IN THE MATTER OF THE	**)**	
	)	**ARBITRATOR'S**
INTEREST ARBITRATION	**)**	
	)	**OPINION**
BETWEEN	**)**	
	)	**AND**
INLANDBOATMEN'S UNION	**)**	
OF THE PACIFIC	**)**	**AWARD**
(The Union)	**)**	
	)	
AND	**)**	**2013-2015 Collective Bargaining Agreement**
	)	
THE STATE OF WASHINGTON	**)**	
DEPARTMENT OF	**)**	
TRANSPORTATION,	**)**	
FERRIES DIVISION	**)**	
(The Employer)	**)**	

HEARING DATES: August 20-24, 2012

HEARING CLOSED: August 24, 2012

ARBITRATOR:

Sylvia Skratek, Ph.D.
3028 Western Avenue
Suite 405
Seattle, Washington 98121

REPRESENTING THE EMPLOYER:

Robert McKenna, Attorney General
By Donald L. Anderson, Assistant Attorney General

REPRESENTING THE UNION:

Schwerin, Campbell, Barnard, Iglitzin and Lavitt LLP
By Robert H. Lavitt, Attorney at Law

PROCEEDINGS RECORDED BY:

Diane M. Cullivan, CCR, RPR
Byers & Anderson, Inc.

WITNESSES FOR THE UNION:
Peter Hart, Merchant Mariner
Jay Ubelhart, Business Agent, Passenger Industry
Michael Thomas Hayden, Shore Maintenance Foreman, Eagle Harbor Shipyard
Claudia Riggins, Traffic Attendant, Coupeville Ferry Dock
Michael Sheldon, Ticket Seller, Edmonds Dock
Dennis Conklin, Regional Director

WITNESSES FOR THE STATE:
Dwayne Erik Hansen, Budget Analyst, Office of Financial Management (OFM)
Doug Schlief, Senior Shoreside Manager
Christina (Tina) Peterson, OFM Labor Relations, Negotiator
Deborah Driver, OFM Labor Relations, Cost Research Analyst
Theresa Greco, Director of Budget and Program Development
Steven Rodgers, Director of Marine Operations
Leah Maurseth, Human Resources Assistant Manager, Department of Transportation (DOT)
Jeff Pelton, Labor Relations Manager, DOT
Andrew Peter (Pete) Williams, Operations Center Port Captain
George Capacci, Deputy Chief of Operations in Construction

BACKGROUND

The State of Washington Department of Transportation (WSDOT), Ferries Division (hereafter "the State") and the Inlandboatmen's Union of the Pacific (hereafter "the IBU" or "the Union") are parties to a collective bargaining agreement that expires on June 30, 2013. (Ex. S1) This matter came before the Arbitrator pursuant to Washington State Statute RCW 47.64.300. As provided at Section (2) of the statute, the parties agreed to submit the dispute to a single arbitrator. The Arbitrator convened a hearing in this matter beginning on August 20, 2012 and continuing through August 24, 2012. At the hearing the parties had full opportunity to make opening statements, examine and cross examine witnesses, introduce documents, and make arguments in support of their positions. Closing arguments were presented by the parties on August 24, 2012 and the record was closed on that date.

STATUTORY CRITERIA

Pursuant to RCW 47.64.320:

> (1) The mediator, arbitrator, or arbitration panel may consider only matters that are subject to bargaining under this chapter, except that health care benefits are not subject to interest arbitration.

(2) The decision of an arbitrator or arbitration panel is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to compensation and fringe benefit provisions of an arbitrated collective bargaining agreement, is not binding on the state, the department of transportation, or the ferry employee organization.

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

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

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

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

(d) Stipulations of the parties;

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

(f) Comparison of wages, hours, employee benefits, and conditions of employment of the involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved;

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

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

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

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

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

(4) This section applies to any matter before the respective mediator, arbitrator, or arbitration panel. [2010 c 283 § 15; 2006 c 164 § 14.]

RCW 47.64.006 provides:

> The legislature declares that it is the public policy of the state of Washington to: (1) Provide continuous operation of the Washington state ferry system at reasonable cost to users; (2) efficiently provide levels of ferry service consistent with trends and forecasts of ferry usage; (3) promote harmonious and cooperative relationships between the ferry system and its employees by permitting ferry employees to organize and bargain collectively; (4) protect the citizens of this state by assuring effective and orderly operation of the ferry system in providing for their health, safety, and welfare; (5) prohibit and prevent all strikes or work stoppages by ferry employees; (6) protect the rights of ferry employees with respect to employee organizations; and (7) promote just and fair compensation, benefits, and working conditions for ferry system employees as compared with public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia in directly comparable but not necessarily identical positions. [1989 c 327 § 1; 1983 c 15 § 1.]

