ARBITRATOR'S INTEREST AWARD

I. PROCEEDINGS

MATTER:	Interest Arbitration, by and between State of Washington (for WSP), and Washington State Patrol Lieutenants Association (WSPLA) In re: 2015-2017 CBA Negotiation
HEARING:	August 26; 27; 28; and 29, 2015 Offices of the Attorney General, Room N485 Tumwater, WA
TRANSCRIPTS:	Received September 3, 2014 Byers and Anderson, Inc: Botelho
HEARING CLOSED:	Post Hearing Briefs Received September 15, 2014
DATE OF AWARD:	October 1, 2014
ARBITRATOR:	Michael G. Merrill, JD PO Box 1121 Renton, WA 98057
REPRESENTING STATE:	Susan Sackett DanPullo, Assistant Attorney General, WSBA 24249 Kari Hanson, Assistant Attorney General, WSBA 24206
REPRESENTING WSPLA:	Leann Paluck, Lombino and Martino PS, WSBA 25225
WITNESSES APPEARING FOR STATE	Karl Nagel, Labor Negotiator, OFM/LR Elliot Susseles, Sr. VP Segal Co Richard Pannkuk, Sr. Budget Analyst, OFM Cheri Keller, Budget Analyst, OFM Melinda Aslakson, Compensation Analyst, OFM/HR Robert Maki, Budget/Fiscal Services Div Cmndr, WSP Cpt. Jeff DeVere, HR Div, WSP Asst. Chief Christopher Gundermann, Invst. Servs Bur. Cmndr, WSP
WITNESSES APPEARING FOR WSPLA	Cpt. Wesley Rethwill, WSP Cpt. Marc Lamoreaux, WSP Lt. Ronald Mead, WSP Lt. E.J. Swainson, WSP

II. EXHIBITS

JOINT

J-1 PERC Certification to Interest Arbitration, Case #26674-I-14-0660
J-2 RCW 41.56.473
J-3 RCW 41.56.475
J-4 WA State Government Org Chart
J-5 WSP Org Chart
J-6 Chief John Batiste Bio
J-7 WSP "About Us"
J-8 WSP Mission, Vision, Values, Goals
J-9 And Parts (a) - (i) Field Operations Individual District Overviews, w/ Patrol Area Map
J-10 And Parts (a) - (b) Investigation Services Bureau and SOD/HSD Division Overviews
J-11 And Part (a) Forensic Lab Services Bureau and IDS Overviews
J-12 And Part (a) Commercial Vehicle Enforcement Bureau Overview, w/ Regional Map
J-13 State Fire Marshal Bureau Overview
J-14 Technical Services Bureau Overview
J-15 HRD -- Total Number of WSP Employees and Assignments
J-16 CBA: State of Washington and WSPLA, Effective 7/1/13 through 6/30/15

UNION

U-1 WSP Org Chart
U-2 WSPLA Historic Base Rate Increase Data
U-3 [Not Admitted]
U-4 Comparison of 2012 Segal Survey with 2014 Segal Survey
U-5 Increases to Base Pay Required to Reach 95/105% Competitive Status
U-6 WSP Wage Spreads, Commissioned Employees
U-7 News Tribune Charts for 2012 and 2013 WSP Commissioned Employee Salaries
U-8 [Not Admitted]
U-9 [Not Admitted]
U-10 OFM Fiscal Report, re WSP, 5/14
U-11 [Not Admitted]
U-12 WSP Operating Budget Request for 2013-15 Biennium
U-13 [Not Admitted]
U-14 Transportation Forecast Revenue Council, June 2014 Forecasts Summary Report
U-15 WSP Time and Activity System Activity Codes List and Sample
U-16 Supervisory View Sign Out Sheet Sample
U-17 WSP and WSPTA CBA, 2013-15
U-18 OFM Travel Policies (Lodging Section)
U-19 Final WSPLA Negotiation Proposal to WSP, 8/25/14
U-20 Testimony Notes, Lamoreaux
U-21 Reandeau Grievance/Arbitration Docs (Paulson, 2009)

STATE
E-1 State's Final Proposal
E-2 Susseles Resume
E-3 Segal WSP 2014 Compensation Survey Results PowerPoint
E-4 ERI Location Cost Comparators Calculations, by State
E-5 Segal WSP 2014 Compensation Survey Executive Summary
E-6 Segal WSP 2014 Compensation Survey Results Full Final Report
E-7 OFM Guide to WA St Budget Process
E-8 Economic and Revenue Forecast Council, 6/17/14 Release
E-9 Economic and Revenue Forecast Council, 8/14 Revenue Update
E-10 OFM Budget Directive, 6/13/14
E-11 State Budget Update PowerPoint, 8/14
E-12 WSP Budget Information PowerPoint
E-13 OFM Costing Data
E-14 WSP Costing Data
E-15 WSPLA Salary Information
E-16 WSPLA Years of Service Information
E-17 Employer Proposal Art. 15
E-19 Reandeau Arbitration Decision (Axon, 2012)
E-20 Reandeau Transcript Vol. I
E-21 Reandeau Transcript Vol. II
E-22 Reandeau Memo, 10/21/10
E-23 WSPLA Unit Backfill List
E-24 WSPLA Historical Separation Data
E-25 WSPLA Unit Premium Pay Data
E-26 WSP Other 2014 Raises Data
E-27 WSP Regulaton Manual, re: Chief Hotline
E-28 Bargaining Proposal to WSPLA 7/23/14
E-29 Negotiation Notes, 7/23/14
E-30 RCW 40.01.040

III. CASE BACKGROUND and ARBITRATOR'S AUTHORITY

The Washington State Lieutenants Association ("WSPLA" or "Union") represents a bargaining unit of commissioned Lieutenants and Captains employed by the Washington State Patrol ("WSP" or "Employer" or "the State").[1] *J-16*. These parties are in the process of negotiating a successor Collective Bargaining Agreement ("CBA") for the 2015-17 biennium. The process is governed by statute, which directs interest arbitration of unresolved matters deemed to be at impasse. *RCW*

1 For purposes of collective bargaining the unit members are considered employees of the State, and the State is represented by the Governor or the Governor's designee, here the Labor Relations Division of the OFM. Brief of State at p.1, and RCW41.56.473

41.56.450; RCW 41.56.473; RCW 41.56.475.

Unable to reach agreement on a number of issues after bargaining in the spring of 2014, the parties submitted matters at impasse to mediation via the offices of the Washington Public Employment Relations Commission (PERC). On August 11, 2014 PERC's executive director certified 11 issues to be submitted to interest arbitration. *J-1.* Before or during the hearing the parties resolved all disputed issues except for the following:

Article 11 Holidays	
Section 11.4	Personal Holidays
Section 11.5	Holiday Credits
Article12 Vacations	
Section 12.2	Accrual of Vacations
Article 15 Other Leaves of Absence	
Section 15.7	Temporary Limited Duty and Long Term Limited Duty
Article 16 Personnel Files	
Section 16.3	Access to Personnel and Supervisory Files
Article 22 General Provisions	
Section 22.3	Residence Requirement
Article 26 Compensation	
Section 26.1	Wage Adjustment
26.3/26.4	Longevity Pay Lieutenants/Captains
26.7.E	Premium Pay
26.10	Clothing Allowance
New Article	
	Physical Fitness Incentive

J-1

The parties stipulated that relevant contractual and statutory authority was followed in the process leading to the interest arbitration stage and in their selection of the interest arbitrator, Michael Merrill. *TR 8-9.*

The Arbitrator acknowledges the following statutory dictates: RCW 41.56.430 provides in relevant part:

> (T)here exists a public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.

RCW 41.56.430

RCW 46.56.475 sets forth the mediation and arbitration process and establishes the role of the arbitrator and the extent of his authority. Of particular relevance to this process are the standards which an arbitrator is required to apply when settling disputes, notably the following in subpart (4):

> In making [his] determination, the [arbitrator] shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid [him] in reaching a decision shall take into consideration the following factors:
>
> (a) The constitutional and statutory authority of the employer;
>
> (b) Stipulations of the parties;
>
> (c) Comparison of hours and conditions of employment of personnel involved in the proceedings with hours and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;
>
> (d) Changes in any of the foregoing circumstances during the pendency of the proceedings; and,
>
> (e) Such other factors, not confined to the foregoing, which are normally and traditionally taken into consideration in the determination of matters that are subject to bargaining under RCW 41.56.473.

RCW 41.56.475

Accordingly, and with focus on the foregoing required considerations throughout, the Arbitrator convened the interest arbitration hearing in Tumwater, WA on August 26, 27, 28 and 29, 2014. The

hearing proceeded in an orderly manner. Both parties had opportunity to examine and cross-examine sworn witnesses, present documentary evidence, and make arguments in support of their positions. A certified written record of the proceedings was taken and copies provided to the parties and the Arbitrator. TR. At the close of the evidentiary hearing the parties agreed to present final arguments by written brief. Briefs were timely received and the hearing closed on September 15, 2014.

Following is the Arbitrator's analysis of each issue presented for interest arbitration and brought before him.

IV. ISSUE BY ISSUE ANALYSIS

Arbitrator's Introduction

The order of presentation begins with what the Arbitrator considers to be the single most pressing and salient issue before him: The Wage Adjustment issue in section 26.6. The included analysis of the state's financial condition of necessity will be referenced repeatedly throughout the remainder of the all the economic issues that will follow.

The Arbitrator at all points weighed the evidence, testimony, and arguments of the parties with great care and extended deliberation. The statutory dictates on the appropriate considerations were a constant touchstone, as required.

The Arbitrator notes by way of introduction that the majority of the issues before him were cost items. The reasons for this are natural and unsurprising, but this common situation invites explanation of the Arbitrator's common inclination with respect to “dividing the pie” (available monies for increase) among competing needs for increase or improvement when an economic situation sharply limits the size of that pie.

Where available funds are tight and needs are broad, that inclination is to toward maximizing increases in the wage category. Wage increases are most likely to benefit more broadly across a bargaining unit than are other more specific or limited improvements. The colloquialism “bang for the buck” applies here, and the best bang is often found in wages when faced with such broad needs. Other reasons specific to this case further militate toward this inclination – notably the seriously inferior competitive position of this unit – and will be more fully addressed.

Yet, as serious as the needs are shown to be, the cautious position of State budget resources prevents resolving competitive and other inequities fully in a fell swoop. Budgetary conditions are improved from the prior biennium(s), and economic recovery is ongoing, but it has been slow. But so dark have been past days that with clouds finally beginning to part it is beyond doubt that the need – to

say nothing of interest – for "catch up at last" is facing the State from multiple bargaining units, of which the WSPLA is only one.

While the Arbitrator might wish to resolve every need shown and address every competitive lag, in the face of the budgetary concerns shown by the State, the Arbitrator will not present such an unrealistic award to the Legislature. Issue-by-Issue discussion follows.

26.1 Compensation Wage Adjustment

Current Language

> **26.1** Effective July 1, 2013, all salary ranges and steps for captains and lieutenants of the WSP Commissioned Officer Salary Schedule that were in effect on June 30, 2012, as shown in Appendix A, will remain in effect until June 30, 2014. Effective July 1, 2014, all salary ranges and steps for captains and lieutenants of the WSP Commissioned Officer Salary Schedule that were in effect on June 30, 2013, shall be increased by three percent (3%) as shown in Appendix B, and will remain in effect until June 30, 2015.

WSPLA Proposal

> A. July 1, 2015 to June 30, 2016: Eleven percent (11%) increase of salary ranges and steps in effect on June 30, 2015 (Appendix A), with a minimum seventeen percent (17%) spread between corresponding Sergeant and Lieutenant steps and corresponding Lieutenant and Captain steps based on years of service (i.e. the spread is between Step A to Step A, etc).
>
> B. July 1, 2016 to June 30, 2017: Eleven percent (11%) increase of salary ranges and steps in effect on June 30, 2016 (Appendix A), with a minimum seventeen percent (17%) spread between corresponding Sergeant and Lieutenant steps and corresponding Lieutenant and Captain steps based on years of service (i.e. the spread is between Step A to Step A, etc).

State Proposal

> Effective July 1, 2015, all salary ranges and steps for captains and lieutenants of the WSP Commissioned Officer Salary Schedule that were in effect on June 30, 2015, shall be increased by three percent (3%) as shown in Appendix B, and will remain in effect until June 30, 2016. Effective July 1, 2016, all salary ranges and steps for captains and lieutenants of the WSP Commissioned Officer Salary Schedule that were

> in effect on June 30, 2016, shall be increased by three percent (3%) as shown in Appendix B, and will remain in effect until June 30, 2017.

Summary Position of the Union[2]

There is full support for the proposed wage increases. They are demanded on a competitive basis, as well as by equity, and are otherwise reasonable, affordable and sustainable.

The 2014 Segal Company salary survey was entered as an Employer exhibit, but was previously agreed to as a joint exhibit. As such, it becomes a stipulation of the parties, and per statute the Arbitrator is required to consider the stipulations of the parties. The full set of comparables in the survey must be considered by the Arbitrator.

These comparables show WSP is not competitive in salary – at any commissioned rank – in comparison to all other west coast state agencys and to the all other in-state agencies on an "overall" basis, as the Segal Company representative confirmed. Segal's defined and agreed-upon meaning of "competitive" is to be within the range of 95% to 105% of compared compensation.

The WSP was not competitive when the last survey was made for 2012-14 CBA bargaining, and it is not competitive now in the new survey. In some classifications and years-of-service, such as Captains with 10 or more years, the competitiveness has actually fallen since 2012. For others, such as Lieutenants at all stages, the wage disparity between WSP and even the 95% competitive status has simply been maintained since 2012. Where any gains are found at all, they are extremely small, such as the 2% increase toward competitiveness for Captains at years 15 and beyond. It is clear the State must increase the wages of lieutenants and captains in a meaningful way if it ever hopes to make improvements to its comparables and competitors.

Lieutenants are now less than 95% of the participant average at all years of service. In fact, in the 10-years of service and beyond, Washington Lieutenants are at a mere 77% of the combined participant average for all jurisdictions surveyed (state and local agencies). At the maximum salary level, comparing only with other state agencies, the WSP lieutenant maximum of $91,246 is $21,400 less than than the competitor average of $112,646. It is important to note that none of the 41 unit lieutenants have less than 10 years of service, and at that level and beyond the State is below market at by as much as 22% points.

Captains are little, if any, better off than Lieutenants according to the salary survey. For all pay

2 In summaries of party position the citations provided have been omitted.

steps other than the minimum entry and the 6-month step, Captains are not competitive. Importantly, there are no Captains with less than 15-year service, and when the full survey range is considered – all states, counties and cities – in years 15 and beyond Captains are not close to competitive. Rates are as low as 86% of competitor results. In fact, the maximum salary for a Captain ($102,862) is actually less than the maximum competitor salary for a Lieutenant ($108,867). Obviously the gap is even bigger when WSP maximum Captain rate is compared to competitors' maximum Captain rate: $102,862 to $122,102.

Overall, the WSP is basically one entire rank behind in pay for Lieutenant's and Captains when reviewing the participant average for all participants and just the state comparables. A significant adjustment is warranted and absolutely necessary.

The cost of those adjustments is reasonable, affordable and sustainable. The calculated aggregate cost of all WSPLA proposals is $2,996,141 (versus the State's $612,974.) The total WSP budget is $546.6 million, of which $393 million, or 72.2% is salary and benefits. The total cost of the WSPLA package is 0.548% of the current budget – even less when the budget is increased in the coming biennium. Even in the face of a budget cut, the total cost percentage of budget is fractional. Assuming a 15% budget cut in General Fund dollars, the total cost of the proposal is still 0.57% of a $525.8 million budget. When costs are sectioned to cover the expense of only the wage proposals, the cost of each 1% increase for the 2015-16 biennial is $102,162, or 0.0187% of the WSP budget. The state's own prediction of 8.3% budget growth shows that the State can afford much more than the 3% it has proposed annually.

In fact, WSP's CFO confirmed the agency ran a $12 million under-expenditure for the current biennium as recently as May, 2014, and at time of hearing was still maintaining an overall under-expenditure. The CFO testified he expects a “good under-expenditure” of $3 to $8 million at the end of this biennium.

The State's Operating Budget is comprised of three main sources: the General Fund, the Capital Budget, and the Transportation Budget. In addition, a Stabilization Fund can be used to transfer money to address shortfalls in any particular account. Adjusting existing programs, suspending them, or eliminating them can also produce budget savings, and these methods have been used in the past and may be used again. Even so, the General Fund is projected for 8.3% growth over the next biennium as the economy is recovering, which is expected to represent a $2.8 billion dollar increase in the General Fund.

