduction of dispatching reliefs by seniority has improved the situation where reliefs now feel they are "getting a fair shot at the work." (Tr. Vol. IV, pg. 545.)

In granting the Union's proposal to dispatch reliefs by seniority Arbitrator Byrne concluded as follows:

The decision regarding seniority is a major change. It may take dispatch time to adjust. It may also require alterations in how employees learn what is available. The Employer is allowed a reasonable time to work out the practicalities of the decision. The parties are directed to work together to make sure the change is correctly implemented within a reasonable amount of time. (Employer Exhibit No. 61, pg. 44)

As described under Issue No. 11, Relief Deck Employees, the parties did bargain extensively and came up with a detailed plan for handling the dispatch of reliefs by seniority. This detailed plan, referred to as Attachment A, and also as Addendum I, was put into place beginning with the start of the 2007 summer schedule.

As described at Issue No. 11, the parties agreed that if either party desired to modify the process after the end of the 2007 summer schedule, the parties would meet and bargain suggested changes in the process until such matters were resolved, and that until final resolution Attachment A would remain in effect.

The Employer wants to eliminate the dispatch of reliefs by seniority because it has raised travel time and mileage costs. The Employer has informed the Union that it is not satisfied with the process of dispatching reliefs by seniority. The parties have engaged in bargaining in an attempt to meet the Employer's concerns but have failed so far to reach agreement.

Captain Williams testified that under WSF and Masters Mates and Pilots Union (MM&P) Agreement, the Employer is required to dispatch relief employees by seniority. Furthermore, the Employer and the MM&P have bargained a process for awarding travel

time that is satisfactory to the Union and keeps costs sufficiently in check to satisfy the Employer.

Adopting the Employer's proposal at this time would, at the very least, be premature.

Based on all of the foregoing, I find that the Union's offer of no change is the most reasonable offer.

AWARD OF THE INTEREST ARBITRATOR

The Award of your Interest Arbitrator with respect to each of the 15 issues discussed in the attached Opinion is as follows:

1. Rule 17.01 – Wages, the General Wage Increase

I find that the Union's offer of a 4.2% wage increase effective July 1, 2009 and a 4.2% wage increase effective July 1, 2010 are the most reasonable offers and are awarded.

2. Rule 17.01 – Wages, Additional Targeted Classification Increases

I find that the Employer's offer of no additional wage increase for each of the Union's proposed targeted classification increases to be the most reasonable offer and is awarded.

3. Rule 17.02 – Entry Level Rates

I find that the Union's offer of a two tier system with the lower tier employees receiving a wage rate of 85% of the full-time journey wage until the employee has worked 1,040 straight-time hours is the most reasonable offer and is awarded.

4. New Rule 17.04 Relating to the Use of Spray Painting Equipment and New Rule 17.05 Relating to Assigning OSs to Don Bunker Gear

I find that the Employer's offer not to create a new Rule 17.04 or Rule 17.05 is the most reasonable offer and is awarded.

5. Rule 1.27 – Early Call-out [New Definition] and Rule 10 – Minimum Monthly Pay and Overtime

I find that the Employer's offer to provide that all call-outs exceeding four hours shall be paid a minimum of eight hours pay at the overtime rate is the most reasonable offer and is awarded.

6. Rule 1.28 Terminal Lead Person [New Definition] and Appendix B, Rule 5 – Terminal Part-time and On Call Employees [New Rule]

If find that the Employer's offer not to create a terminal lead position is the most reasonable offer and is awarded.

7. Rule 7 – Crew Requirements

I find that the Employer's offer of no change in crew manning to be the most reasonable offer and is awarded.

8. Rule 18 – Vacations

I find that the Employer's offer of no change to the vacation accrual benefit to be the most reasonable offer and is awarded.

9. Rule 25 – Maintenance and Cure

I find that the Employer's offer of no change to maintenance and cure is the most reasonable offer and is awarded.

10. Rule 36 [New Rule] – Additional Union-Sponsored Defined Contribution

Retirement (401k) Plan

I find that the Employer's offer not to provide an additional retirement plan to be the most reasonable offer and is awarded.

11. Appendix A, Rule 5 – Relief Deck Employees

I find that the Union's offer of ten OS relief personnel to be the most reasonable offer and is awarded.

12. Appendix A, Rule 6.03 – On Call Deck Employees

I find that the Employer's offer of no change with respect to this rule to be the most reasonable offer and is awarded.

13. Appendix B – Terminal Department, Rule 1.05 – Filling of Vacancies and Year Around Positions

I find that the Employer's offer of no change with respect to this rule to be the most reasonable offer and is awarded.

14. Appendix C – Information Department, New Rule 6 – Parking Permits

I find that the Employer's offer not to add this rule to the Agreement to be the most reasonable offer and is awarded.

15. Rule 19 – Seniority and Assignment

I find that the Union's offer of no change to Rule 19.01 or Addendum H and I to be the most reasonable offer and is awarded.

Dated: September 20, 2008

Seattle, Washington



Michael H. Beck, Interest Arbitrator