RCW 47.64.005 provides:

> The state of Washington, as a public policy, declares that sound labor relations are essential to the development of a ferry and bridge system which will best serve the interests of the people of the state. [1961 c 13 § 47.64.005. Prior: 1949 c 148 § 1; Rem. Supp. 1949 § 6524-22.]

RCW 47.64.200 states:

> As the first step in the performance of their duty to bargain, the employer and the employee organization shall endeavor to agree upon impasse procedures. Unless otherwise agreed to by the employee organization and the employer in their impasse procedures, the arbitrator or panel shall issue a decision it deems just and appropriate with respect to each impasse item. If the parties fail to agree upon impasse procedures under this section, the impasse procedures provided in RCW 47.64.210 and 47.64.230 and 47.64.300 through 47.64.320 apply. It is unlawful for either party to refuse to participate in the impasse procedures provided in RCW 47.64.210 and 47.64.230 and 47.64.300 through 47.64.320. [2010 c 283 § 12; 2006 c 164 § 7; 1983 c 15 § 11.]

CONTEXT OF THE DISPUTE

The WSDOT Ferries Division was created in 1951. It is the largest ferry system in the United States and the third largest in the world. Nearly twenty three million people are transported by the ferry system annually. Twenty three ferries cross Puget Sound and its inland waterways to twenty different ports of call from Tacoma, Washington to Sidney, British Columbia. The ferry system is part of the state highway network for commuters and commercial and recreational users. (Exs. S5 and J4) The ferry system is publicly supported

through revenue sources that include but are not limited to: Ferry Fares; Motor Vehicle License, Permits & Fees; and the Motor Vehicle Fuel Tax Distribution. The Washington State Legislature authorizes the revenue sources, rates, uses and to which funds and accounts that the revenues will be deposited and appropriates the transportation funds. (Ex. S4)

The Inlandboatmen's Union of the Pacific is the exclusive representative of the bargaining unit representing the approximately 900 employees in the Deck, Terminal and Information departments of the Washington State Ferries.

The parties began negotiations on a successor collective bargaining agreement in accordance with RCW 47.64.170. After a reasonable period of negotiations the parties were unable to reach agreement on several issues. As provided at Section (1) of RCW 47.64.300, all impasse items were submitted to arbitration. In accordance with that same section of RCW 47.64.300 the issues before this Arbitrator are limited to the issues certified by the Executive Director of the Public Employment Relations Commission (PERC).

The Executive Director of the PERC certified the Union's seventeen submitted issues and the State's eleven submitted issues. (Ex. J1) Shortly thereafter the State filed an unfair labor complaint alleging that the Union had refused to bargain in violation of RCW 47.64.130(2)(c) by insisting to impasse on proposals regarding Crew Requirements (Rule 7), Relief Employees (Appendix A, Rule 5.02) and Terminal Vacations and Relief Employees (Rule B-3.06) "…which are alleged to be non-mandatory subjects of bargaining". (Ex. J2) By letter dated August 16, 2012 the Executive Director of PERC suspended interest arbitration for the disputed articles thereby removing Crew Requirements (Rule 7) and Terminal Vacations and Relief Employees (Rule B-3.06) from consideration by this Arbitrator while the unfair labor practice proceeding is pending. These two issues will be remanded to the Arbitrator if the complaint is withdrawn or dismissed. (Ex. J3) Additionally, the parties advised the Arbitrator that the third issue, Relief Employees (Appendix A, Rule 5.02), was not intended to be a matter for this proceeding.

On all of the remaining issues, both parties provided the Arbitrator with well prepared and thoroughly documented notebooks which provided exhibits in support of their respective positions on each of the issues. The parties advised the Arbitrator at the beginning of the proceedings that they had reached settlement on several of the remaining certified issues: Rule 14.03 Grievance Procedure; Rule 19.04 Terminal Monitor; Rules 21.07 and 21.08 Sick Leave; Rule 34 Other Applicable Legal Requirements. The parties further advised the Arbitrator that they had agreed to defer the following issues: Rule A-6 Part-Time and On Call Deck Employees; Appendix A5A.03 Travel time Schedule A and D; Schedule A and Schedule D Charts. The State advised the Arbitrator that it was modifying its proposal on Rule 17 Compensation to provide for the continuation of the 3% wage restoration that will occur on June 30, 2013 into the 2013-2015 Agreement. The issues that have not been settled, deferred or suspended have been addressed within this decision in the order in which they appear within the collective bargaining agreement.

The award in this matter is based upon the information provided in the submissions and the evidence, testimony, and arguments put forward during the hearing.