Most of the WSP funding – 74.2% – is from the Transportation Budget. The pending State obligation to education funding is a General Fund expense, not a Transportation Budget expense. Further, the "15% reduction" budget direction only applies to the General Fund amounts, and will thus have limited impact on the WSP. Only 26.5% of WSP funding comes from the General Fund.

The Transportation Budget is further divided into its three component parts: The State Patrol Highway Account; the Motor Vehicle Account; and, the Highway Safety Account. The WSP historically moves funds between the accounts as necessary to cover shortfalls in any of them. Projections show that, in the aggregate, the three funds will continue to grow with positive net balances up to an including the 2021-23 biennium. This is also the case for the current biennium, ending in 2015: the three accounts funding the majority of the WSP budget are projected to end $48.049 million dollars in the black. And for the next biennium, the three funds are projected to end overall with $90.925 million in the black. Undoubtedly the money exists to cover the "budget dust" 0.548% budget amount of the WSPLA total proposal.

If the WSP does not improve its competitive position, the current recruitment and retention problems will continue and worsen. The hiring rate, measured by the number of successful hires for every 1,000 applicants, has fallen from 4.625% between 2006-10 to the current 1.4% rate. The low salaries paid by the WSP hurt recruiting ability, according to the Human Resources Captain responsible for hiring and recruiting. A survey commission by the WSP HR Division showed that "pay" is one of the issues considered most by job seekers in the each of the three decision areas considered: application; acceptance; or decline. Other issues made the lists, but "pay" was listed in all three areas. Website data confirms that the visitors spend most of their time in WSP's compensation page, and most often leave the site from the compensation page. WSP unilaterally increased cadet pay rates (non bargaining unit positions) by 14% in the last biennium to address the situation. The point has been reached where cadet quality is at risk, with the current classes now rating below historical average.

As a result of these problems, the number of WSP vacancies is up. Currently 92 field positions were vacant as of June, 2014. The WSP has had to add a special "fourth" cadet class in hope of filling these positions. The WSP has recently an award-winning cadet between class completion and end of the probationary period to another competing local law enforcement agency with higher pay rates. Attrition rates are also high, as are retirement rates (attrition is running at five per month with commissioned officers leaving for other jurisdictions). Compensation competitiveness must be increased to address these problems. Salary increases for WSP officers at the front and back ends are

needed to improve candidate hiring and reduce attrition.

The WSP has gone ahead and increased pay for certain non-represented employees during the 2013-15 biennium. Executive staffers were given 4% raises from the current budget appropriation. The Chief was increased 7%. Some civil service and WMS employees also received wage increases, at an average rate of 5.39%. Secretaries and exempt staff, along with special deputies, were also given 4% increases. The funds are available, and now the WSPLA unit needs increases as well.

The WSPLA goals are for the WSP to be competitive with its comparables and for the WSPLA unit to be consistent with wage adjustments made for the WSPTA. Two 11% increases will begin to address the former, and a 17% minimum spread proposal takes care of the latter.

The 17% spread proposal addresses the compression issues between ranks and avoids the negative impact of differing decisions at interest arbitration. The current average spread between Sergeant and Lieutenant is 16.4%; between Lieutenant and Captain is 14.1%; and from Captain to Assistant Chief is 17.1%. The proposed 17% spread place-holder is reasonable.

The competitive situation will not be fully repaired even by the WSPLA proposal, but the situation will be improved as it must be. For Lieutenants with 10 years of service or more, the raise required to reach the minimal 95% threshold is in a range of 9.02% to 12.5%, while reaching 100% of survey participant averages would take a range of 14.76% to 18.42%. The 11% request is well placed to reach points between 95% and 100%, leaning closer to the 95% minimum standard. For Captains with 15 years of service or more, the raise required to reach the minimal 95% threshold is in a range of 8.00% to 9.81%, while reaching 100% of survey participant averages would take a range of 13.69% to 15.59%. The 11% request is again well placed to reach points between 95% and 100%, leaning closer to the 95% minimum standard.

Any claim that the combined two 11% increases would reach beyond the point of necessary competitive adjustment must be tempered with the fact that the salary survey data is already out of date. The survey was effective as of January 1, 2014, and there is no data on what must be expected from the competitors between 2014 and 2016. It is highly unlikely these adjustment would propel the WSP to the front of the pack. More likely is simply to meet the competitive goal of between 95% and 105% of the competitive average. Pay equity with peers is a legitimate and worthy goal and will help attract and retain worthy applicants and officers. Accepting the WSPLA increase requests is vital in order to meet these goals.

Summary Position of the State

The compensation proposals at hand must be viewed in light of the State's financial situation with respect to all its budgets; that situation is fairly dire.

The State Office of Financial Management has asked State agencies to cut their proposed budgets by 15%. Recovery from the Great Recession has proceeded very slowly, and given that recessions historically occur about once every 10 years, the State is now closer to the next recession than the last one. And while the State expects $2.6 billion is additional revenue in the next biennium, those additional funds are about $900 million short of the amount needed to meet all of the State's spending obligations. In addition the *McCleary* (school funding case) obligations of $1.2 to $2 billion are also pending.

The Transportation Budget funds $405 million of the total $546.6 million WSP budget (the remainder comes from the General Fund). The Transportation Budget totals $9.3 billion and is funded primarily by gas tax revenues, as well as motor vehicle licenses, permits and fees. Gas tax revenues re decreasing due to inflation, insufficient federal funding, and the developing move to more fuel efficient and alternative energy cars. The Transportation Budget faces substantial financial pressures in the upcoming biennium. Revenues are expected to increase (by about $57 million) but $39 million of that amount is already directed to replacement vessels for the ferry system. The remainder is offset by incoming new expenses that include $310 million for a lawsuit related to fish passage; $20 million for DOL computer upgrades; $39.3 million in increased employee health care costs; and, $13.6 million in increased pension costs. The Transportation Budget funds almost all of lieutenants' and captains' salaries.

The Transportation Budget is comprised of funds from six different sub-funds. Of these the State Patrol Highway Account is the primary source of WSP appropriation. This SPHA is projected to end the coming biennium in the red by approximately $10 million. It is possible that the Legislature could transfer money into that account from the projected-black Motor Vehicle Account, the Highway Safety Account, or the Multimodal Account, but two other Transportation Budget sub-funds dedicated to the ferry system are projected to show a combined deficit of some $147 million in the upcoming biennium. The net balance for all Transportation Budget funds at the end of the coming 3015-17 biennium is projected for $1.1 million in the red, and red numbers at the end of a budget term are not permitted.

The proposed WSPLA increases are not affordable. The WSPLA has its members as a single

consideration to account for. The Governor, as the State's statutory bargaining representative and the head of its Executive Branch, has duties that are far broader. By statute the Governor must prepare a budget that allows the State to live within its means. The challenges in balancing the General Fund and the Transportation Budget allow, at the most, the increases proposed as the State's best offer.

Questions of appropriate comparables are not answered by statute. A list should be prepared that is balanced on the high side and the low side, with greatest consideration given to population and geographic proximity or labor market. While the Segal survey of comparables includes jurisdictions other than other state agencies, using the foregoing criteria shows that the other state agencies are the best approximation of "like personnel of like employers." The instant Arbitrator has confirmed this in the most recent prior Interest Arbitration between the parties.

The cost of the WSPLA two 11% increases, with a 17% spread dictate, is approximately $2.6 million over the biennium. In accord with the demonstrated condition of the State's resources, this is not financially feasible. While the State agrees the WSPLA members deserve a raise, it has offered the best it can afford. WSPLA's proposal is economically unsound and unreasonable and awarding it would be irresponsible in light of the State's extremely challenging financial situation.

Arbitrator's Analysis

The 17% Spread Language and the Compression Issue

In 2012 bargaining for the current CBA, the Union made a "me-too" proposal designed to apply any wage increase received by the WSPTA (Troopers) unit to the WSPLA unit. *WSPLA*, PERC 25066-I-12-605 (Merrill, 2012). This was intended as a means to ensure the compression problem within and between the units did not worsen. The Arbitrator noted the compression issue was an agreed-upon problem seen from both sides in bargaining the last CBA. *Id*. at 16. The Union again points out that in 2013 the top ten list of highest-compensated WSP employees, including the Chief, featured two sergeants and no captains. *U-7.* When the list is expanded to the top 20 (not including the Chief), the situation is no better. That number includes three troopers, four sergeants, eight lieutenants, and only three captains. *U-7.* The situation is again not contested in the current record, and little need be noted here beyond the general observation that many troopers earn more than many lieutenants (and even captains) and many sergeants earn more than many lieutenants (and even captains) and many lieutenants earn more than many captains. *U-7.* Also as in 2012, the parties have not detailed the commonly understood negative consequences of compression, and the Arbitrator accepts this as confirmation there is no disagreement as to their impact. *WSPLA*, *Id*., at p.6 note 4.

Now the Union offers the 17% spread language as a way to address the problem. There are material differences between this and the last "me-too" method. The Arbitrator noted in 2012 that the me-too would not act to remedy any compression; it would only make sure that the situation did not get worse if the WSPTA received a higher wage package than the WSPLA. *Id*. At 18. The 17% spread language would improve at least some of the spreads and ease compression by increasing them, while at the same time it would act in the form of a "me-too" on the base compensation rates. *U-6.*

The Arbitrator also noted that to his reading nothing proved such a provision would be contrary to statutory dictate or otherwise impermissible. *Id*. At 17. And here again he notes the purposes behind the 17% spread language are rooted in interests of parity, equity, competitive ability and comparative status. These are factors normally taken into consideration in determining compensation issues in collective bargaining, so statutory reasons did not act against the goal of this kind of language. Yet, the 2012 proposal was declined. The Arbitrator does so again here, in part for the reasons noted in 2012, and more.

To accept the 17% spread proposal of necessity removes an issue of great import from direct consideration. The record here, as in 2012, has been exhaustively built to provide the Arbitrator with all the information needed to come to a reasoned decision. On the other side, the Arbitrator has literally no inkling what the record contains in the WSPTA case he is being asked to abdicate to. However, he notes that while a straight "me-too" could do nothing to improve compression (it could only keep it from getting worse), the new 17% spread language would in fact act in remedial fashion to a defined extent in many cases. *U-6.* Thus, an objection he noted in 2012 is remedied by the new proposal.

The new language, however, adds a new negative consideration that more than offsets this gain. Such "automatic" language brings the possibility of turning the escalator it is designed to build into a circular ride that, at worst, could not logically end and, at best, could raise significant confusion in applying the language. The situation is easily postulated in only a single example. Imagine if the WSPTA acted in a like manner to ensure that the spreads between its members and WSPLA members grew no further; such proposal would read to the effect that "WSPTA wage rates shall be adjusted as necessary to maintain a maximum 15% spread" in relation to WSPLA rates. Placing the respective proposals in both contracts would start the escalators moving around the circle – any WSPLA action to move its rates to 17% above would trigger a WSPTA rate move from below to close the gap to 15%, and when that gap was closed, the WSPLA would have no choice but to increase the rates, or be in violation of the 17% spread language. And on, *ad infinitum*.

Suffice to say, the proposed language while again targeting a worthy goal must again be refused. The better course is to rely on the active and direct role of the interest arbitrator to address such problems. There is at least a chance the base rate award will act to ease the compression situation. Moreover, whether continuity of arbitrators is maintained from year to year or not, the relatively short two-year duration of CBAs allows subsequent arbitrators to remedy any damage done on the compression issue by virtue of an WSPLA award that turns out to be inferior to the WSPTA award, as will be discussed more fully following.

The Comparative Case for Wage Increase

The Arbitrator is expressly directed to consider comparison of hours and conditions of like employers on the west coast. *RCW 41.56.475(4)(c)*. It has been held that "hours of conditions" effectively encompasses wages. *WSPLA*, *Id*. at 18, note 6, citing *WSPLA*, PERC 21892 (Lankford, 2008). Likewise, this Arbitrator confirmed, as have others, that the meaning of "west coast" is rightly interpreted to include states beyond the coastline, thus properly including the full list of OR, NV, CA, AZ and ID. *Id.*, at 18, note 7. The record establishes the Segal survey of comparators is thorough, well-designed, fully documented and skillfully presented. *E-3; E-5; E-6; TR 22-72*. It was presented by the State but "agreed to" by the Union. *Brief of Union* at p.22.

Agreement is less clear between the parties on the utility to give to the cities, counties and other non-state law enforcement jurisdictions included in the survey. *E-6.* The state references only other state agencies; the Union uses data from all comparators surveyed. Yet again as in 2012 it is clear – regardless of the jurisdictions used – that in terms of WSPLA base wages the WSP is deeply and widely non-competitive with the great bulk of comparables, with examples at the most relevant levels.

The most appropriate apples-to-apples numbers are those after adjustment to reflect the WSP's longevity and location pay enhancers, and to reflect the geographic cost-of-labor adjustments. *TR 29-33; E-4.* The basic picture is charted below showing the composite result for comparability of the adjusted base pay versus all five survey states.

Steps →	Min/0	6 mo.	1Yr	5yr	10yr	15yr	20yr	25yr	Max
Adj Pay LT	96%	91%	89%	81%	78%	79%	81%	79%	81%
Adj Pay CPT	98%	95%	93%	83%	76%	79%	80%	79%	82%

E-3.

The overall numbers certainly explain and confirm the Segal company analyst's statement: "Washington compensation continues to remain less comparable." E-5. In fact when the figures are averaged one more step to create a composite figure across all progression steps, the results are:

Competitive Average for Lieutenants, all levels:	83.9%
Competitive Average for Captains, all levels:	85.0%

But the situation is in fact worse than that. For WSPLA officers, the lower years-of-service categories are practically irrelevant, at least as per how the bargaining unit is now comprised. The record reflects there are no Lieutenants with less than 10-years tenure, and no Captains with less than 15. It is possible to become a Captain with less than 15 years-of-service however, so the numbers are appropriately run to reflect only the 10-year point and beyond. The results then become:

Competitive Average for Lieutenants, 10 years and above:	79.6%
Competitive Average for Captains, 10 years and above:	79.2%

The definition for a competitive status is not in dispute. The range from 95% and 105% is deemed competitive by the Segal company and is accepted as such by both State and Union. *E-3.* These figures show that at all relevant points the State is distressingly behind its comparable competing state agencies.

The matters of recruitment and retention were raised in testimony. Much of the information was anecdotal, including testimony of a highly-ranked, prize-winning cadet who left during this probationary period for a position with a local city force where he received an immediate "$20,000 more." This story does not involve a unit member officer, and it does not cross the border from anecdote to reliable data point, but the message it illustrates is one that the Arbitrator is willing to take by notice: when an employer falls 10 to 15 percentage points behind in overall compensation to the broad universe of its competitors, that employer must expect to lose employees from all levels to those competitors.

Indeed, somewhat more reliable information on retention and recruitment confirmed problems are growing. Marc Lamoreaux, a Captain with experience in the Human Resources Division, testified

that between 2006 and 2010 the approximate hire rate was 4.62%, meaning that from every 1,000 applicants, WSP could hire 46. *TR 390-91*. His report on current data, which was not disputed, had that rate dropping to a current 1.4%. *TR 391*.

The current WSP Captain in charge of the Human Resources Division is Jeff DeVere. *TR 461*. Captain DeVere confirmed the annual attrition rate is "four, five or six" commissioned officers leaving for other competing law enforcement agencies. *TR 505-06*. This year, Captain DeVere stated, the total is already up to 10 officers. *TR 506*. And in at least "some" of those, Captain DeVere testified, the pay was an identified reason. *TR 507*. This too amounts to an anecdotal item, but less so is the result of a commissioned survey done for WSP HR. In the survey, candidates uniformly mentioned "pay" as a factor in decisions for the three categories of application, acceptance, and decline. *TR 507*. No other factor was listed in all three categories, showing that, in the law enforcement context specifically, pay does indeed rank at or near the top of the standard considerations in a job search. Confirming this, at least by inference, was Captain DeVere's report on web data showing that visitors to the WSP website spent the most time on the "compensation" page, and most frequently left the site from the same page. *TR 508*.

Objective data does show a high vacancy rate in commissioned ranks. The current vacancy rate in the field force is 92 (as of June 30, 2014). *TR 400*. The WSP has had to implement a fourth Academy training class – the usual number is three – in an effort to fill the vacancies. *TR 248; TR 399*. Yet, using current average class size, graduation, hiring and attrition rates, the outlook is that the number of vacancies will remain at between 54 funded positions in 2017 at the end of the coming biennium. *TR 398-400*. This data confirms the drop in hiring rate since 2010 is beginning to be keenly felt.

Overall, it is noted that there is more information supporting damage to WSP recruiting and retention than there was in the 2012 case, but, as was the case at that time, the Arbitrator can say with confidence that with figures so far below the competitive standard it is reasonably concluded that if these are still not serious issues at present, they will become serious issues in time if not addressed.