ANALYSES AND DECISIONS

Rule 1.14 Relief Employee

State Proposal
The term "relief employee" shall be an employee working on a year around basis, offered at least forty (40) hours of work per week in the Terminal Department, and eighty (80) hours of work in the Deck Department per work period, to relieve ~~**year around**~~ employees who are not scheduled for work **or to work various assigned shifts. A Relief Deck employee has all necessary qualifications and documents to work any and all routes with no barriers to entry into Canada.**

Discussion

In this proposal the State is seeking to guarantee that all Relief Deck employees are able to accept any and all assignments including those assignments that require the fulfillment of the international mandate that employees possess an STCW[1] certification and endorsement as well as those assignments that require entry into Canada. Within the ferry system there is currently

[1] Standards of Training Certification and Watchkeeping

one route, Anacortes, Washington to Sidney, British Columbia and return, on which a Relief Deck employee would need the STCW certification and endorsement and would need to be free of all barriers to entry into Canada. The route is not in operation year round and as emphasized by the Union does not require a large number of Relief Deck employees when it is in operation.

The State and the Union entered into a Memorandum of Understanding (MOU) (Ex. S24) in May 2012 that provides full and fair opportunity for the Relief Deck employees to obtain the STCW. The MOU is in fact a follow up to the State's previously offered opportunity after the last round of negotiations for those same employees to obtain the STCW. Unfortunately some employees once they completed the prior opportunity chose not to obtain the STCW and the MOU was negotiated to make certain that all employees were again provided the opportunity to obtain the STCW. The Arbitrator cannot find any good reason to deny the State the language that it is seeking that would ensure that all employees have the appropriate documents for working the international route. That is not to say however that she is willing to accept all of the State's proposal as written. There was inadequate testimony and evidence for her to accept the language that requires all Relief Deck employees to have no barriers to entry to Canada. The well known barrier to entry to Canada is "driving under the influence" or DUI violation however neither the State nor the Union provided any testimony or evidence as to how that barrier (or any other barrier) would be removed by an employee who may at some point in their life history had a DUI violation on his or her record. While there was anecdotal testimony that it was/wasn't a simple barrier to remove, that it required massive/minimal paperwork, that the Canadian Consulate worked quickly/slowly to remove the barrier, and that the cost of the paperwork is "maybe" $200, the Arbitrator is unwilling to award this language based upon anecdotal testimony. As the Union emphasized there are long term employees who may be affected by this language who have successfully fulfilled the terms of the Agreement and have not been required to work on the one, seasonal international route. To place a requirement of this magnitude on those employees would in effect require them to bid out of the position that their long service to the ferry system has allowed them to enjoy. That is not to say that the State's language cannot be addressed in future negotiations but rather there is simply not enough evidence for the Arbitrator as to how barriers can be removed for her to award language that may have negative consequences for long term employees.

There was no evidence or testimony presented regarding the deletion of the words "year around" and the addition of the words or to work various assigned shifts but presumably these two changes clarify the fact that relief on the one international route would be for a seasonal not year around employee. With that understanding she finds no good reason not to grant the modification.

Decision

The State's proposal is granted with the following modifications:

The term "relief employee" shall be an employee working on a year around basis, offered at least forty (40) hours of work per week in the Terminal Department, and eighty (80) hours of work in the Deck Department per work period, to relieve ~~year around~~ employees who are not scheduled for work or to work various assigned shifts. A Relief Deck employee has all necessary qualifications and documents to work any and all routes. ~~with no barriers to entry into Canada.~~

Rule 8.03 Sleeping Quarters

Union Proposal

When the Employer is unable to provide a sufficient number(s) or adequate sleeping quarters **for the Deck, Terminal or Information employees,** which are reasonably quiet, equipped to provide hot and cold running water, adequate heating, ventilation and lighting aboard the vessel, the Employer, ~~subject to prior notification and approval by the duty officer or their designee,~~ shall provide sleeping quarter(s) for the affected employee(s) or **reimbursement upon receipt of actual expenses as per the State law pertaining to reimbursement for actual expenses or per diem.**

Discussion

The Union put forward testimony to support its proposal through Michael Sheldon, a Ticket Seller at the Edmonds Dock. As a result of the reduction in force, Mr. Sheldon was required to bid on a new position and ultimately was awarded his preferred choice at Edmonds. (Ex. U4) Mr. Sheldon's home however is in Kingston on the West Sound and he was now in the position of having to be at his worksite in Edmonds on the East Sound for the start of the morning shift. The only choice that he felt that he had was to spend the night in Edmonds so that he was available for the early morning start. The State emphasized that there were other positions available that Mr. Sheldon's seniority would have allowed him to secure that would not have required the travel to Edmonds. (Ex. S27) Mr. Sheldon however indicated that he was interested in securing the best possible position with the best possible hours and the one position that best

fulfilled his interests was the Ticket Seller in Edmonds. The State further emphasized that there was no vessel in Edmonds on which Mr. Sheldon could spend the night since the vessels were berthed overnight in Kingston. That would in effect have triggered the proposed language that would enable Mr. Sheldon to receive a per diem reimbursement. During the hearing additional problems were identified that are applicable to the proposed language specifically: there are some employees who have difficulties sharing sleeping quarters; gender differences require separate quarters; some employees lock up the available sleeping quarters thereby preventing others from entering; some management staff have taken over the sleeping quarters as their private areas thereby preventing the quarters from being used as intended. Whether or not the proposed language would have benefitted Mr. Sheldon given the fact that there was no vessel available in Edmonds, the Arbitrator found that his testimony brought clarity to the overall issue of sleeping quarters that requires the attention of the parties. In order to give effect to the current language *When the Employer is unable to provide a sufficient number(s) or adequate sleeping quarters which are reasonably quiet, equipped to provide hot and cold running water, adequate heating, ventilation and lighting aboard the vessel,* there must first be a determination as to why the currently provided sleeping quarters have not been effective in serving the needs of the employees. If indeed, employees are inappropriately blocking others from using the sleeping quarters as intended, i.e. locking the door to the quarters or using the quarters as a private break area, then action must be taken to correct the abuse of the sleeping quarters. Both parties have an interest in making certain that the sleeping quarters are available for employees who may need them. Only if all of the sleeping quarters are being used as intended should reimbursement be made available to those employees who are unable to secure adequate sleeping quarters. That is not to say that the Arbitrator is willing to award any of the Union's proposed language but rather she will remand this issue to the Labor Management Committee for review and resolution to be completed no later than January 31, 2013. If there is no resolution of the issue by the stated date, then the issue will be submitted to this Arbitrator for a final and binding resolution.

Decision

The Union's proposal on Rule 8.03 Sleeping Quarters is hereby remanded to the Labor Management Committee for review and resolution. If there is no resolution of the issue by

January 31, 2013 then the issue will be submitted to this Arbitrator for final and binding resolution.

Rule 17 Classification & Rates of Pay

State Proposal: Current Contract as of June 30, 2013 (without 3% reduction)

Union Proposal:
17.01 Wages
3% increase for 7/1/13; 3% increase for 7/1/14
Eliminate lowest of three tier pay rates

17.04 Adopt the State General Service Salary Schedule and place employees into an applicable range at Step A

17.05 If other State employees receive a raise then the ferry employees will receive a commensurate raise.

Discussion

During these times of a fragile and at times volatile economic recovery, compensation remains the most difficult item to be resolved. As evidenced by the revenue forecasts and updates there is reason to hope that the worst is behind us and that the Washington State recovery will remain moderately positive. (Exs. U29, 30, 32, 35, 36, 37, 38) It is also important to note that after this Arbitrator's previously issued award for the 2011-2013 collective bargaining agreement that significant efforts were undertaken by the parties to enter into an agreement that recognized what at that time was the State's rapidly declining economic situation. That declining economic situation coupled with a national focus on public sector unions that generated considerable negative commentaries created an environment that was described by Mr. Ubelhart as being not unlike having a "gun pointed at your head". The final outcome represented a 3% reduction in wages for State employees including WSF employees. The Arbitrator notes that the State was also successful in obtaining a provision that it had sought but not been granted in the previously issued award: *that Rule 10.02 be modified to provide that when work is extended beyond the regular assigned work day that the time shall be paid at the overtime rate in six (6) minute increments.* The State's rationale in 2010 for its proposal had as its basis that it would be consistent with the employees in general government. The State was also successful in reducing the Arbitrator's previously issued award regarding the travel time pay

cap and in effect successfully modified the provision in a manner that represents Assignment Pay. There can be no dispute that the IBU bargaining unit members were faced with draconian decisions to be made during times of an economic and political maelstrom. That is not to say that the State was also not in a difficult situation when faced with the declining economy but the fact remains that employees were forced to accept financial reductions that would not be recovered in the immediate future.

Given this environment the Arbitrator has reviewed the Union's compensation proposals and while it is true that in her previously issued award she denied *the Union's proposal to dovetail the IBU wage schedules into the State of Washington General Service Salary Schedule at applicable range and steps* it is also true that there have been significant changes in the last two years that warrant a new look at the proposal. As she discussed within the 2010 Analysis *collective bargaining agreements are negotiated over the life of the employment relationship and in this matter that relationship has been ongoing since at least the mid 1960's. There are reasons that the wage schedule has developed in the format that it appears in the Agreement and to simply replace it with something that appears in the agreements of the general state employees would be premature and inappropriate at this time.* (Ex. U26, p.22) Today it is clear that the employment relationship has evolved to the point that the State has successfully begun to incorporate many of the provisions that are found within the agreements with general government employees. Given the fact that one of the criteria within RCW 47.64.320 at Section (3) subsection (b) requires the consideration of *Past collective bargaining contracts between the parties including the bargaining that led up to the contracts,* the Arbitrator finds that the bargaining that has led to the current collective bargaining agreement has resulted in provisions that are comparable to those contained within general government agreements. The time is right to dovetail the IBU wage schedules into the State of Washington General Service Salary Schedule at applicable range and steps. Furthermore a range and step schedule is not only consistent with comparators (Exs. U6, U7, U8) but is also consistent with a step schedule that is used internally by the WSDOT Ferries Division. (Ex. U9)