In explaining the low competitive rates, some history is available. The 2012 bargaining showed the WSPLA unit had received only 8% in wage increases since 2007, and none since 2009. *WSPLA*, *Id*. at 21. Moreover, the record from that case shows that during that same period the relevant CPI had risen by some 15%. *Id*. The record here does not include CPI data for the last two years. But, the Arbitrator takes notice that only a few web clicks are necessary to confirm the Seattle area CPI ("all

items") for the year ending August 2014 rose 1.8%, and the projection for the remainder of the decade from the Congressional Budget Office finds inflation to "remain at or below 2%." See: http://www.bls.gov/ro9/cpiseat.htm; http://www.cbo.gov/publication/45010 (accessed 9/26/14). Lost earning power due to inflation is without doubt a factor normally and traditionally taken into consideration in determining compensation settlements.

The State of State Finances

Contrasted to the foregoing evidence supporting compensation increases is the State's precarious financial position. It is well settled the State's relative ability to fund increases is a matter to be considered in an interest arbitrator's award. *IADD Local 1386*, PERC 15764 (Wilkinson, 1988). This too falls as a factor within the statutory realm of factors normally and traditionally taken into consideration in reaching an interest award. Further, the Arbitrator is acutely aware that his Award, at least with respect to financial cost components, is not binding on the Legislature. Its financial feasibility will ultimately come under the discriminating eye of the OFM. It does no service not to apply reasoning in a manner designed to craft an award that will emerge from the OFM examination unscathed. Accordingly, the projections for the budgets from which any increase will flow must be examined with care.

The WSP budget is created, via Legislative appropriations, from two main funding sources: the General Fund (aka the Omnibus Budget) and the Transportation Budget. But, in that the State must balance all its budgets, it is necessary to consider the State's financial resources overall as well. The States larger budget is made up of the latter two funds, plus the Capital Budget. *E-7; E-12; TR 77; 176*.

The good news for the State is that it's recovery from the "Great Recession" is ongoing, though slow. *TR 81*. The June 2014 forecasts anticipate 8.3% growth over the coming biennium. *TR 80-81; E-11*. Indeed, the State expects $2.6 – $2.8 billion in additional revenue in the next biennium. *TR 93; TR 110.* The bad news is that much, if not all, of this money could well be already spent. Increases in pension costs, employee health care increases, an I-732 teacher COLA, and other coming expenses lead to a currently seen $900 million shortfall even after the latter revenue increases are factored into the General Fund. *E-11*, at 11. None of that even considers the looming expense for the *McCleary* education funding debt. *Id*. As a consequence of this, the OFM has advised State agencies to cut proposed budgets tapping the General Fund by 15% for the coming biennium. *TR 83-84; E-10*.

The positive element for the WSP in all this is that the Transportation Budget, not the General

Fund, provides the decided majority of its funding. Of the full WSP budget of $546 million, $405 million is allocated from the Transportation Budget. Only the 26% minority share of $139 million comes from the General Fund. *TR 133; E-12*. Moreover, when considering payment for wage compensation, the share of General Fund dollars becomes even slimmer. According to the State's calculations, only 15.5% of any compensation proposal cost will come from the General Fund portion of the WSP budget. *E-13(a*).

The sources for WSP funding from within the Transportation Budget itself come from multiple sub-accounts – three fractional sources (Ignition Interlock; Airplane Revolving; and, MultiModal State funds) and three more significant sources: the Motor Vehicle Account (MVA); Highway Safety Account (HSA); and, the single greatest source, the State Patrol Highway Account (SPHA). *E-12*. Of these the dominant contributor is the SPHA, funded by motor vehicle licenses, tabs and other fees dedicated to that account. *TR 135; E-12*. The SPHA funds are currently 91% of the Transportation Budget funds in the WSP overall budget ($369.4 million of $405.4 million). *E-12*.

Of these three major contributors, two are projected to be in the black for the coming 2015-17 biennium. *E-12*. The SPHA is projected red, by $10.1 million. *E-12*. However, the black numbers for the other two funds are significant: MVA is projected for a $30 million ending balance and the HSA projected for a $71 million ending balance. *E-12*. Thus the net estimated ending balance for the three accounts is $90.9 million to the good.

At the same time, other red numbers are found in other sub-accounts that feed the overall Transportation Budget. Of the five other major contributing funds, three are projected red (Puget Sound Ferry Operations Account; Puget Sound Capital Construction Account; Transportation "Nickel" Account). *E-12*. The two others projected black fall short of bringing the net of these five to the positive; the net total of these is $92 million in the red. *E-12*. Thus, taking the positive figure from the three WSP funding portions against the remaining Transportation Budget sub-accounts, one sees a net projected ending balance for the coming biennium of a negative $1.1 million. This is a truly fractional portion of the total, but it remains a red number.

However, the situation is markedly different than in 2012 looking to the 2013-15 biennium. The current figures, while less than rosy, are hardly equivalent to the washes of red seen when this Arbitrator found the State finances showed an "impaired and limited ability" to fund increased costs. *WSPLA*, *Id*. at p. 22-24.

Reconciling State Finances for 2015-17 with Competitive Needs

The circumstances do not show the State is unable to marshal sufficient resources to meet the established need for compensation improvements. Indeed, the State itself proposes two 3% wage increases. This is perhaps not surprising, even outside of internal considerations relative to the woeful competitive situation for commissioned officers. This is because the record reflects the WSP has given a number of compensation increases during the past year elsewhere in the agency. Executive staffers, from the Chief down, have received increases. The Chief received 7%, another executive received 8%, and the rest of the executive staff, 4%. *TR 496; E-26*. Nearly one-half of the 60 Washington Management Service (civilian) employees received raises, in an aggregate average amount of 5.39%. *TR 497; E-26*. The cadet rate was increased by 14%, and even though this was offset by loss of what had been a 5% raise for cadets on entering the Academy and loss of educational (college degree) premiums, the increase still ranged as high as 9%. *TR 498-99.* Furthermore, at the end of June 2013 (at the start of the current biennium), the 3% temporary wage reductions taken in 2011 were restored for the entire ranks of non-commissioned agency employees. *E-26.*

One must bear in mind that this all occurred in a biennium that required dealing with the sea of projected red numbers presented to the Arbitrator in the 2012 case. *WSPLA*, *Id*. at 22-24. This evidences three key observations that support a more significant increase than proposed by the State.

First, with the recovery proceeding, the trend for positive numbers is increasing. This is shown by the predictions for the coming bienniums of 2017-19; 2019-21; 2021-23. In each of these, while the the projected ending balances for SPHA are negative and grow each term, for the MVA and the HSA the numbers are positive, and grow by far greater amounts and percentages than the negative numbers in the SPHA accounts. *E-12.* The net projected positive balances of the three main WSP Transportation Budget sub-accounts in those future bienniums are, respectively, $148 million; $156 million; and, $165 million. *E-12*. It is reasonable to conclude that these positive trends were at work in unexpectedly producing the monies for the increases paid throughout the WSP in 2014, which was forecast to be an impaired and limited ability biennium. Indeed, the projected ending fund balance for the three main WSP Transportation Budget sub-accounts this biennium is a positive $48 million, and the numbers through the full range of all eight Transportation Budget sub-accounts is an even greater $99.3 million. *E-12*. Clearly, even in the current biennium which had far darker projection than for the next, the numbers turned out to be greatly positive. This positive trend applies even as regards the General Fund. The June forecast used for the majority of the State's presentation was updated in August, and showed an $89 million greater than expected income. *TR 82*. While this is a relatively

fractional amount, the demonstrated trend is confirmed toward the positive, and beyond expectations.

Second, it is possible to move monies between positive sub-accounts and negative accounts in order to even balances. The record reflects this was one of the tools used in the current biennium. The MVA was tapped to contribute $27 million to the needy SPHA in 2014. *TR 135*. There is every reason to believe that this can be done again, given the overall net positive of some $90 million projected for the three accounts in the coming biennium.

Third, with respect to the General Fund situation (which also showed red numbers in 2012) these and other tools are available to produce the same positive end as well. The record reflects that moves were made "between budgets" such as from the Budget Stabilization Fund and/or the Capital Budget. *TR 116*. Programs can also be eliminated, delayed, suspended, adjusted, or extended. *TR 117-119*. This includes the I-732 COLA expenses which were suspended in the current biennium and could be suspended again. *TR 119*. Even *McCleary* expense has been delayed, and while there is undoubtedly pressure for compliance there is no suggestion in the record the entire burden must be shouldered in any single biennium.

The combination of these three observations leads to the Arbitrator's confidence that despite even the negative numbers showing in the other non-WSP Transportation sub-accounts and the pressure on the General Fund, the State has it within its power to balance the General Fund and the Transportation budget (as it must) while affording compensation increases in a more significant amount than the State's proposal and can make greater progress toward reducing the damaging gaps in competitive compensation rates.

Addressing Compensation Increase Needs

Despite the improved, and improving financial condition of the State budgets (most notably the key Transportation Budget sub-accounts feeding the WSP) there is still no support for the Union's proposed 22% combined increase. The result of these increases would place the WSP at or near the top of the competitive heap in most if not all classifications. The State's recovering resources are too modest and under too great a demand after the recession-imposed austerity at all levels of government employment to allow such a complete vault to the top in a single biennium.

Yet, the wait for the this unit has been long, and the competitive gap has grown while the unit's earning power has declined. Signs show the expected damages from lack of competitiveness are becoming manifest. Every dollar that can be marshalled should be applied to the wage increase in order to reduce the competitive gap and restore losses in earnings to the broadest group of unit

members.

Accordingly, in light of all the foregoing, the Arbitrator will apply a five-percent (5%) increase in year one, followed by a five-percent (5%) increase in year two of the biennium. The Arbitrator is well aware even the net 10% overall increase will not bring the unit to competitive status in the most relevant year-of-service classifications. However, it will stop the decline and make a move that is more than half the distance to competitive status in the key 10-years-and-over classifications. Further, by applying the near total bulk of contract expense in the wage area it is hoped that the compression issues will be positively impacted, or, at a minimum not exacerbated.

Arbitrator will Award

> Effective July 1, 2015, all salary ranges and steps for captains and lieutenants of the WSP Commissioned Officer Salary Schedule that were in effect on June 30, 2015, shall be increased by five percent (5%) as shown in Appendix B, and will remain in effect until June 30, 2016. Effective July 1, 2016, all salary ranges and steps for captains and lieutenants of the WSP Commissioned Officer Salary Schedule that were in effect on June 30, 2016, shall be increased by five percent (5%) as shown in Appendix B, and will remain in effect until June 30, 2017.

Section 11.4 Personal Holiday

Current Language

> All full-time employees, after four (4) full months of employment, are entitled to one (1) added day of personal leave with pay each calendar year. Such leave may be taken as mutually agreed to by the supervisor and the employee. Personal holidays must be taken during the calendar year or the entitlement to the day will lapse, except that the entitlement will carry over to the following year when an otherwise qualified employee has requested a personal holiday and the request has been denied.

WSPLA Proposal

> All full-time employees, after four (4) full months of employment, are entitled to *two (2)* added day*s* of personal leave with pay each calendar year. Such

> leave may be taken as mutually agreed to by the supervisor and the employee. Personal holidays must be taken during the calendar year or the entitlement to the day will lapse, except that the entitlement will carry over to the following year when an otherwise qualified employee has requested a personal holiday and the request has been denied.

State Proposal

No Change to existing language

Summary Position of Union

Adding a second paid personal leave day is a positive change in two respects. Certain WSP employees already receive a second personal day, and this proposal brings equity with these fellow employees. A second personal day also is an alternative form of compensation which will serve to address the proven compensation non-competitive issue.

Four other CBAs for various WSP units feature paid personal days. These days may be set for expiration but they may also be renewed. The WSP payroll system if already set up for administering paid personal days. The State's alleged cost for this proposal was $3,267, which represents the cost to backfill the four lieutenant positions that would have to be filled when the current occupier took a personal day. This amount, small as it is, remains dubious as Lt. Rethwill testified that of the four named backfill positions, he knew of no operational reason requiring backfill for any of them for a single day absence.

Even the State's claim of an impact cost from "loss of productivity" is dubious. In costing vacation day absences, the State based costs solely on "cash value." It made no loss of productivity cost claim for added vacation days, even though their common sense impact is the same as they are both types of leave days.

This kind of low-impact addition that brings both equity to the unit, and adds a benefit that helps remedy the compensation non-competitive issue, is a change with little basis for rejection.

Summary Position of the State

The current terms providing a single paid personal leave day should be maintained. There is no support for adding a second day that meets the required standard of review.

Claims based on equity must fail. No other commissioned staff at the WSP have more than one

paid personal leave day. Furthermore, as for non-commission WSP staff, the direction for paid personal days is toward elimination, not addition. The State's WSP negotiator explained that a paid personal day first went into certain non-interest arbitration eligible CBAs when there were no pay raises in the 2009-11 cycle. The added personal day always had a sunset clause ending the terms at contract expiration, though in 2011-13 when these units suffered pay cuts, the terms were renewed, though again with sunset provisions. The WSPLA unit did not suffer the pay cuts felt by these other units in 2001-13, and in fact in 2013-15 this unit received a pay increase, not the freeze of other alleged "equity" units.

The WSPLA also underestimates the real costs of adding a second paid personal day. In addition to the hard dollar cost ($3,267 annually at current rates) of backfilling another leave day, there is a tangible impact to productivity and operation. Every day a command position officer is absent there is a loss from his or her absence.

The WSPLA has failed to show a basis supporting this change that satisfies the governing statutory terms in RCW 41.56.475(4).

Arbitrator's Analysis

This proposal has both cost and impact. Its hard dollar cost of four required backfills is disputed by the Union, but without data. However, the Arbitrator is in agreement that the larger consequence is in fact added losses of productivity. It defies logic to deny a loss in productive work as a result of a paid day off. In a real sense, claiming otherwise disrespects the daily contribution of the officers in the bargaining unit. The impact can only grow the moreso when one considers the unit is operating with a high vacancy rate.

The WSPLA posits that the second personal holiday would be an alternate form of compensation. *TR 277.* The Arbitrator is in full agreement. It would in fact be one more personal holiday than any other unit in the WSP enjoys; there is no record of any employee group with more than a single personal holiday, which are creatures of statute. *TR 732; RCW 1.16.050(2)*. The proposal is not for a personal leave day. Certain WSP CBAs apparently added a single personal leave day during the periods when pay freezes, and indeed pay cuts, were imposed. *TR 732-33*. Those single-day agreements are set to "sunset" at the end of the relevant agreement. *TR 733; TR 746*. There is no equivalent situation in the WSPLA bargaining unit.

Finding no basis in equity or other justification for the expense and impact of the proposal, the

Arbitrator declines to add an a second personal holiday to the CBA.

Arbitrator will Award

No change to existing language.

Section 11.5 Holiday Credits

Current Language

11.5 Holiday Credits
Lieutenants and captains may accumulate holiday credits, up to a maximum of eighty (80) hours.

WSPLA Proposal

11.5 Holiday Credit
Lieutenants and captains may accumulate holiday credits, up to a maximum of *one hundred twenty (120) hours.*

State Proposal

No change to existing language

Summary Position of the Union

The current maximum carry-over accrual for holiday hours of eighty (80) should be increased to one hundred and twenty (120). This change is cost-free to the State, and even though the improvement is minor, it positively adds some form of additional leave potential and as such helps address the non-competitive compensation situation.

The ten holidays in the CBA, when worked on the common 8-hour day basis, total 80 hours of accrued leave. Because holidays are often work days for unit employees, a time and one-half credit calculation equates to 120 hours for the ten holidays. Currently, the CBA only allows a maximum of 80 hours of accrued credit to be carried past an employee's anniversary date. Any hours over 80 that are not used by the employee's next anniversary date are lost.

The math is simple and persuasive. Unit members should be allowed to carry-over up to their full annual 120 hours of accrued vacation. Current rules on using accrued vacation only on an agreed-

upon basis will not be changed. The only change will be that if work or other considerations prevent an officer from using the 120 hours holiday time he has earned within the relevant year, the officer will not lose that holiday pay just because it is over the 80-hour limit. Not even end-of-tenure cash-out limits are proposed for change here; those would remain at 80 hours.

This proposal is carefully crafted to address a readily evident problem in a cost-free manner. Even the minor impact it has of providing some possible greater leave usage is important when the wages of the unit are so far behind on a competitive basis.

Summary Position of the State

The current 80-hour structure of the holiday leave accrual terms should not be changed. The goal of the proposal will have a material negative operational impact on the WSP.