How to accomplish the dovetailing is a question not easily answered. The testimony of Christina Peterson was enlightening. Her wealth of experience with range and step tables

illuminated the challenges facing the parties. The current wage schedule for IBU employees consists of three tiers with one wage for a specified position. Placement on a tier is dependent upon the number of hours worked. The Union's proposal would simply take an employee's wage and place it on the salary grid at Step A of the range that represents minimally an increase of approximately one percent. For example, the AB Position with a wage rate of $23.92 on July 1, 2013 would be placed at range 59, step A at a wage rate of $24.19[2] on July 1, 2013 representing an increase of approximately one percent[3]. After reviewing and calculating all of the ranges and steps specified in the Union proposal at Union Exhibit 1, page 22, the Arbitrator has concluded that the Union's proposal is acceptable for both the regular positions and the temporary positions. In her calculations the Arbitrator used the General Service Salary Schedule at Appendix M of Union Exhibit 10.

The Arbitrator has also considered Arbitrator Beck's award issued September 8, 2008 in which he awarded the Union's proposal of "…a two tier system with the lower tier employees receiving a wage rate of 85% of the full-time journey wage until the employee has worked 1,040 straight-time hours…" (Ex. U27, p.41) For all of the reasons set forth by Arbitrator Beck (Ex. U27, pp. 16-18), this Arbitrator awards the Union's proposal in this proceeding to eliminate the third tier that had been the entry level rates. The elimination of these rates and the modification of what were the temporary position rates to the new entry level rates will result in numerous employees being placed at higher rates than they would have received under the three-tier system. Not only will the employees on the entry level tier be moved to what had been the temporary position tier but also the employees on the temporary position tier will be moved to the highest tier. The moves will be tied to the number of hours worked which have been modified in the Union's proposal to eliminate the lowest tier. Once the employees have been moved to their appropriate position on the tiers, they will then be placed on the General Government Service Salary Schedule range and step as per the Union's proposal. The Arbitrator has reviewed the State's cost analysis for the elimination of the lowest tier and finds that the State concluded that it was "indeterminate". (Exs. S9 and S10) The Arbitrator has also reviewed all of the financial information presented by Dwayne Erik Hansen. (Ex. S4) She is

[2] $24.19 represents the current range 59, Step A with the 3% reduction removed i.e. $23.49 plus 3%.
[3] The actual rate and percent increase may be higher if the General Government Salary Schedule is increased as of July 1, 2013.

fully aware that Ferry operations for the 2011-2013 biennium represent 53.4% of the Ferry $889.2M dollar total budget and that of the 53.4% salaries and benefits represent 54.4% or $258.8M. She further understands that slide 13 of State Exhibit 4 suggests that there are insufficient ending fund balances being projected for 2013-2015. She further notes however that if the assumed 2.5% fare increases illustrated on slide 12 are taken into consideration the increases based upon the data contained in State Exhibit 19 will generate approximately $7.75M per biennium. The Arbitrator is further aware that Slide 8 of State Exhibit 4 outlines a *2013-2015 Legislative Direction on Use of New Revenues* however the stated direction does not prohibit the re-direction of the revenues. Just as an agency may need to re-direct its appropriations so too may the legislature need to re-direct the use of the $183.5M dollars of new revenues.

The Arbitrator notes that one of the criteria for her determination contained within RCW 47.64.320 at Section (3) subsection (f) requires a:

> Comparison of wages, hours, employee benefits, and conditions of employment of the involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved.

When she reviews the OFM Marine Employees' Compensation Survey there is a key finding that is applicable to the decision in this matter:

- WSFS Ferry/Terminal positions lag the market average (including and excluding benefits) this year as opposed to leading it in both areas in previous years. Factors contributing to this new market lag include the State's 3% salary reduction in addition to market actual average salaries increasing by approximately 8% (excluding COLD; approximately 7% including COLD). (Ex. S3, p.2)

The Executive Summary of that Survey provides more specifics regarding the salary lags with the only exception being the assignment pay for the small group of Relief Employees placing them in the unique position of having their actual average pay leading the market. (Ex. S3, p.3) Having suffered the effects of a wage freeze that began when Arbitrator Beck's 2008 award of a 4.2% wage increase was not implemented, compounded by the lack of ability to move on a grid

as well as an additional 3% reduction in wages for the 2011-2013 biennium the IBU employees have subsidized the State budget for far too long.

The Arbitrator has reviewed the State's exhibits that illustrate the costs of a 3% wage increase as being approximately $4.5 million and that illustrate the estimated costs of moving to the range and step grid as being approximately $8.5 million. (Exs. S21 and 22) If the Arbitrator were to award both the 3% wage increase and the move to the range and step grid, according to the State's calculations the costs would be almost identical to the costs that would have been incurred if the 4.2% wage increase granted by Arbitrator Beck in 2008 had ever been implemented.

Finally, the Arbitrator has not forgotten the Union's proposal for a 3% increase on July 1, 2013 and again on July 1, 2014 nor has she forgotten the proposal that would provide a raise to ferry employees if any other State employees receive a raise. Regarding both of these issues the Arbitrator has concluded that the placement on the range and step grid will yield increases to this work group as they move along the grid that should not be compounded by the addition of another 3% and that once the ferry employees are placed on the grid they will enjoy the same raises that are received by any other State employees.

Decision

- Union Proposal to eliminate the entry level rates is granted. (Ex. U1, pp. 19-21)
- Union Proposal to dovetail employees into the State of Washington General Service Salary Schedule as specified at page 22 of Union Exhibit 1 is granted.[4] July 1, 2013 shall be the periodic increment date for all employees who move to the schedule on that date. Thereafter, employees will receive a two (2) step increase annually, on their periodic increment date, until they reach the top of the pay range.
- Union proposal for a 3% wage rate increase is denied.
- Union Proposal providing a raise commensurate with raises received by any other state employees is denied.

[4] Page 23 of Ex. U1 contains the Entry Level tier which this award has eliminated therefore the Arbitrator has not included that tier in the overall compensation award.

Rule 18.03 Vacation and Compensatory Time off Pre-Scheduling Process – Deck Employees Only

State Proposal

G. The Employer will provide ten (10) slots per day starting with the first work period of the single day and/or compensatory day three-hundred and sixty-five (365) day calendar in support of Subsection 18.03, above. From October 1st through May 31st there shall be an additional two (2) slots per day for a total of twelve (12) slots per day. ~~**In addition a total of fifteen (15) slots will be available for the following days:**~~

~~**1. Mother's Day**~~
~~**2. Memorial Day**~~
~~**3. July 4th**~~
~~**4. Labor Day**~~
~~**5. Thanksgiving and the following day**~~
~~**6. Christmas Eve and Christmas Day**~~

Discussion

Captain Rodgers testified that the fifteen slots that are available on the six listed holidays create a problem for the ferry system on the busiest days of the year. Extra service is provided on these days and at the same time the single day call in rates are higher than normal. There may be as many as forty positions that need to be filled which may require up to two hundred telephone calls. On cross examination Captain Rodgers acknowledged that the language regarding the number of available single-day vacation slots was negotiated at the same time as the employer successfully bargained language for the idea of the block vacation or 40-hour increment calendar. The slots were the quid pro quo for the acceptance of that calendar. The Arbitrator was not provided any evidence to support any problems that may accompany the current language and while there may be problems in the application of that language she does not find that deleting the fifteen slots is the only solution to whatever problems there may be. As noted by the Union additional compensation on the holidays might resolve problems. The Arbitrator is also unwilling to subject this Union to any further rollbacks of benefits that they have negotiated over the years. She has previously noted that at least one of the items that the State sought in negotiations for the 2011-2013 agreement and that this Arbitrator rejected in interest arbitration was nonetheless placed into the current agreement through what Mr. Ubelhart described as negotiations "with a gun to his head". Specifically in her 2010 award (Ex.U26) she rejected the State's proposal "…that Rule 10.02 be modified to provide that when work is extended beyond the regular assigned work day that the time shall be paid at the overtime rate in

six (6) minute increments." She awarded what was then the current language that provided "…that any extension of fifteen minutes or less beyond the regular assigned work day would be paid at the overtime rate for one quarter of an hour." The State's rejected proposal however is now found at Rule 10.01 of the 2011-2013 agreement. (Ex. J4) Dennis Conklin testified that there were also reductions in the overtime rate of pay. The Arbitrator appreciates that the parties were faced with recessionary bargaining and she further appreciates that both parties were attempting to settle an agreement during not only an economic recession but also during a time period when the nation was riveted by the unwarranted attacks on the public sector. The Union understandably had little choice when it determined what modifications it could swallow during that time period. The Arbitrator however can find no good reason to compound the losses suffered by the Union during that time period by now deleting language that was negotiated in good faith as a quid pro quo for their agreement on the acceptance of the block vacation or 40-hour increment calendar.

Decision

The State's proposal is rejected.

Rule 21.02 Sick Leave

Union Proposal

An employee may, at the employee's option, use vacation leave **or comp time** in lieu of sick leave but may not use sick leave in lieu of vacation leave, except as otherwise provided in Subsection 21.04.