The only goal of this proposal can be to allow employees to take additional longer blocks of time away from work. It is true that many, though not all, officers work holidays at a time-and-one-half accrual rate for their holiday banks, which can increase banks beyond 80 hours. But taking only a limited few holidays during the year reduces this bank to within the 80-hour carry-over limit. As a 24-7 operation, there is no possible goal to reduce the number of holidays worked by officers. Instead, the only goal can be to aggregate larger totals of available accrued hours in order to allow larger blocks of time away from work.

Any officer absence from work has an operational impact, this only grows the moreso when the absences are prolonged. In any absence a junior officer fills in an acting role. The cost incurred is direct – one additional salary paid day. Operations are impacted when the less-experienced officer takes the position, resulting in lower production or quality of work, or involving more time of superior officers.

The current 80-hour cap works well serving an important function in balanced fashion. Holiday working officers are fairly compensated while not creating oppressive operational constraints or significant financial liability. Testimony established that often officers have to take "spontaneous leave" to avoid losing accrued hours; increasing the available total only raises the stakes and "builds the monster and compounds it." The balance between holiday compensation and negative operational impact that is represented by the accepted 80-hour limit should not be disturbed.

Arbitrator's Analysis

In hard dollars terms this proposal is without cost, but, as the Arbitrator pointed out in the

foregoing discussion concerning Section 11.5, there is an undeniable operational impact from employee time off work. However, a different result is in order here.

The time added in this proposal to the holiday leave bank (or "credit account" in CBA terms) is not in any real sense "new time off." The holiday hours earned from 80 to 120 have always been a potential addition to holiday banks under the CBA. There is no change to how hours are accrued, calculated or otherwise credited to unit members.

The sole change is reducing the impact from an officer's inability to schedule her or his holiday bank usage during any single year. There is no change to the amount of holiday credits that can be paid on separation or used as provided in the retirement section; the credit account limits in those sections will remain at 80.

The Arbitrator recognizes the problem posed by the form of "crisis management" at the end of a year arising when an officer is faced with a use it or lose it situation. But, contrary to the State's view that increasing the holiday bank will "build [that] monster," he believes that this change offers an equal chance for relief from any such beast, in that the added leeway may just as well allow unit members the luxury of delaying use until a work period comes that is less onerous than might be found when the monster would otherwise rear up at a particularly bad year end time.

Methods for using accrued holiday credits are subjects normally and traditionally taken into consideration in collective bargaining. Having recognized (as an equally normal and traditional consideration) that losing earned holiday hours is a significant negative for employees, and finding the WSPLA proposal applies cost-free methods that are reasonably crafted without significant operational impact to address that problem, the Arbitrator grants the proposed change.

Arbitrator will Award

11.5 Holiday Credit

Lieutenants and captains may accumulate holiday credits, up to a maximum of one hundred and twenty (120) hours.

Section 12.2 Annual Leave – Rate of Accrual

Current Language

12.2 Rate of Accrual

Full-time employees who have been in pay status for eighty (80) non-

overtime hours in a calendar month will accrue annual leave according to the rate schedule below. Annual leave accrual for part-time employees will be proportionate to the number of hours the part-time employee is in pay status during the month to that required for full-time employment.

Full Years of Service	Hours Per Year	Monthly Accrual
During the first year of current continuous employment	Ninety-six (96)	Eight (8) hours
During the second year of current continuous employment	One hundred four (104)	Eight (8) hours and forty (40) minutes
During the third and fourth years of current continuous employment	One hundred twelve (112)	Nine (9) hours and twenty (20) minutes
During the fifth, sixth, and seventh years of total employment	One hundred twenty (120)	Ten (10) hours
During the eighth, ninth, and tenth years of total employment	One hundred twenty-eight (128)	Ten (10) hours and forty (40) minutes
During the eleventh year of total employment	One hundred thirty-six (136)	Eleven (11) hours and twenty (20) minutes
During the twelfth year of total employment	One hundred forty-four (144)	Twelve (12) hours
During the thirteenth year of total employment	One hundred fifty-two (152)	Twelve (12) hours and forty (40) minutes
During the fourteenth year of total employment	One hundred sixty (160)	Thirteen (13) hours and twenty (20) minutes
During the fifteenth year of total employment	One hundred sixty-eight (168)	Fourteen (14) hours
During the sixteenth, seventeenth, eighteenth and nineteenth years of total employment and thereafter	One hundred seventy-six (176)	Fourteen (14) hours and forty (40) minutes

WSPLA Proposal

12.2 Rate of Accrual

Full-time employees who have been in pay status for eighty (80) non-overtime hours in a calendar month will accrue annual leave according to the rate schedule below. Annual leave accrual for part-time employees will be proportionate to the number of hours the part-time employee is in pay status during the month to that required for full-time employment.

Full Years of Service	Hours Per Year	Monthly Accrual
During the first year of current continuous employment	Ninety-six (96)	Eight (8) hours
During the second year of current continuous employment	One hundred four (104)	Eight (8) hours and forty (40) minutes
During the third and fourth years of current continuous employment	One hundred twelve (112)	Nine (9) hours and twenty (20) minutes
During the fifth, sixth, and seventh years of total employment	One hundred twenty (120)	Ten (10) hours
During the eighth, ninth, and tenth years of total employment	One hundred twenty-eight (128)	Ten (10) hours and forty (40) minutes
During the eleventh year of total employment	One hundred thirty-six (136)	Eleven (11) hours and twenty (20) minutes
During the twelfth year of total employment	One hundred forty-four (144)	Twelve (12) hours
During the thirteenth year of total employment	One hundred fifty-two (152)	Twelve (12) hours and forty (40) minutes
During the fourteenth year of total employment	One hundred sixty (160)	Thirteen (13) hours and twenty (20) minutes

During the fifteenth year of total employment	One hundred sixty-eight (168)	Fourteen (14) hours
During the sixteenth, seventeenth, eighteenth and nineteenth years of total employment	One hundred seventy-six (176)	Fourteen (14) hours and forty (40) minutes
During the twentieth year of total service and thereafter	*One hundred eighty-four (184)*	*Fifteen (15) hours and twenty (20) minutes*

State Proposal

No change to existing language

Summary Position of the Union

This proposal to increase vacation accrual by eight (8) hours from year twenty (20) and beyond is fully justified and should be adopted. Current leave policy is inferior to surveyed competitors, and the benefit of time off for law enforcement officers is manifest.

The salary survey showed WSPLA members are a total of 513 hours behind during a 25-year career; using an 8-hour per day measure, this means unit officers lose over 64 full days of vacation during their career compared to most comparable agencies. At every year of service the WSP is behind the participant average. The proposed additional 8-hours of pay will not fully eliminate the proven non-competitive situation, but is a reasonable improvement, as admitted by the Assistant Chief.

Existing statutory vacation limits have been exceeded in other bargaining units. Where they have been subsequently reduced, the higher limits have been accepted on a "grandfathered" basis, and the previous increases have never been declared "illegal."

The estimated $47,576 biennial cost of this proposal is and entirely reasonable expense, especially in an environment where overall compensation is so far behind. This proposal adds positive benefit at low cost and should be accepted.

Summary Position of the State

The WSP is in fact competitive with relevant west coast state agencies in terms of paid time off. This proposal is unjustified and should be refused.

The five comparable state agencies surveyed provide between 168 and 192 hours of vacation at 25 years. The CBA currently provides 176 hours at 16 years. The WSP is manifestly competitive.

Operationally, indications are that leave allowances are not lacking. Leave banks are capped by statute at 240 hours, and many unit members carry the full balance, and in fact have problems managing leave use and must work to take enough at year-end to avoid losing amounts over 240 hours. Adding more leave will only make this management more cumbersome.

Finally, the current leave accrual is identical to the WSPTA unit and as provided in all Washington State general government contracts. There is nothing on record to show why WSPLA members should be treated differently than all other Washington State employees.

In light of these facts, and with respect to the terms of WAC 357-31-165, the current leave accrual language must be maintained.

Arbitrator's Analysis

Compared to the full list of state agency comparators, the WSP vacation accrual is one of the areas of compensation where it is competitive, and markedly so. The Washington schedule tops out at 176 hours after 16 years of service. *J-16.* No other state agency reaches that total until year 20, and even then the WSP 176 hour total is surpassed only by OR and AZ. *E-6* at 191. One other state, CA, finally exceeds WSP's 176 and moves to 180 hours in year 21. *Id*. The other two states, ID and NE remain below the WSP and hold at the 168 hour level through the 25th year end-of-scale. *Id*.

Thus, on total vacation hours aggregates the WSP exceeds three of the five comparator state agencies. *Id*. WSP's total is 3668 hours, and only AZ's 4032 (leading amount) and CA's 3732 surpass it. WSP is ahead of OR, ID and NE in aggregate vacation hours. *Id*. As such, the Arbitrator finds the State competitive within this relevant group.

When the comparators broaden to include counties and cities the State's ranking does change to toward the negative. *Id*. at 192. But even if the Arbitrator were to consider this group, the dubious regulatory propriety of making an increase to the vacation schedule warns the Arbitrator away from accepting it. The State references WAC 357-31-165 as the mandatory structure for vacation accrual for State employees in the WSP. The State confirms the the WSPTA unit has the same schedule, which is provided for all general government contracts. *TR 735*.

Furthermore, unrebutted testimony indicated that it is not uncommon for bargaining unit officers to carry accrued vacation at the 240 hour limit, and even beyond to the extent that they

routinely confront the use it or lose it point at the end of an anniversary year. *TR 664-65; TR 791*. While the Arbitrator is in full agreement with the Union that vacation time is an essential benefit for any employee (and particularly in law enforcement), this usage pattern would indicate the expense of this proposal ($47,567) does not bring as much actual benefit as would otherwise be the case.

At bottom, the proposal seeks to treat the WSPLA unit more favorably than the great bulk of other State employees and is in excess of regulatory dictates. In light of those facts and the fact that this is an expense proposal, and especially given the positive competitive position of the State in this area versus other state agencies, the Arbitrator will deny this change.

Arbitrator will Award

No change to existing language.

Section 15.7 Temporary Limited Duty and Long Term Limited Duty

Current Contract Language

15.7 Temporary Limited Duty and Long Term Limited Duty
The following provisions shall govern temporary limited duty and long term limited duty assignments.

A. Definitions

1."Active service," "line duty," "other duty," and "disability" shall have the respective meanings set forth in WAC 446-40-020 in effect as of the date of this Agreement.

2."Temporary limited duty" shall mean an active service assignment for an employee incapable due to a disability of performing line duty but capable of performing other duty of a light or modified nature consistent with the operation of the Employer. Temporary limited duty is the time period before an employee is considered fixed and stable.

3."Fixed and stable" shall mean the point reached when a disability is unlikely to be significantly improved by further medical treatment and the employee is not reasonably expected to be able to return to line duty, typically referred to as permanent.

4."Work hardening" shall mean a process approved by the employee's physician and, if necessary, by the Employer's physician after an independent medical examination, as part of rehabilitation designed to

facilitate an employee's return to line duty if possible.

5."Long term limited duty" shall mean a permanent limited duty assignment for an employee whose condition is fixed and stable.

B. Obligation to provide

The Employer shall offer temporary limited duty and long term limited duty assignments to employees if the Chief determines that appropriate work is available.

1. Temporary Limited Duty

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

2. Long Term Limited Duty

The Employer shall use reasonable efforts to provide a long term limited duty assignment within fifty (50) miles of the employee's current residence. If after using reasonable efforts the Employer is unable to provide a long term limited duty assignment within the fifty (50) mile distance and the Employer decides to offer an assignment outside that limit that the employee accepts, then the employee shall comply with the residence requirement. If it is necessary for the employee to relocate, the Employer shall reimburse the employee's moving costs in accordance with the Office of Financial Management guidelines.

C. Procedure

An employee requesting any limited duty assignment shall submit the request by IOC through the chain of command. Provided the Chief determines that appropriate work is available, the HRD shall coordinate selection of the assignment with the employee's attending physician and, if necessary, with the Employer's physician after an independent medical examination. An employee shall have the option to accept a limited duty position that is approved by his/her attending physician and, if necessary, by the Employer's physician after an independent medical examination, and that is in compliance with this Agreement. An employee who has accepted a limited duty assignment must participate in a work hardening program approved by his/her attending physician and, if necessary, by the Employer's physician after an independent medical examination.

D. Return to Line Duty

A temporary limited duty or long term limited duty assignment will end when the employee is certified as capable of return to line duty by his/her physician and if necessary, when an independent medical examination

ordered by the Employer determines that the employee is capable of return to line duty.

1.When an employee returns to line duty from temporary limited duty the employee shall be returned to his/her former assignment.

2.Lieutenants who are returned from a long term limited duty assignment shall be allowed to return to either an assignment in the same geographical area of their long term limited duty assignment or to the district of their previous field force line assignment if a lieutenant vacancy exists in that district.

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

WSPLA Proposal

No change to existing language

State Proposal

15.7 Temporary Limited Duty and Long Term Limited Duty

The following provisions shall govern temporary limited duty and long term limited duty assignments. *This sub-section is not subject to the grievance procedure of Article 19.*

A. Definitions

1. "Active service," "line duty," "other duty," and "disability" shall have the respective meanings set forth in WAC 446-40-020 in effect as of the date of this Agreement.

2. "Temporary limited duty" shall mean an active service assignment for an employee incapable due to a disability of performing line duty but capable of performing other duty of a light or modified nature consistent with the operation of the Employer. Temporary limited duty is the time period before an employee is considered fixed and stable. *A temporary limited duty assignment generally will not exceed six months from the date of injury or from the date of incapacitation for active service.*

3. "Fixed and stable" shall mean the point reached when a disability is unlikely to be significantly improved by further medical treatment and the employee is not reasonably expected to be able to return to line duty, typically referred to as permanent.

4. "Work hardening" shall mean a process *designed in consultation with* the employee's physician and, if necessary, by the Employer's physician after an independent medical examination, as part of rehabilitation designed to facilitate an employee's return to line duty if possible.\

5. "Long term limited duty" shall mean a permanent limited duty assignment for an employee whose condition is fixed and stable.

B. *Employer Option* to provide

The Employer shall offer temporary limited duty and *may offer* long term limited duty assignments to employees if the Chief determines that appropriate *bargaining unit* work is available.

1. Temporary Limited Duty

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

2. Long Term Limited Duty

If the Employer is able to offer a long term limited duty assignment, the Employer shall use reasonable efforts to provide a long term limited duty assignment within fifty (50) miles of the employee's current residence. If after using reasonable efforts the Employer is unable to provide a long term limited duty assignment within the fifty (50) mile distance and the Employer decides to offer an assignment outside that limit that the employee accepts, then the employee shall comply with the residence requirement. If it is necessary for the employee to relocate, the Employer shall reimburse the employee's moving costs in accordance with the Office of Financial Management guidelines.

C. Procedure

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

D. Return to Line Duty

A temporary limited duty or long term limited duty assignment will

end when the employee is certified as *medically* capable of return to line duty. *The Employer may order* an independent medical examination, *by a physician(s) of the Employer's choosing and at the Employer's expense, to* determine that the employee is *medically* capable of return to line duty.

1. When an employee returns to line duty from temporary limited duty the employee shall be returned to his/her former assignment.

2. Lieutenants who are returned from a long term limited duty assignment shall be allowed to return to either an assignment in the same geographical area of their long term limited duty assignment or to the district of their previous field force line assignment if a lieutenant vacancy exists in that district.

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

Summary Position of the Union

The current CBA language should be maintained without change. This language is significant and important, and is unique within the WSP to the commissioned officers group. There is no basis supporting its change or removal.

Consistency of administration exists at present because the same language is present in the WSPTA CBA. As officers move between ranks, both officer expectations and ease of administration are maintained by maintaining this parallel.

Bargaining history, both past and present, is important here. The existing language was created after over a year of negotiation during the 1997-98 term. The present proposal to change the language has had the benefit of almost no bargaining.

Current negotiations featured no meaningful opportunity for exchange. An initial proposal to strike the full language was minimally discussed. A following modification, posed as a "what if" was discussed, but only briefly. There is no evidence of any further discussion in any subsequent session up to the single mediation date. Mediation day featured a new proposal, but the record reflects the parties never met face to face for actual bargaining exchanges, and the mediator only spent less than one half hour with the WSPLA representatives. The current proposal came in on the day before the arbitration

hearing began, obviously leaving no time for joint discussion. This conduct reflects a lack of good faith behind the proposal.

Despite claims to the contrary, the proposed changes are significant. For example, an entire section is proposed to be removed from access to the grievance procedure. Making such significant proposals while manipulating the timing to prevent discussion further establishes an absence of good faith. The WSPLA proposed to the opposite, stating in the limited bargaining that the matter should be renewed for discussion during the term of the CBA. The Union recommitted to this posture during the arbitration hearing, while the current language is maintained. An additional benefit comes from the stated willingness of the WSPLA to join with the WSPTA at the table in such discussions.

At present, there is no showing that the language is in need of change. The long term limited ability language at issue has been applied only a single time since 2012. The State's reference to this single instance as the basis for its position is misplaced. That long and unique case is the exception, and its "bad facts" (in the State's perspective) will only result in making "bad law" if they are the sole basis for change. One situation, no matter how protracted or unique, should not dictate significant change to longstanding, important language.

Even assuming it has the importance alleged by the State, the issue deserves meaningful discussion among the parties. Interest arbitration is not the appropriate venue to change such important language where the parties have not first explored the issues and reviewed their own possible means to address any issues.

Summary Position of the State

The State's proposed changes to the Limited Duty sections serve to clarify the language and otherwise appropriately modify the terms in order to reflect the intended operation and application of the language as found in recent arbitral rulings considering the language.

Article 15.7.B currently indicates the State "shall" provide limited duty. The replacement of "shall" with "may" simply embodies the Axon ruling as to the true meaning of this language. To leave the term "shall" in place implies a duty on the WSP that the arbitrator specifically rejected.

Adding the words "bargaining unit" comports with reason and intended application of the terms, as the context of the language implies the work to be possibly assigned must be of this bargaining unit, as opposed to work of the many other units under wholly different contracts the WSP maintains. Any other interpretation puts the WSP in the position of being asked to improperly "skim" work from other

units.

In 15.7.A.2 and 15.7.A.4 and 15.7.C clarify definitions appropriately and further reflect the arbitration decision on the meaning of the language. The proposed changes regarding interaction with an employee's physicians reflect a more proper consulting, as opposed to decision-making, role between outside physicians and WSP decision-makers. In 15.7.D the proposal clarifies the various return to work conditions and medical processes.

The change to 15.7's opening paragraph moves the limited duty beyond the application of the grievance process and is supported by the lengthy process in the referenced arbitration most recently dealing with this section. That case took years to litigate despite the State's contention the language was plain and unambiguous. This change in no way removes the WSP obligation to conduct a reasonable accomodation process for injured employees.

The record shows there was bargaining on the State's proposals. After the initial deletion proposal changed, the modified terms were discussed prior to and during the mediation process. The modifications immediately prior to the instant arbitration only further reduced the number of changes sought. The final set of proposed changes reflects the issues and terms addressed in the referenced arbitration on the language, and the proposals are therefore appropriately decided at this time. Avoiding re-litigation of previously litigated matters saves the employee and the employer money. The purpose of the CBA is to set forth mutual understandings. When the grievance process has clarified understandings it is best to incorporate those into the new CBA so as to prevent future litigation of the same issue. Therefore, the proposed changes are rightly adopted.

Arbitrator's Analysis

The record of the Arbitrator's work in his prior WSPLA interest arbitration confirms that he finds it fully appropriate for an interest arbitrator to clarify language in cases where a dispute as to meaning has been adequately bargained and moved to impasse. *WSPLA*, *Id*., at 72. Support for his rulings came in holding that "clearer language is an improvement in any CBA." *WSPLA*, *Id*., at 72. In such clarification cases an arbitrator is not adding new terms or even changing intended meanings. Rather, the originally intended meaning, once found by sufficient evidence, is simply being set forth with clearer language. In other words, the status quo is being determined (not changed), then its maintenance is being ensured through the confirming clarification.

This clarification function is to be distinguished from an arbitrator being asked to decide

whether or not to add wholly new terms and meanings to a CBA. That new language function, is, of course, equally within the power of an interest arbitrator. However, this Arbitrator applies a different standard to these different circumstances. Here, the cases cited by the State are well taken supporting the principle meriting a high standard to justify such proposed change. "In interest arbitration, the party seeking to change the status quo bears the burden of showing that a compelling need for a change exists." *Federation of Oregon Parole and Probation Officers*, ERB IA-05012, at 22 (Harris, 2012); *Pierce Co. Fire District No. 2*, PERC 06681, at 10 (Wilkinson, 1988). The point of the cases is well taken. "This principle is based on the idea that the status quo represents stability and that changes to this status quo are more appropriately made by the parties themselves through the mechanism of collective bargaining rather than by adjudication by third party neutrals." *Federation of Oregon Parole and Probation Officers*, *Id*., at 22.

Having said as much, the Arbitrator recognizes that if the parties could always reach their own agreements "through the mechanism of collective bargaining" directly, there would be no need for interest arbitration or interest arbitrators. Obviously, where it is required interest arbitration is simply a part of the collective bargaining mechanism.

The most salient point for the Arbitrator here is that before a party can begin to show compelling need for new language, the direct collective bargaining process should have allowed a real opportunity for the parties to directly bargain the full content of the given proposal. While the language of this proposal was certified for interest arbitration, the Arbitrator nevertheless finds the record convincingly shows the issues involved were not discussed across the table in a meaningful way. The record shows the first proposal was to delete the entire section, which did not lead to any discussion as far as can be seen on the record. *TR 724-25.* Next came less sweeping language, closer to what is now at hand, that was presented as part of a "what if" pattern settlement document. *TR 725; E-28.* This was discussed that single day, though the notes show it was not debated in any detail and engendered only a single exchange, as the discussions were not progressed through caucuses and return discussion. *TR 725; E-29*. The next contact on the issue came at the single-day mediation, when by all accounts the parties did not bargain directly across the table and there is no evidence of any back and forth on this issue even through the mediator. *TR 591; TR 512-13; TR 726-27*. The final proposal came from the State on the Monday before the arbitration commenced, again with no back and forth opportunity, but with fewer proposed deletions that offered previously. *TR 728-30; E-18*. Though the Arbitrator cannot agree with the "not in good faith" characterization of this proposal by the Union, he

will say the process did not result in anything close to robust exchanges on what is a highly nuanced and intricate piece of language.

But even aside from these concerns for the process, the Arbitrator is in any event not convinced there is a compelling need for the changes proposed. The background must be mentioned. The clear genesis of the attention to the section was a pair of arbitrations over application of the language to a lieutenant in the unit. *E-19; U-21*. The process was lengthy, playing out over the better part of three calendar years from 2009-12 and involving a single injury leading to long term disability issues. *Id*. The first arbitration found a violation of the applicable language; the second, following an order to re-apply the terms of section 15.7 to the grievant, found in favor of the State. *Id*. It is quite clear that the intent of the proposal is to avoid the problems in the language that, in the State's view, were exposed in the process.

While the Arbitrator can appreciate the frustration over the time, resources and effort required by the process, it does not provide a solid foundation for establishing a compelling need for the changes proposed. The Arbitrator is unwilling to look at the language through so narrow a prism.[3] The record shows this section has been in the CBA for nearly 20 years, having first been negotiated after a year's discussion in 1997-98, then reworked in 2001 bargaining. *TR 556-57*. The Arbitrator must review the utility and value of the language in the abstract, not as it was presented (or, even, manipulated to some extent) in a single instance. There is no evidence of any similar issues with the terms prior to the cases involving this single injury.

The Arbitrator is in agreement that temporary and long-term limited duty options are an extremely valuable element for the bargaining unit, especially in view of the physically demanding and hazardous work of the unit. This is true regardless of whether or not the terms are duplicated to any extent by federal or other disability law. Accordingly, the Arbitrator is unwilling to grant a proposal to wipe away the ability of the Union to advocate for its membership in cases involving the language by moving the full section outside the terms of the grievance procedure. Nor is the Arbitrator willing to grant any of the changes proposed that address the role, however limited that role may be, of a unit member's physician(s) in the process. The role of an employee's physician is tempered throughout the section by conditional language, as well as the repeated outlets provided to the State to involve

3 It is fair to say the prism suggested by the arbitrations is distorted as well as narrow, in that the record(s) – some five inches thick of them read by the Arbitrator – show the grievant to be an uncooperative participant and a reluctant communicator in situations that demanded cooperation and communication. *E-19; E-20; E-21; U-21*.

independent medical examiners.[4] This is not to say the Arbitrator disagrees with the State's views about the interpretive consequences of the rulings in the arbitrations involved. Much of the power in personal physicians claimed by the grievant in those cases was held to be misplaced and overstated. This is merely to say that changes in the language are still not justified by the attempted misapplication of the language in one case. At bottom, it is clear to this reviewer that all the foregoing changes are proposals to change the status quo, and there is no compelling basis for a third party to implement those changes at this point. Changes like these are better left until the parties themselves have a duly lengthy opportunity to address them directly. If that fails, recourse to interest arbitration may be more appropriate in the future.

The other proposed changes are, however, properly characterized as true clarifications of existing language. In 15.7 (B) and (B)2 the State proposes language that proposes that "shall" be tempered with insertion of the word "may" (and other conditional language) to confirm "that it is in the discretion of the chief to decide" if there is appropriate work available for a limited-ability unit member. *Brief of State* at 24. The Arbitrator's reading of both arbitrations confirms that the State's reading is absolutely correct. Arbitrator Paulsen stated, "In other words, the judgment of whether appropriate work is available is up to the discretion of the Chief." *U-21* at 14. Arbitrator Axon repeated this finding, at multiple points in his decision, including his statements that, " [i]n clear and unambiguous language Article 15.7B establishes it is within the sole discretion of the Chief to decide if 'appropriate work is available'," and adding, "...there is no contractual obligation to offer long term limited duty assignment to the Grievant." *E-19* at 16-17. To repeat: the Arbitrator agrees completely that the "obligation" to provide limited duty is a conditional one. But he does not agree that the proposed changes are necessary. Given the controlling – and clear – conditional phrase "...if the Chief determines," then adding the proposed language could only serve to confuse the matter and is unnecessary. For example, placing the "may offer" behind the first clause regarding temporary limited duty while leaving the "shall" in front of that temporary limited duty phrase is problematic. That structure could well cause a reviewer to conclude that the temporary duty offer was in fact a mandatory "shall" duty, when under the current language it clearly is not. *J-16*. These changes are accordingly rejected as unnecessary and possibly confusing additions that do not amount to clarifications.

4 It appears equally fair to say that viewing the language through the prism of at least some of the physicians involved in the referenced arbitrations provides an equally inappropriate narrow – and distorted – view. It is beyond the Arbitrators ken to appreciate how a physician could approve a light duty position as within an injured person's ability, then withdraw that approval for the same job based solely on the employee's objection to the commute *to* that job. *E-19* at 22.

The remaining true clarification proposal concerns replacing "work" with the term "bargaining unit work" inf 15.7B and 15.7C. The Arbitrator is in agreement that the word "work" can only refer to work within the bargaining unit. The parties' power to collectively bargain and control terms and condition of employment is self-evidently limited to matters within the bargaining unit(s) covered by the resulting CBA. The record reflects no contrary evidence or even argument on this particular portion of the proposal. Accordingly, these two changes are accepted by the Arbitrator.

Arbitrator will Award

> 15.7 Temporary Limited Duty and Long Term Limited Duty [in relevant part]
>
> B. Obligation to provide
> The Employer shall offer temporary limited duty and long term limited duty assignments to employees if the Chief determines that appropriate bargaining unit work is available.
>
> ***
>
> C. Procedure
> An employee requesting any limited duty assignment shall submit the request by IOC through the chain of command. Provided the Chief determines that appropriate bargaining unit work is available, the HRD shall coordinate selection of the assignment with the employee's attending physician and, if necessary, with the Employer's physician after an independent medical examination. An employee shall have the option to accept a limited duty position that is approved by his/her attending physician and, if necessary, by the Employer's physician after an independent medical examination, and that is in compliance with this Agreement. An employee who has accepted a limited duty assignment must participate in a work hardening program approved by his/her attending physician and, if necessary, by the Employer's physician after an independent medical examination.

Article 16.3 Access to Personnel Files and Supervisory Files

Current Language

> Employees have the right to confidentiality related to individual performance, personal information and personnel issues to the extent

provided/allowed by law. The Employer and the Association will take appropriate steps to maintain such confidentiality. The Department shall have access to an employee's personnel and supervisory file when necessary for Departmental operation. Access to the files shall be limited to:

A. Employees with proper identification requesting to examine their own file. Examination will be in the presence of the HRD Commander or designee. Employees shall not remove any material from their files; but may have the HRD provide, without charge, a copy of any material in the files.

B. The Chief.

C. The Deputy Chief.

D. The Assistant Chiefs and Bureau Directors.

E. WSP Labor and Policy Advisor

F. Assistant Attorneys General assigned to represent the WSP and their authorized staff (e.g., paralegal, tort investigator).

G. An employee's representative having written authorization from the employee.

H. Supervisors and managers in the employee's direct chain of command.

I. Officials whose duties require access to personnel files (determined by the HRD Commander). After access has been approved by the HRD Commander or designee, an entry in the Personnel File Access Record (attached to the inside cover of the file jacket) shall be made, documenting the name of the individual examining the file and the date of the examination. No materials may be removed from the employee's file except pursuant to the purging provisions of this Article. If an authorized representative of the Employer, as determined above, makes a copy of any document from an employee's personnel file or disciplinary file, then a notation will be made in the file indicating the person who made the copy, how many copies were made, and to whom the copies were provided.

J. The Office of the State Human Resources Director

K. Department of Enterprise Services

WSPLA Proposal

Employees have the right to confidentiality related to individual performance, personal information and personnel issues to the extent provided/allowed by law. The Employer and the Association will take appropriate steps to maintain such confidentiality. The Department shall have access to an employee's personnel and supervisory file when necessary for Departmental operation. Access to the files shall be limited to:

A. Employees with proper identification requesting to examine their own file. Examination will be in the presence of the HRD Commander or

designee. Employees shall not remove any material from their files; but may have the HRD provide, without charge, a copy of any material in the files.
B. The Chief.
C. The Deputy Chief.
D. The Assistant Chiefs and Bureau Directors.
E. *[Delete WSP Labor and Policy Advisor and renumber following as necessary]*
F. Assistant Attorneys General assigned to represent the WSP and their authorized staff (e.g., paralegal, tort investigator).
G. An employee's representative having written authorization from the employee.
H. Supervisors and managers in the employee's direct chain of command.
I. Officials whose duties require access to personnel files (determined by the HRD Commander). After access has been approved by the HRD Commander or designee, an entry in the Personnel File Access Record (attached to the inside cover of the file jacket) shall be made, documenting the name of the individual examining the file and the date of the examination. No materials may be removed from the employee's file except pursuant to the purging provisions of this Article. If an authorized representative of the Employer, as determined above, makes a copy of any document from an employee's personnel file or disciplinary file, then a notation will be made in the file indicating the person who made the copy, how many copies were made, and to whom the copies were provided.
J. The Office of the State Human Resources Director
K. Department of Enterprise Services

State Proposal

No change to existing language

Summary Position of the Union

The Labor and Policy Advisor should be removed from the list of "automatic access" and treated equal to other officials whose duties require access to personnel files. The WSPLA proposal here stems from goals for transparency, consistency and security in accessing employee personnel files, and should be adopted in view of those important interests.

Members of the true executive staff, including those in bureau level positions, are rightly beyond the need for sign-in/sign-out file viewing requirements. In the interest of transparency and consistency, all others should follow this simple controlling and documenting mechanism.

Lieutenants and Captains have to sign for access to these formal personnel files, and even when they access an employee's supervisory files. This proposal does not deny access to the Labor and Policy Advisor, and is not cumbersome in the least. When duties require access and it is given in the normal course of business, access is granted with the only change being a confirming notice is left of the access made. This simple change meets the multiple stated goals of improved transparency, consistency, and security, and should be accepted.

Summary Position of the State

There is no support in the record for removing the Labor and Policy Advisor from the current list of approved positions for file access.

Transparency is not a legitimate motivation. Assistant chiefs and bureau chiefs, even those outside an employee's chain of command, may access any personnel file without record, and that would remain the case after the proposed change. The proposal will not limit unrecorded access to only those in an employee's chain of command. The change only makes it more cumbersome from the Labor and Policy Advisor to perform necessary work for him or herself, and, as is common, for or on behalf of the chief, bureau directors, and assistant chiefs.

The purpose and source of this proposal has not been established. No need for change has been established. The WSPLA bears the burden to show a need for the change and has failed.

Arbitrator's Analysis

Employees have a legitimate interest in the privacy and security of their personnel files. The CBA currently lists three individuals who have unfettered, at-will access to the personnel file and supervisory files of any officer in the bargaining unit. These individuals may look at any file at any time for any departmental purpose and need leave no record to indicate the access was made. They are: The Chief; the Deputy Chief, and the Labor and Policy Advisor.

The party on that list who differs from the others is the Labor and Policy Advisor. The contrast is self-evident. The Chief and the Deputy Chief are the two highest ranking officers in the WSP and are fully commissioned at the top of the chain of command. The Labor and Policy Advisor is a member of the "executive team" but need not hold a commission or rank, and is not in the chain of command.