Discussion

The Union emphasizes that it is seeking nothing more than what is already being provided to other State employees as evidenced in Union exhibits 17, 18, and 19. These three exhibits represent the collective bargaining agreements between the State and: the Washington Federation of State Employees; the Service Employees International Union Healthcare 1199NW; and the Washington Public Employees Association. The Union cites the specific provisions within each of these three agreements that provide an employee the option of using comp time in lieu of sick leave. The State's opposition to this proposal is based on its concern that an employee who has been denied vacation or single days off may simply choose to call in sick and use their comp time in lieu of sick leave. The State claims that it already has difficulty managing

the language that allows for the use of vacation leave in lieu of sick leave and that the granting of the Union's proposal will compound the problem of managing the work force on short notice. The State emphasizes that the Union's proposal is nothing more than a "work around" of the language within the Agreement that provides ten slots per day allowing ten people to be off on comp days. As Captain Rodgers testified:

> So if we have a ten people off as the contract requires and another person calls in sick and uses a comp day, then we have 11. We bargained a specific amount of people to be off on comp days. So if they call in sick and then use comp time, now we have 11 people off on comp time over and above what we bargained. It's just a mechanism to maneuver around what we bargained, and it makes it difficult for us to manage our work force on short call-ins. (Tr. V. 4, p. 101)

The Arbitrator recognizes that the employees in this matter are not similarly situated as the employees represented in the agreements in the Union's exhibits however she also recognizes that the State is willing to accept language that has been incorporated into other State agreements when it is supportive of their position. As the Union reiterated numerous times during these proceedings, *if the State wants us to accept the negatives that are forced on other State employees, then the State should also provide the benefits that are granted to other State employees.* While the Arbitrator can find no good reason to disagree with the Union's iteration regarding some of the issues in this proceeding, she agrees with the State on this particular issue. It is unknown if the other State agreements cited by the Union have language similar to the provision referenced by Captain Rodgers regarding limitations on the use of comp time. If the Arbitrator were to grant the Union's proposal she would in effect be modifying through a "work around" the provision of the Agreement that has placed limitations on the use of comp time. Furthermore as noted by Captain Rodgers, the ferry system is a 365 day operation that requires manning every day of the year. It is difficult to manage the employees who call in for leave at the last minute. He stated: *the use of vacation time in lieu of sick leave [is a problem] because it encourages people to give last-minute notice for days off*…(Tr. V. 4, p. 100) Adding comp time to the language would compound the problem.

Decision

The Union's proposal is rejected.

Rule 23 Holidays

Union Proposal
Rule 23.01 New Year's Day (January 1), Martin Luther King Junior's Birthday (Third Monday in January)…shall be recognized holidays. All employees required to work on holidays shall be paid at the straight time rate of pay, with an additional ~~one (1)~~ **one and one half (1.5)** hour's pay for each hour worked during the period from midnight to midnight of the holiday.

Discussion

In making a determination on this proposal the Arbitrator has reviewed the comparators contained within the *Office of Financial Management (OFM) Marine Employees' Compensation Survey* (Ex. S3) which is mandated by RCW 47.64.170(8). Within that survey the Arbitrator found that the vast majority of the comparators provided compensation for work assignments on paid holidays at 200% of base pay. (See page 27 [MM&P and MM&P Comparator Group]; page 35 [MEBA Licensed and MEBA Licensed Comparator Group]; page 42 [MEBA Unlicensed and MEBA Unlicensed Comparator Group]; page 50 [IBU/Deckhand Comparator Group and IBU/Terminal Comparator Group]. That is not to say that there are not some comparators providing compensation above 200% however given the fact that there are limited resources available during the uncertain economic recovery the Arbitrator is unwilling to grant a proposal that will add costs in the neighborhood of two million dollars over the biennium. (Ex. S13) The Arbitrator further acknowledges that other State employees have negotiated holiday pay at the overtime rate of one and one-half of the regular rate of pay (Exs. U17, 18 and 19) however given the other financial matters that are addressed within this decision, a line must be drawn somewhere. The current contract language that provides compensation on paid holidays at 200% of the base pay is consistent with the compensation paid by the comparators.

Decision

The Union's proposal is rejected.

Rule 29.07 Document Renewal

Union Proposal
The employer shall pay the cost of all document renewals up to two hundred and twenty-eight dollars ($228) for documents associated with obtaining the employee's Merchant Mariner Credential (MMC) and/or Transportation Worker Identification Credential (TWIC).

Discussion

This proposal costs relatively little and would be consistent with the language that is found at 17.04 of the Masters, Mates & Pilots Agreement for Licensed Deck Officers. (Ex. U21) Peter Hart's testimony confirmed that the MMC is a Coast Guard requirement that currently costs $130 for a renewal and the TWIC is a U.S. Homeland Security requirement that currently costs $95-$126 for a renewal depending on the length of time for which the card is renewed. While the State asserted that it is unknown whether there was a "quid pro quo" that accompanied the provision in the MM&P Agreement, the Arbitrator does not find that to be a compelling assertion given the fact that it is always difficult to determine why language has been incorporated into a comparator's agreement. According to the State's analysis this provision will cost approximately $64,000 over a two year biennium. (Exs. S14 and S21, p.2) Given the erosion that has occurred to this bargaining unit's purchasing power over the last several years, this provision would be a small cost for the State to incur as one step toward the restoration of the purchasing power for the affected members of the bargaining unit.