The remainder of the list of parties with unfettered access is comprised not of single parties, but of groups or categories of individuals. Of these, outside of any legal representative of either the

employee or the office of the Attorney General (assigned to the represent the WSP) (and the wholly external Department of Enterprise Services and the Office of the State HR Director), there are no other groups or categories of parties with unregulated access who are not in the chain of command, and not highly placed in that chain. All Assistant Chiefs and Bureau Directors are on the full access list, as are all supervisors and managers in the employee's direct chain of command.

This analysis shows that the Labor and Policy Advisor is reasonably shown as a party who is differently situated than others on the list of WSP parties empowered with unrestricted access to a unit member's personnel and supervisory files. Furthermore, the Arbitrator takes note that the collective bargaining process is with reason perceived by some to be an adversarial system, in that management and labor approach issues from different sides of the table and often are forced to represent competing interests. Further note is taken that the position of Labor and Policy Advisor is a direct report to the Chief who advises on matters that specifically include labor-managment issues, including but not limited to collective bargaining. As such, the sensitivities of the bargaining unit driving this proposal and the professed interest in transparency behind the proposal is neither unreasonable nor unremarkable.

It is important to note that the proposal does not seek to deny access to the Labor and Policy Advisor. The WSPLA in making the proposal explicitly noted that the Labor and Policy Advisor would fall under the terms of section "I" of the language. Section "I" provides that any "official whose duties require access to personnel files" simply needs their access "approved by the HRD Commander or designee." *J-16*. With that approval, any such official has full access subject to a requirement that the name of the accessing official must be noted in a "Personnel File Access Record" that is to be "attached to the inside cover of the file jacket." *Id*. It would appear that there is nothing to prevent the Labor and Policy Advisor from taking the role of the HRD Commander's "designee" and facilitating his or her own access when duties require access to personnel files. In such case, the singular difference from the previous status would be that a trail is left of the access (and notations made detailing anything that may have been copied). *Id*.

This process is not punitive, onerous, or complicated. The distinctive position and status separating the Labor and Policy Advisor from the remainder of the relevant list is persuasively shown. And employee's interest in confidentiality of personnel file information to the greatest possible practical degree is legitimate. So too are the gains from simple transparency measures applied to the greatest number reasonably possible of parties who are permitted access to private files. These are

compelling interests that are common to collective bargaining. Accordingly, the Arbitrator accepts the proposal.

Arbitrator will Award

Article 16.3 Access to Personnel Files and Supervisory Files

Employees have the right to confidentiality related to individual performance, personal information and personnel issues to the extent provided/allowed by law. The Employer and the Association will take appropriate steps to maintain such confidentiality. The Department shall have access to an employee's personnel and supervisory file when necessary for Departmental operation. Access to the files shall be limited to:

A. Employees with proper identification requesting to examine their own file. Examination will be in the presence of the HRD Commander or designee. Employees shall not remove any material from their files; but may have the HRD provide, without charge, a copy of any material in the files.
B. The Chief.
C. The Deputy Chief.
D. The Assistant Chiefs and Bureau Directors.
E. Assistant Attorneys General assigned to represent the WSP and their authorized staff (e.g., paralegal, tort investigator).
F. An employee's representative having written authorization from the employee.
G. Supervisors and managers in the employee's direct chain of command.
H. Officials whose duties require access to personnel files (determined by the HRD Commander). After access has been approved by the HRD Commander or designee, an entry in the Personnel File Access Record (attached to the inside cover of the file jacket) shall be made, documenting the name of the individual examining the file and the date of the examination. No materials may be removed from the employee's file except pursuant to the purging provisions of this Article. If an authorized representative of the Employer, as determined above, makes a copy of any document from an employee's personnel file or disciplinary file, then a notation will be made in the file indicating the person who made the copy, how many copies were made, and to whom the copies were provided.
I. The Office of the State Human Resources Director
J. Department of Enterprise Services

Article 19.6 Grievance Procedure Step 2

Current Language

19.6 Step 2
If the grievance has not been settled at Step 1, the grievant/Association may present the grievance in writing to the Chief within fifteen (15) calendar days after the response specified in Step 1 is due. The Chief or designee shall contact the grievant/Association to schedule a meeting or telephone conference call to discuss the grievance within fifteen (15) calendar days after receipt thereof. Within fifteen (15) calendar days after the meeting or conference call, the Chief or designee shall respond in writing to the grievant/Association with a decision on the grievance.

WSPLA Proposal

19.6 Procedure
Step 2
If the grievance has not been settled at Step 1, the grievant/Association may present the grievance in writing to the Chief within fifteen (15) calendar days after the response specified in Step 1 is due. The Chief or *Deputy Chief (for grievances filed by a Captain) or Assistant Chief (for grievances filed by a Lieutenant)* shall contact the grievant/Association to schedule a meeting or telephone conference call to discuss the grievance within fifteen (15) calendar days after receipt thereof**.** Within fifteen (15) calendar days after the meeting or conference call, the Chief or *Deputy Chief (for grievances filed by a Captain) or Assistant Chief (for grievances filed by a Lieutenant)* shall respond in writing to the grievant/Association with a decision on the grievance.

State Proposal

No change to existing language

Summary Position of the Union

The WSPLA's proposal ensures that at the Step 2 grievance stage an officer in the grievant's chain of command and one level above their immediate supervisor will attend the meeting. Ensuring a grieving officer has face-to-face access to a member of their chain of command, instead of the Labor and Policy advisor who is not commissioned and not in the chain of command for a captain or lieutenant, greatly improves the grievance process and reflects the WSP para-military organizational structure.

In the WSPTA unit, troopers and sergeants now have the ability to meet with at least the district or division commander (a captain) prior to reaching the Labor and Policy Advisor stage. This structure has a record of proven success, with a recent example coming on a trooper's appeal to the Assistant Chief, who then reversed the captain's prior decision. The ability to meet with someone in the chain of command can and does make a difference.

If anything, the situation is more important to captains and lieutenants, where they would in all likelihood have already met with their immediate supervisor. In such case, ensuring access to the next level higher is available before the arbitration stage can make a real difference to resolution.

Nothing in the proposal intends to exclude the Labor and Policy Advisor. The proposal adds the chain of command representative in addition to any other chosen representative of the chief. Following chain of command is a deeply instilled part of every WSP's officers training, and this proposal mirrors the import of the teaching. Acceptance of this proposal will improve the grievance process by honoring the chain of command, and ensuring true operational perspective in a step 2 meeting.

Summary Position of the State

This WSPLA proposal is another unsupported and unjustified attempt to remove the Labor and Policy Advisor from the involvement with the bargaining unit.

There is in fact an existing chain of command presence in the process for any grieving WSPLA member – his or her immediate supervisor. This is the same as the WSPTA process. Indeed, the WSPTA grievance language also provides for the "Chief or the Chief's designee" to arrange the step 2 meeting.

Furthermore, there is nothing to prevent the Chief from designating a higher-level member of a grievant's chain of command, instead of the Labor and Policy Advisor, to handle a step 2 meeting. However, a discipline matter is a rare grievance for WSPLA members, and more likely the matter will involve a CBA interpretation or policy matter where the Labor and Policy Advisor will be the best equipped representative of the Chief due to familiarity with the CBA and a cross-bureau global perspective, as well as carrying executive staff status as a direct report to the chief. Moreover, as a simple practical matter, given the tight (15-day) window for scheduling a step 2 meeting the Chief must retain the option to forego a chain of command presence when their limited numbers make it difficult for them to be available on such notice.

At the end of the day, management should retain the option to choose who its representative will

be because management ultimately owns the responsibility for the outcome and how it is decided. Choosing who is best qualified to assist in such a situation is a legitimate management interest. Given the strength of this interest, and all the competing concerns, and without a compelling reason for this change, the proposal should be rejected.

Arbitrator's Analysis

The record made clear that the common "designee" used by the Chief in processing Step 2 grievances is the Labor and Policy Advisor. *TR 544-45*. The nature of this position as compared to commissioned officers in WSPLA unit members' chain of command was discussed at length above.

However, the thrust of this proposal differs from the latter. This proposal does not seek to treat the Labor And Policy Advisor (if acting as the Chief's designee) any differently than others in the unit chain of command or in any exclusionary fashion. Nothing in the proposal would act to exclude the Chief – or the Chief's designee of choice -- from attending or otherwise participating as an additional WSP representative at any stage of the grievance procedure, notably and expressly including at Step 2. It is instead others in the chain of command who are the actual parties at the root of this proposal in an affirmative manner.

The WSPLA points out that in a WSPTA member trooper or sergeant filing a grievance will of necessity have the involvement of a member of the chain of command who is at least one step above his or her immediate supervisor (at Step 1 of the WSPTA process the district/division commander is required to respond to the grievance). *U-17* at 59.

The WSPLA grievance process does not have the same requirement. The Step 1 process is limited to the grieving officer's immediate supervisor; the Step 2 process specifies only the Chief or the Chief's designee, who, of course, does not have to be in the chain of command at any level. *J-16* at 48.

To the WSPLA the issue then is, first, a matter of equity in terms of treatment compared to the WSPTA. But, second, the proposal reflects a practical interest in adhering to the chain of command with the hope of improving the chances for success of grievance resolution at the last step prior to arbitration. The proposal does so by necessarily injecting the involvment of a superior above the WSPLA member's immediate supervisor into this key stage of the process.

The Arbitrator sees compelling merit in these points, but notes that the WSPLA proposal differs from the WSPTA language in one key respect. The WSPTA procedure specifically references either the Labor and Policy Advisor, or the Chief's designee, and prescribes a role for that position in making

the formal written response to a grievance at both Steps 1 and 2. As written, the WSPLA proposal would require either the Deputy Chief or the Assistant Chief to take over the written response duties at Step 2.

This requirement is one step too far, as it goes beyond equity and beyond the compelling purpose of merely ensuring involvement of at least a one-step-higher representative of the chain of command in the grievance process prior to arbitration. The proposal would go beyond by overtly dictating to the WSP what party would be required to write the decision at Step 2 and thus unreasonably intrudes on the Chief's prerogative in choosing as a designee the best party seen fit for the often delicate duty of Step 2 response prior to arbitration.[5] This is not done in the WSPTA CBA and should not be done here.

Accordingly, recognizing that enhancing the grievance resolution process is a traditional subject of bargaining, and that ensuring some level of involvement in the process of an officer one-step higher than a grievant's immediate supervisor is a compelling goal, the Arbitrator will accept the first part of the proposal dedicated to those goals. The second part, as an unreasonable restriction of the Chief's management prerogative and a proposal not supported by the same equitable considerations as the former, will be denied.

Arbitrator will Award

> 19.6 Procedure [In relevant part]
>
> Step 2
> If the grievance has not been settled at Step 1, the grievant/Association may present the grievance in writing to the Chief within fifteen (15) calendar days after the response specified in Step 1 is due. The Chief or Deputy Chief (for grievances filed by a Captain) or Assistant Chief (for grievances filed by a Lieutenant) shall contact the grievant/Association to schedule a meeting or telephone conference call to discuss the grievance within fifteen (15) calendar days after receipt thereof**.** Within fifteen (15) calendar days after the meeting or conference call, the Chief or designee shall respond in writing to the grievant/Association with a decision on the grievance.

5 The State rightly points out that in this unit of Lieutenants and Captains any grievances are often more complicated and the stakes are often higher than might elsewhere be the case, requiring all the more the input of a party – such as the Chief's designee – who holds labor law and CBA expertise as well as a more cross-bureau globally attuned operational and institutional perspective as a member of the executive staff.

Article 22.3 Residence Requirement

Current Language

22.3 Residence Requirement

A. Employees must reside within forty-five (45) miles of their assigned district, division or detachment office**.**

WSPLA Proposal

A Employees must reside within *fifty (50)* miles of their assigned *duty station*.

State Proposal

No change to existing language

Summary Position of the Union

This proposal adds five (5) miles to the current residence requirement distance. Making this change brings consistency with broader and widely accepted State distance/travel policy, and at the same time provides more flexibility for unit members in accessing available assignments that are spread throughout the vast WSP jurisdiction.

The mileage limit has been increased before, and increases are proven to result in greater opportunity for taking new assignments. The WSP jurisdiction covers 21,000 miles of roadway and assignments can be in any of the multiple districts throughout the state. If a unit member does not have to move to accept a new assignment the likelihood of accepting that assignment is logically much greater.

Fifty (50) miles is a reasonable distance, not arbitrarily chosen. The OFM travel regulations choose 50 miles as the limit within which a covered State employee is not deemed in travel status. So too is 50 miles the applicable limit for State moving regulations – moves inside 50 miles are not subject to paid moving benefits. Given this last term, the current limit of 45 miles has the difficult result of forcing an officer who lives 48 miles distant into moving to be within the 45 mile limit, but that same officer is not eligible for moving expense terms.

This proposal addresses what might appear to be minor issues, but in fact has multiple positive impacts on already under-compensated employees. Leaving children in their same school and avoiding a home sale in a down market are tangible benefits to members that are only in addition to the benefit

of having a larger number of advancement assignment choices within reach. At the same time, the WSP benefits by having a larger pool of candidates for assignment, and growth and development opportunities. This proposal should be implemented as a win-win.

Summary Position of the State

There is no support for this extension of the current residence limit for assignments. Extending the distance has tangible negative impact to important operational concerns and represents added cost.

Even the WSPLA basis for its proposal is dubious. The claim for a 50 mile "moving limit" is not in fact supported by anything on the record. The travel-status distance is 50 miles, but the comparison with the basis for the WSP distance policy is inapt.

The operational concerns for the WSP center on service to an assigned area. An officer's availability to an assigned area is important to serving that area. Response time on call outs is a factor to consider in residency requirements – the longer the distance, the slower may be the possible time to respond in an emergency situation

The proposal is not without cost. Defining an amount is not practically possible, but given that the WSP pays for the fuel, maintenance and vehicle replacement, it is a given that the more miles traveled means the greater will be these expenses. These costs would only grow as the agency expands and develops over time as well.

The 45 mile residency limit should be maintained, and kept parallel to the 45 mile limit in the WSPTA CBA.

Arbitrator's Analysis

The Arbitrator is willing to agree that some point, if not now, this proposal would benefit some unit members who resided outside of the current 45 miles from an assigned district, detachment or office but less than 50 miles away from that desired location. And the Arbitrator accepts that not having to move home, family and household to come within a residence requirement is also a positive benefit. It is even possible that this proposal could open opportunities for unit members to consider different command and growth opportunities, and thus benefit the WSP with their expanded abilities and experience, if the residence boundaries were expanded by some amount.

However, when opposed to the contrary concerns these considerations do not create a compelling case supporting this change. The attempted tie-in to the State OFM rule on travel lodging

(after traveling 50 miles overnight lodging is compensable) is unpersuasive. *TR 737*. The match of the proposal to the number seems more coincidental than calculated, and, moreover, it is of dubious support when the proposed distance for a daily commute becomes equivalent to a distance deemed so far that an employee could reasonably be expected to claim the need for overnight lodging instead of having to try and return the long distance home in a single day.[6]

In addition, there is no detail in the record that removes the uncertainty over the impact of the difference between the current "district, division or detachment office" and the proposed "duty station." The basis for this modification was not addressed, and could well impose a greater change than merely the added five miles alone.[7] The Arbitrator cites noted Northwest arbitrator Jane Wilkenson for the applicable mindset: "A cautious approach to change is justified when the consequences of the change are not certain." *IAFF Local 1488*, PERC 06881 (Wilkinson, 1988).

At the same time, the proposal would undoubtedly increase WSP expenses. WSPLA officers drive WSP vehicles, and the agency pays for all gas and maintenance. *TR 673-74*. Any added commute distance logically equates to added expense on these assets, though admittedly in an unknown amount. Equally unknown, and perhaps unknowable, is the impact such a change could have on the service and performance of unit members. Common sense tells that response time and availability to the district one serves are reasonably considered factors, and the natural inference is that the farther one is removed from the other side of one's coverage area means the more one's performance and availability is threatened (at least) and compromised (at worst). Finally, indications are that there are not equity based needs, as the WSPTA residence distance remains at 45 miles. *TR 736*.

In sum, the Arbitrator finds that there is no showing of compelling need for the proposal, and it is opposed by a contrasting set of expenses and uncertainties, and so declines to apply the change.

Arbitrator will Award:

No change to existing language.

6 The same reasoning might be applied to the 50-mile "moving expenses rule" referenced by the Union, but the Arbitrator is in agreement with the State that the record lacks evidence to confirm such a rule exists. To the contrary, the better testimony indicated such a rule did not exist. TR 737.

7 The Arbitrator's awareness that "duty station" is the phrase used in the WSPTA CBA does not solve this problem. U-17 at 10.

Section 26.3 and 26.4 Longevity

Current Contract Language

26.3 Longevity Premium Pay – Lieutenants

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

A. Two percent (2%) longevity pay based upon the top pay step of the Commissioned Officer Salary Schedule for lieutenants shall be added to the salaries identified in the applicable Appendix for all employees with five (5) through nine (9) years of commissioned service.
B. An additional two percent (2%) longevity pay shall be added for all employees with ten (10) through fourteen (14) years of commissioned service.
C. An additional two percent (2%) longevity pay shall be added for all employees with fifteen (15) through nineteen (19) years of commissioned service.
D. An additional two percent (2%) longevity pay shall be added for all employees with twenty (20) or more years of commissioned service.

26.4 Longevity Premium Pay – Captains

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

A. Two percent (2%) longevity pay based upon the top pay step of the Commissioned Officer Salary Schedule for captains shall be added to the salaries identified in the applicable Appendix for all employees with fifteen (15) through nineteen (19) years of commissioned service.
B. An additional two percent (2%) longevity pay shall be added for all employees with twenty (20) or more years of commissioned service.

WSPLA Proposal

26.3 Longevity Premium Pay – Lieutenants *and Captains*

Lieutenants *and Captains* will receive longevity pay in accordance with the following schedule:

A. Two percent (2%) longevity pay based upon the top pay step of the Commissioned Officer Salary Schedule for lieutenants *and*

captains shall be added to the salaries identified in the applicable Appendix for all employees with five (5) through nine (9) years of commissioned service.

B. An additional two percent (2%) longevity pay shall be added for all employees with ten (10) through fourteen (14) years of commissioned service.

C. An additional two percent (2%) longevity pay shall be added for all employees with fifteen (15) through nineteen (19) years of commissioned service.

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

26.4 Longevity Premium Pay – Captains *[Delete]*

State Proposal

No change to existing language

Summary Position of the Union

The proposal to add two steps to the captain longevity schedule is grounded in equity and the need to reduce compression problem in the bargaining unit.

Troopers, sergeants and even lieutenants have four (4) steps of longevity, while captains only have two (2). This means the maximum longevity percentage for captains is only 4%, without compounding, for captains compared to the others' 8%.

Bringing equity to this schedule will also help reduce the pronounced compression in the unit. Some sergeants earn more than even captains under the current CBAs. In fact, after the Chief, the highest earning commissioned officers were 6 lieutenants, followed by a sergeant. The overtime exempt status of captains means that lieutenants have ready ability to earn more than captains, and even the Deputy Chief.

The difference between the lieutenant's longevity scale and the captain's' scale means that when a lieutenant becomes a captain after 15 years of service – the typical interval – that officer will take a 4% cut in longevity pay. This cut, combined with the loss of overtime pay, contributes directly to the compression between captains and lieutenants.

Because the impact of this change would be immediate, as all current captains have a minimum of 15 years service, the calculated cost is $201,052 for the biennium. Captains with 15 to 20 years of service would see a $349 monthly increase, Captains 20 years or more would increase by $357 a

month. These amounts are reasonable, affordable and sustainable.

Summary Position of the State

The cost of this proposal is not affordable.

It is true a Lieutenant of 20 years (thus receiving 8% longevity pay from the 4th step of their schedule) would lose 4% upon moving to the 2-step Captain schedule, this design flows from the fact that Captains are compensated overall at a higher rate than Lieutenants. Further, while not readily apparent upon first presentation, it is now made clear that the Union proposal is intended to add two full longevity steps, meaning an immediate 4% to all captains, since every captain has at least 15-years of service.

The immediate and significant ongoing cost of this proposal is not affordable and the proposed change cannot be accepted.

Arbitrator's Analysis

The Arbitrator has recognized the manifest problems of non-competitive compensation and unit compression. It is true that accepting this proposal would strike at both of these issues.

However, the Arbitrator's determination on the overall salary compensation award subsumes any funds available for any other proposals with significant economic impact. Reference may be made to the reasoning hereinabove on the State's recovering but still precarious financial position to explain why the Arbitrator declines to award this proposal.

Arbitrator will Award

No change to existing language

Article 26.6 Shift Differential

Current Language

Shift Differential – Lieutenants Only
Shift differential will be paid at five percent (5%) of the lieutenant's regular rate of pay for all hours worked between six (6:00) p.m. and six (6:00) a.m., including overtime hours.

WSPLA Proposal

Shift Differential –

Shift differential will be paid *to lieutenants and captains* at five percent (5%) of the *employee's* regular rate of pay for all hours worked between six (6:00) p.m. and six (6:00) a.m., including overtime hours.

State Proposal

No change to existing language

Summary Union Position

The proposal to add a five percent (5%) shift differential for all hours worked by captains between six (6:00) p.m. and six (6:00) a.m. is intended to bring equity to the CBA and address the need to reduce compression problem in the bargaining unit. The CBA currently applies this shift differential only to Lieutenants, and officers under the WSPTA CBA receive it as well.

Captains do work these hours, often being called away for extended periods during emergencies such as the Oso Slide. The impact of the time away from families, as well as simply the nighttime hours, is the same for captains as for all other commissioned officers who currently receive a shift differential for these hours. Fairness requires that Captains standing side by side with troopers, sergeants and lieutenants during these hours should receive the same form of compensation for it.

The administration methods for recording this time already exist, and the voluntary reporting program for recording these hours currently used by lieutenants would be used by captains. The application of the differential would not be related to shift, but only the hours actually worked between 6 p.m. and 6 a.m.

The costs associated with this proposal were viewed as minimal by the State's calculation witness. No captain has a scheduled regular shift during these hours. The payment would be made only as properly requested, recorded and required. As such, this change should be accepted.

Summary Position of the State

Captains are overtime exempt employees who enjoy the flexibility to set their own hours. This proposed change should not be accepted.

It is true that occasionally a Captain will be called out during these hours, and do have to monitor issues via telephones and messaging systems between 6 p.m. and 6 a.m. This proposal could have the unintended impact of providing an incentive to create worktime, including self-dispatches to scenes where they are not needed during these hours.

Upon promotion, Captains knowingly accept the requirement to manage their own time and work as needed to perform their duties. This includes sometimes working over 40 hours in a week, and sometimes at odd hours. Accepting a captain's status is a matter of knowing choice.

This proposal brings risk to the current pay status of the exempt Captains, and is otherwise unnecessary and incompatible with their roles.

Arbitrator's Analysis

The Arbitrator finds that the structure of Captain's compensation and work schedule does not allow acceptance of this proposal. The record reflects the nature of Captains' work is as salaried, exempt employees who set their own hours. As such, the compensation for working any late hours is designed to be taken in subsequent scheduling. There is no indication on the record that this does not occur.

And yet, the Arbitrator notes that any opportunity to address the need to improve the compression issue between Captains and Lieutenants demands consideration in its own right, even though the impact of this proposal would be undoubtedly small. Indeed, given that this proposal would not have significant financial impact it is not ruled out on the same basis as other declined economic proposals.

Rather, the deciding factor here is that the relatively small impact does not justify the risk posed by the uncertain impact of the language on the exempt status relied upon in the structure of the Captains' position. The State's fear is well placed that this premium, calculated in an hourly manner as it would have to be, could endanger the exempt structure.

Accordingly, without a deeper analysis available on the record on the actual impact of this language, the Arbitrator declines to apply it.

Arbitrator will Award

No change to existing language

Section 26.7 Premium Pay

Current Language

The Employer will pay premium pay as follows to employees assigned primarily to the following responsibilities:

Assignment	Monthly Rate
Legislative Liaison*	Five Percent (5%)
Multi-Engine Pilot**	Ten Percent (10%)
OPS, CID and IAD	Three Percent (3%)
Single Engine Pilot**	Five Percent (5%)
SWAT Member	Three Percent (3%)

*Provided only during legislative session.

**An employee may only receive one (1) pilot premium pay.

WSPLA Proposal

A. The Employer will pay premium pay as follows to employees assigned primarily to the following responsibilities:

Assignment	Monthly Rate
Legislative Liaison*	Five Percent (5%)
Multi-Engine Pilot**	Ten Percent (10%)
HSD, SOD, OPS, CID and IAD	Three Percent (3%)
Single Engine Pilot**	Five Percent (5%)
SWAT Member	Three Percent (3%)
Academy Staff	*Five Percent (5%)*

*Provided only during legislative session.

**An employee may only receive one (1) pilot premium pay.

State Proposal

No change to existing language

Summary Position of the Union

This proposal adds premium pay to three specialty unit assignments where the trooper and the sergeants in those units already receive that same premium pay. It is a matter of equity and fairness that the lieutenants and captains who run those units and supervise those troopers and sergeants should be paid the same specialty compensation earned by those serving under them. Adopting the proposal will also counter the acknowledged compression problem in the unit.

Academy staff assignments are one such area. Troopers and sergeants who teach at the Academy receive the premium proposed – Captains and Lieutenants who teach beside them do not. This teaching includes classes for cadets as well as for various Academy classes provided for already commissioned officers.

The State points out that Lieutenants or Captains are not required to have the full or current specialized training of the officers they supervise in the three assignments covered by this proposal. While that may be the case at least in some instances, in every instance the supervising Captain or Lieutenant must have a working knowledge of those they supervise and in every case the Captain or Lieutenant is the one who is ultimately responsible for anything that happens in the specialty unit they supervise.

Adding the premium will also diminish the compression problem caused when sergeants and troopers receive a premium not provided to their higher rank supervising officers. Even so, the cost of this proposal is not extreme. The State set it at $61,859 for the biennium. This is a reasonable, yet impactful, proposal that the State can afford, and it should be adopted.

Summary Position of the State

This costly proposal is not justified and should not be accepted.

Unit members who currently receive premium pay do so because their assignment calls for special skills, training and/or certification, or an exorbitant and continuing excessive time commitment. Additionally, the targeted positions are not in need of additional incentive pay to attract unit members to move to those positions.

A Captain who oversees the HSD division, which includes (in part) specially-trained "bomb technician" specialists, is not required to receive the same training – but if a WSPLA member in the HSD does have SWAT training, they already receive a premium under the present language.

The SOD division includes pilots and an executive/capitol security unit. Any certified pilot already receives a premium; a WSPLA supervising officer is not flying the planes and does not have the same licensing duties, so the same premium is not justified. Supervising executive security, whether the Executive Protection Unit or at the governor's mansion, or the capitol, does not require special responsibilities or certifications, and the duties do not significantly differ from the regular FOB WSPLA supervisory duties.

Assignment to the Academy for a WSPLA member is a desirable position, and the environment

and opportunities there provide ample incentive for attracting candidates. The Academy premium for WSPTA members was instituted to solve a recruitment problem; the WSP has no such problem for WSPLA assignment to the Academy.

The WSPLA has not shown the proposed changes here, and the expense associated with them, are justified. The proposals should be rejected.

Arbitrator's Analysis

The proposed additions to the premium pay schedule are based to a small extent on improving the compression problems within the commissioned WSP ranks, but for the most part are justified in notions of parity. The Arbitrator finds that the record does not support the claim that the work of the WSPLA unit officers in the relevant specialty assignments is equal in training, skill, knowledge required, and performance duties to the work of the WSPTA members with whom they seek equity.

The HSD unit oversees security for the ferry system, which includes canine elements, and among other duties, also has oversight for the WSP bomb squad . *TR 637*. The record reflects that the WSPLA members assigned to oversee the HSD supervise specialty-skilled WSPTA officers but they do not exercise those same skills. *TR 640*. One HSD Lieutenant oversees the Fusion Center, including the bomb squad, but he does not undergo the required bomb training, and does not perform that work. *TR 641-42*. The other HSK Lieutenant oversees VATS troopers and canine handlers, and again is not certified in the actual specialty work performed. *TR 640-42*. So too with the Captain in charge of the HSD; he commands the division but holds none of the current specialty certifications and does not undergo the specialty training required. *TR 641*.

The SOD division shows the same circumstances. SOD encompasses the WSP aviation division and various capitol campus security detachments. The SOD captain oversees them all, but holds no pilots license or aviation certifications, and the work is otherwise similar to being responsible for one of the state APAs (Autonomous Patrol Areas) in supervisory requirements. *TR 645; TR 647*. One of the two SOD Lieutenants oversees the aviation division, but is a licensed pilot and does fly so is already receiving specialty pay. *TR 646*. The other Lieutenant supervises various capitol campus security units, for which again the record shows no involved specialty skills, training or knowledge. *TR 646*.

These latter two departments stand in contrast to the existing specialty departments in the proposed grouping, the OPS, CID and IAD. These units have statewide responsibility and can demand exorbitant amounts of time at odd hours, particularly the OPS position. *TR 650*. In addition, special

investigative skills are required, and applied, in the CID and IAD positions. *TR 651*.

The Academy Captain and Lieutenant supervise what is a strikingly impressive training operation, but the record reflects that the bulk of their duties at the Academy differ from the actual routine instruction and daily training work done by WSPTA members who receive the premium now requested by the WSPLA. *U-20*. While the two officers do a certain amount of actual classroom instruction, it is on an "as needed" basis, or for the most part devoted to highly specific topics that do not require extended sessions or series of sessions. *TR 383-84; U-20*. Moreover, it is established that the WSPTA premium for Academy trainers was implemented to address a recruitment issue; there is by all accounts no current recruitment issue for WSPLA officers to fill Academy positions. To the contrary, it is an honored and much desired assignment with its own intrinsic benefits, including access to regular exercise and a stimulating highly energized environment. *TR 648-49*.

None of this even begins to consider the ability to pay element discussed hereinabove. The cost of these premium proposals totals over $60,000 for the biennium. While there may be some merit in the nature of the work in some cases – the closest call by far is at the Academy – and while implementing the premiums would serve to counter compression problems, given the foregoing operational realities and the realities of the devoting the funds in this bargaining cycle to the maximum possible unit-wide salary increases, the Arbitrator must decline to impose any of the added specialty premium classifications.

Arbitrator will Award

No change to existing language.

Section 26.7.D Field Training Officer (FTO) [New]

Current Language

None

WSPLA Proposal

D. *Field Training Officer (FTO)*

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

State Proposal

No new language

Summary Position of the Union

A graduated cadet begins field service only under the direction of a Field Training Officer (FTO). Currently, a Trooper acting as an FTO receives a 10% premium; a Sergeant acting as an FTO receives a 5% premium. This proposals adds a 5% premium for the WSPLA officer who supervises the work of the FTO Troopers and FTO sergeants as a simple matter of equity.

When an Academy class is set to enter the field, the work of the WSPLA FTO supervising begins with trips to the Academy to meet with the class, and decisions and planning at district level to select and prepare the FTO Trooper and Sergeants. The WSPLA supervisors work continues throughout the FTO period. The FTO supervisor reviews all the work of the FTOs, including monitoring the sergeants, and collects information to provide input on which FTOs will continue with the cadets. While the FTO Trooper does the daily reports, and the FTO sergeant reviews those reports, the FTO WSPLA officer is responsible for monitoring the work of that FTO sergeant. And if there are serious issues with a cadet's performance, the FTO Lieutenant is the party who must work with the Academy regarding those issues.

The work is labor intensive, sometimes requiring moves to night shift, and to train a new FTO Lieutenant some 8 to 10 weeks of training is required. This work is, of course, all in addition to the regular duties of an FOB Lieutenant.

Current administration mechanisms are in place to track the hours worked on FTO assignments by unit members. The state did not place a cost on this proposal, but there are FTO supervising Lieutenants in every district, and compensating them with a premium equal to the FTO sergeants they supervise is a fully justified addition to the CBA.

Summary Position of the State

There is no equivalency between the amount of work done by FTO Troopers and FTO Sergeants and the work of an FTO supervising Lieutenant. This proposal is not supported by fact and must be denied.

An FTO Trooper rides with a cadet and trains that cadet directly and at length. The FTO Trooper writes daily reports and cadet evaluations and gives documented feedback to the cadet. An FTO sergeant oversees all the multiple FTO Troopers in his or her district, and must be the link

between every one of them and the single FTO Lieutenant.

The level of labor between these positions is not comparable. The "heavy lifting" is done by the field Trooper and Sergeant, and simply overseeing the Sergeant is not equivalent in practical terms. The amount of evaluation, documentation and feedback is materially different.

There is no compelling evidence to change this provision from the status quo.

Arbitrator's Analysis

While an FTO Lieutenant must devote special efforts to the important work, the Arbitrator is in agreement that there is not a close enough comparison to justify applying the premium paid to WSPTA troopers and sergeants performing FTO duties to FTO Lieutenants. There is a fundamental difference in the work of the WSPTA FTO Trooper/Sergeant pair and the supervising WSLPA FTO Lieutenant. The work of the FTO Trooper and Sergeant is directly related to the cadet, while the work of the FTO Lieutenant is more closely related to the FTO Trooper and Sergeant. *TR 768*. A cadet remains functionally attached to the Academy Training Division Lieutenant, not the FTO field Lieutenant. *TR 653*. The cadet is, however, out in the field being trained all day long with the Trooper, and through weekly feedback from the Sergeant who reads the daily reports made every day by the Trooper underneath him and feeds them on to the Training Division. *TR 653-54*. But the work of the FTO field Lieutenant is not direct to the cadet, it is in selecting, supervising and monitoring the FTO Trooper and the FTO Sergeant and the ongoing training. *TR 767-769*. The FTO Lieutenant is, in other words, dedicated to supervising the process of training, while the FTO Trooper and Sergeant are dedicated to the actual training.

Having said as much, the Arbitrator will liken his view of this circumstance to the Academy premium. It is clear there is intensive, specialized, skilled and highly demanding work of great import going on. It may well be that such premiums can be justified on their own merit, and for the impact they will have on compression issues. But this will have to wait for a time with a better financial outlook, or at least a time where funds may be spread around the unit in more areas than in a single too-long neglected wage arena (as has had to happen here). At present, for all the reasons discussed above, the Arbitrator cannot agree to implement the proposed FTO premium.

Arbitrator will Award

No new language

Section 26.7 E (New)

Current Language

None

WSPLA Proposal

E. *If a Lieutenant or Captain is not receiving any premium pay under Section 26.6 above and a majority of the commissioned personnel in a unit receive premium pay, then the Lieutenant and/or Captain who supervises that unit shall receive the same premium pay. If a Lieutenant or Captain is not receiving any premium pay under Section 26.6 above and a Lieutenant and/or Captain supervises more than one unit that receives premium pay, then the Lieutenant and/or Captain shall receive the highest of the premium pays that the commissioned personnel receive*.

State Proposal

No new language

Summary Position of the Union

This proposal serves an alternative ("either/or") to the specific specialty unit premium proposals made elsewhere by providing an automatic mechanism for establishing premium eligibility based on the premium status of the officers being supervised by the WSPLA member. For the same reasons as stated, it is a reasonable and affordable change.

As a matter of equity, as supervising Lieutenant or Captain not otherwise receiving premium pay should receive the applicable premium if a majority of the commissioned personnel in his or her unit receive that same premium pay. Further, if such a Lieutenant or Captain supervises more than one specialty unit that receives premium pay, the supervising officer shall receive the highest of the premium pays that his or her personnel receive.

Summary Position of the State

There is no justification for this new language, for the reasons expressed in discussion the specifically proposed premium additions and expansions.

As a general matter, it does not make sense for a Lieutenant or Captain to receive premium pay solely because a majority of his or her subordinates receive it. The rational behind premium pay is the

requirement for specialized training, skills, and/or certification, or for objectively evident exceptional time demands. Merely overseeing such skilled or specialized individuals does not entitle premium pay; a pilot's supervisor is not a certified pilot doing any flying and a bomb tech's supervisor is not a trained expert certified for bomb squad work.

There is no support for adding this new language and is likely impact for expense and confusing implementation.

Arbitrator's Analysis

The Arbitrator is in agreement with the State here. This alternative to specific premium additions has no support. No matter how bad a compression issue may be, premium pay must stand or fall based on the work done to earn it. It cannot be justified on work done nearby it, or around it, or even over it.

The proposal is more accurately seen as a supervisory premium, to be paid for a special method of supervising. If that could be shown and demonstrated in practice, such a proposal could possibly get at least a considered review. However, it is more likely the riposte would merely be that the entire officer classes of Lieutenant and Captain are based on a "supervisory premium" that is ongoing and reflected in their higher base compensation compared to the Troopers and Sergeants they supervise.

For now, the reply will stand on such examples as these: a pilot's un-licensed supervisor does not fly planes, and a bomb squad's untrained supervisor does not defuse bombs, just as a supervisor who works over a highly educated unit does not take an advanced degree just because a majority of the employees underneath him have them.

This proposal is therefore refused.

Arbitrator will Award

No new language

Section 26.10 Clothing Allowance

Current Language

Clothing Allowance

Employees assigned to IAD, CID and OPS shall receive a six hundred dollar ($600) annual clothing allowance.

WSPLA Proposal

Clothing *and Cleaning* Allowance

Employees shall receive an *eight* hundred dollar (*$800*) annual allowance *for the cleaning of clothing and uniforms as well as the purchase of clothing.*

Employees who transfer to a non-uniformed assignment shall receive a one-time one thousand dollar ($1,000) payment to purchase clothing.

State Proposal

No change to existing language

Summary Position of the Union

The clothing allowance has been ignored for years and as a static amount is no longer close to even where it started. The allowance needs to be adjusted to restore at least its original intent and applied across the full unit.

Over the passage of the many years (so many as to be uncertain in Assistant Chief's memory) the $600 allowance has lost buying power. Clothing costs have increased and inflation has taken place. An increase of $200 begins to restore the amount to its original level.

By applying this to the entire unit, the proposal equalizes the uniformed and non-uniformed assignments by assisting not only with the purchase of civilian clothes, but also to offset the costs of cleaning the uniforms that have been increasing over time as well. The WSP provides uniforms, but the officers must pay for required dry cleaning to maintain them. A uniformed Lieutenant who uses two uniform sets and cleans them only weekly (at $15 apiece) still spends $1,560 annually to maintain a clean uniform. Adding the cost of tailoring and repair and the total nears $1,700 per year.

This proposal also includes a one-time lump sum of $1,000 for officers transferring to a non-uniformed assignment. The expense is minimal, calculated at an estimated two officers per year, and the language is intended to apply to a temporary non-uniformed assignment.

The salary survey shows many agencies provide both a cleaning and a clothing allowance. This proposal would make the current language, which lacks a cleaning element, both a cleaning and clothing allowance. Three of the five surveyed west coast state agencies have a cleaning allowance, along with five counties and 11 cities, making the total a full 66% of all participants surveyed. A

clothing allowance, averaging $627 annually, is paid by 79% of all participants surveyed. The cost of the full WSPLA proposal is estimated at $94,551 for the biennium, or less than a 1% base wage adjustment for one year.

Both the comparables in the salary survey and the extremely minimal cost of this proposal support its adoption.

Summary Position of the State

This proposal is unjustified and should be refused as there is no compelling reason for adoption.

Uniformed officers are provided with full uniforms at State expense and non-uniformed officers receive the contractual clothing allowance payment.

The State is aware of no civil service contracts that provide employees with a clothing allowance. Employee managers routinely must wear business attire and, in accord with receiving higher compensation that non-managers, are expected to invest in their own clothing.

The proposal is also unclear, in that no certainty is provided on which assignments, beyond the three currently named, would qualify as non-uniform assignments.

The cost of the full proposal is significant, and combined with the lack of compelling basis it should be refused.

Arbitrator's Analysis

The static history of the clothing allowance has can no longer be ignored. The amount of the total cost for a $100 increase has not been calculated, but the Arbitrator takes notice that it cannot be excessive, given the relatively small portion of the unit in the IAD, CID and OPS divisions.

This increase is justified on multiple grounds. The old figure has been eroded by inflation and no longer resembles the original buying power that must have been represented at time of its origination. The comparative survey shows that the participant average for the 23 of the 29 comparators that pay a clothing allowance is at $627. *E-6* at 172. The $100 increase will vault the WSP ahead of that average, but it still will be equal to or less than five other agency amounts. *E-6* at 169-172.

The remainder of the proposal cannot be accepted at this time. The Arbitrator will note that of the two additional concepts, the more attractive is the one time payment on first transfer to a non-uniform assignment. However, the proposed language falls victim to clarity problems. The current

rubric using divisional names provides certainty, but more assurance would need to be found on what constituted a "non-uniform assignment" and on how long a qualifying assignment under that language would have to last if that were to be the operative phrase.

The unit-wide clothing-slash-cleaning allowance stands on much shakier ground. The Segal survey showed that of the 29 total jurisdictions examined, only six offer a cleaning allowance. *E-6* at 166-168. In addition, of all the clothing allowances, only one or two of the agencies provided the allowance for officers that were in uniform, and these could well have been jurisdictions that did not provide uniforms as the WSP does (the data is unclear). *E-6* at 169-172.

In any event, the economic issues at hand that have been the constant restriction apply yet again to make consideration of such a wholly new unit-wide cash benefit out of the question.

The Arbitrator will limit the change to increasing the clothing allowance within the current language by $100.

Arbitrator will Award

Clothing Allowance

Employees assigned to IAD, CID and OPS shall receive a seven hundred dollar ($700) annual clothing allowance.

Section 26.13 Physical Fitness Incentive (New)

Current Language

New proposal

WSPLA Proposal

Physical Fitness Incentive

The Employer shall annually pay each employee who meets the Cooper Institute Physical Fitness Norms for Law Enforcement according to the schedule listed below:
Fortieth percentile (40%): $250 lump sum
Fiftieth percentile (50%): $375 lump sum
Sixtieth percentile (60%): $500 lump sum
Payment to the employee is contingent upon the Training Academy's certification of each employee's results at In-Service Training.

State Proposal

No new language

Summary Position of the Union

This proposed new section recognizes the need for all officers to exhibit physical fitness and would provide an incentive to maintain that fitness.

There is no obligation on the State to pay the incentive to every unit member. Only those who qualify at the stated thresholds are eligible for the compensation. The threshold standards, even at the entry 40% level, are not easily met, and are based on the Cooper Institute standards already accepted and applied by the WSP.

Administration is easily accomplished without expense. No new or different training is required. Testing would be done, on an individual and voluntary basis, during in-service training sessions that are already in place.

Even if the cost of this proposal were to be maxed-out, with every unit member reaching the 60% standard for the $500 payment, the cost of $72,000 covers the full biennium. This is minimal, and the benefit of fitness in the work of this unit is extremely high. The proposal is fully justified and should be accepted.

Summary Position of the State

This new language is costly, confusing, and backed by no compelling need. The language should be rejected.

Fitness is necessary for the law enforcement profession, so much so that the WSP teaches that fitness should be a lifestyle and simply a required lifelong element of the profession. The measure of security and self-protection fitness provides an officer is its own incentive. Moreover, the primary incentive for officer members of the WSPLA to remain fit is in setting an example for subordinates.

Furthermore, the proposal is unclear with regard to its administrative details, and would cause confusion in application. The timing for the “annual” payment is unclear, and it is unknown when a given employee's year would start or end or even when the payment would be made. The testing process is not addressed in any way. The many questions of logistics and pay procedures and standards are wholly unaddressed.

This unnecessary, expensive and confusing proposal should be rejected.

Arbitrator's Analysis

The financial environment continues to not be suitable to considering this new premium, even if it could be justified on other required grounds.

The Arbitrator will note that while he has already confirmed there are benefits to be had in areas of improved performance, and financially in terms of health expenses, from fitness emphasis, this proposal continues to lack specificity that would give more comfort in considering its adoption at any point in the future. The questions posed by the State are well taken. The administrative details are unclear as to important matters including what would constitute a given year, and when and how and by whom the testing would be administered and verified. Also, data is lacking to show how appropriately the levels of fitness were chosen. It is unknown what percentage of the unit would be likely to reach any given level of fitness. If the Cooper Standards are indeed so ubiquitous and easily applied, it would seem possible to obtain this sort of data in preparation for a more considered review of the proposed standards and the premium to be offered at any stage.

In any event, there is an insufficient need for this kind of new premium to allow implementation, even were it deemed clear and practically written, in the face of the economic considerations discussed in detail hereinabove.

Arbitrator will Award

No new language

V. ARBITRATOR'S AWARD

In accordance with the reasoning and application of statutory considerations above, the Arbitrator makes the following Interest Arbitration Award in accord with his statutory authority:

ARTICLE 26 COMPENSATION

26.1 Effective July 1, 2015, all salary ranges and steps for captains and lieutenants of the WSP Commissioned Officer Salary Schedule that were

in effect on June 30, 2015, shall be increased by five percent (5%) as shown in Appendix B, and will remain in effect until June 30, 2016. Effective July 1, 2016, all salary ranges and steps for captains and lieutenants of the WSP Commissioned Officer Salary Schedule that were in effect on June 30, 2016, shall be increased by five percent (5%) as shown in Appendix B, and will remain in effect until June 30, 2017.

ARTICLE 11 HOLIDAYS

Section 11.4 Personal Holiday

No change to existing language

Section 11.5 Holiday Credits

Lieutenants and captains may accumulate holiday credits, up to a maximum of one hundred and twenty (120) hours.

ARTICLE 12 VACATION

Section 12.2 Annual Leave – Rate of Accrual

No change to existing language

ARTICLE 15 OTHER LEAVES OF ABSENCE

Section 15.7 Temporary Limited Duty and Long Term Limited Duty [in relevant part]

B. Obligation to provide

The Employer shall offer temporary limited duty and long term limited duty assignments to employees if the Chief determines that appropriate bargaining unit work is available.

***

C. Procedure

An employee requesting any limited duty assignment shall submit the request by IOC through the chain of command. Provided the Chief determines that appropriate bargaining unit work is available, the HRD shall coordinate selection of the assignment with the employee's attending physician and, if necessary, with the Employer's physician after an independent medical examination. An employee shall have the option to accept a limited duty position that is approved by his/her attending physician and, if necessary, by the Employer's physician after an independent medical examination, and that is in compliance with this Agreement. An employee who has accepted a limited duty assignment must participate in a work hardening program approved by his/her

attending physician and, if necessary, by the Employer's physician after an independent medical examination.

ARTICLE 16 PERSONNEL FILES

Article 16.3 Access to Personnel Files and Supervisory Files

Employees have the right to confidentiality related to individual performance, personal information and personnel issues to the extent provided/allowed by law. The Employer and the Association will take appropriate steps to maintain such confidentiality. The Department shall have access to an employee's personnel and supervisory file when necessary for Departmental operation. Access to the files shall be limited to:

A. Employees with proper identification requesting to examine their own file. Examination will be in the presence of the HRD Commander or designee. Employees shall not remove any material from their files; but may have the HRD provide, without charge, a copy of any material in the files.
B. The Chief.
C. The Deputy Chief.
D. The Assistant Chiefs and Bureau Directors.
E. Assistant Attorneys General assigned to represent the WSP and their authorized staff (e.g., paralegal, tort investigator).
F. An employee's representative having written authorization from the employee.
G. Supervisors and managers in the employee's direct chain of command.
H. Officials whose duties require access to personnel files (determined by the HRD Commander). After access has been approved by the HRD Commander or designee, an entry in the Personnel File Access Record (attached to the inside cover of the file jacket) shall be made, documenting the name of the individual examining the file and the date of the examination. No materials may be removed from the employee's file except pursuant to the purging provisions of this Article. If an authorized representative of the Employer, as determined above, makes a copy of any document from an employee's personnel file or disciplinary file, then a notation will be made in the file indicating the person who made the copy, how many copies were made, and to whom the copies were provided.
I. The Office of the State Human Resources Director
J. Department of Enterprise Services

ARTICLE 19 GRIEVANCE PROCEDURE

19.6 Procedure [In relevant part]

Step 2
If the grievance has not been settled at Step 1, the grievant/Association may present the grievance in writing to the Chief within fifteen (15) calendar days after the response specified in Step 1 is due. The Chief or Deputy Chief (for grievances filed by a Captain) or Assistant Chief (for grievances filed by a Lieutenant) shall contact the grievant/Association to schedule a meeting or telephone conference call to discuss the grievance within fifteen (15) calendar days after receipt thereof**.** Within fifteen (15) calendar days after the meeting or conference call, the Chief or designee shall respond in writing to the grievant/Association with a decision on the grievance.

ARTICLE 22 GENERAL PROVISIONS

22.3 Residence Requirement

No change to existing language

ARTICLE 26 COMPENSATION

26.3 Longevity Premium Pay – Lieutenants

No change to existing language

Article 26.6 Shift Differential

No change to existing language

Section 26.7 Premium Pay

No change to existing language

Section 26.7.D Field Training Officer (FTO) [New]

No change to existing language

Section 26.7 E (New)

No new language

Section 26.10 Clothing Allowance

Clothing Allowance

Employees assigned to IAD, CID and OPS shall receive a seven hundred dollar ($700) annual clothing allowance.

Section 26.13 Physical Fitness Incentive (New)

No new language

In accordance with the agreement of the parties and at their request, the Arbitrator shall retain jurisdiction, within legal limits, for the purpose of administering this Award, for a period of thirty (3) calendar days from the date of this interest arbitration Award.

This interest arbitration award is respectfully Submitted this 1st day of October 2014, and the foregoing Award is so ordered by:

Michael G. Merrill

LABOR ARBITRATOR