Decision

The Union's proposal to add a new Rule 29.07 is granted.

Rule 30.04 Injured Employee's Seniority

Union Proposal

Employees may be granted leaves of absence limited, except in case of physical disability, to six (6) months in any year without loss of seniority by mutual agreement between the Employer and the Union. Retention of seniority during a longer leave of absence may be arranged by agreement between the Employer and the Union. Leaves of absence will not be granted to employees to work in other industries, training or educational institutions unless mutually agreed to between the Employer and the Union.

All requests for leaves of absence shall be approved in writing in advance by the Union and Employer.

Employees injured on the job will not have their seniority adjusted.

Discussion

Union witness Claudia Riggins put forward a compelling story regarding her on the job injuries that have effectively prevented her from returning to her previous work position. She

suffered a right shoulder injury in August of 2010 that had not healed properly and that required surgery in January of 2012. She subsequently injured her left shoulder in December of 2011 and has remained out of work up until the present time. By letter dated July 16, 2012 she was advised that she had exhausted all of her approved leave and was being placed "…in unapproved leave status with frozen seniority". (Ex. U23) The Union contends that she is being punished for doing her job and that her seniority should not be adjusted for her on-the-job injuries. The State maintains that it has been more than patient with Ms. Riggins and has assisted her in making certain that she received all of the leave to which she is entitled. The State further maintains that there are employment positions that Ms. Riggins could fill at Clinton and Anacortes and in effect was offering her reasonable accommodation for her injuries. There is no dispute that Ms. Riggins is a good employee who would bring value to these other employment positions. The letter that she received was intended to be a proactive approach to encourage her to return to work. According to the State it must have the ability to encourage employees to return to work and must also have certainty as to which positions can be filled. When injured employees are unwilling to fill positions that can accommodate their injuries, the State is unable to fill the position that they had vacated due to their injury. It's difficult to recruit somebody to work for a few months in a remote location like Coupeville. The Arbitrator appreciates both parties' positions on the Riggins' situation but quite frankly, the scenario that unfolded at the interest arbitration is not something that can be resolved through this process. It did however raise a very legitimate question which the Arbitrator did raise with the State's witness as to whether employees who have been injured on the job retain their seniority during the time period identified as being legitimately related to the on the job injury. The State confirmed that was the case and the Arbitrator will add clarifying language to the Union's proposal to make certain that there is no misunderstanding as to when an employee's seniority will continue to accumulate.

Decision

Union's proposal modified as follows:

Employees injured on the job will not have their seniority adjusted for the duration of the time that can be verified as being required for recovery from the on the job injury. Once the employee has been released to return to work their seniority may be adjusted if they fail to return to work.

Appendix A
Rule 3 Shore Gang Personnel

Union Proposal

Filling Vacancies of Foreman and/or Lead
3.13 When a year round vacancy occurs assignment to such vacancy will be made in accordance with the provision set forth in Rule 19.

Discussion

Michael Hayden testified regarding the process that has recently been followed in the placement of personnel into Lead positions. Mr. Hayden has been a WSF employee since 1965 and has worked in the Shore Gang since 1993. He has been a Foreman since October of 2007 and as a Foreman he participates in the interview/promotion process for the hiring of a Lead position. Hayden testified that in one recent instance the five most senior employees were interviewed for the position. The interviews were followed by a six week trial period to further determine ability and qualifications. At the end of the process the most qualified employee of the five senior employees was placed into the Lead position. Captain Rodgers raised a concern regarding the application of the proposed language which appears to suggest that an employee would be placed into a position by seniority and then it would be determined if the employee was qualified and able to fulfill the Lead or Foreman position. He testified that as the language is currently applied in the terminal and the vessel department "…seniority is the rule….There isn't an interview process to determine qualification". (Tr. V. 4, p. 114) When the Arbitrator reviews the language in Rule 19.01 she understands the concern raised by Captain Rodgers. The language of that provision clearly states *In the application of seniority under this Rule, if an employee has the necessary qualifications and ability to perform in accordance with the job requirements, seniority by classification shall prevail.* While there are no restrictions within the language as to how qualifications and ability are to be determined it appears from Captain Rodgers' testimony that the practice is to place an employee into a position by seniority without an interview process to determine qualifications and ability. The Arbitrator further notes that the current language at Rule 19.01 is consistent with the process outlined by Mr. Hayden in which the qualifications and ability of the senior employees were assessed prior to the determination as to which senior employee would be placed into the Lead position however rather than rely solely

upon a reference to Rule 19.01 which could lead to confusion in its application the Arbitrator finds that it is more appropriate to be more specific within Rule 3.13.

Decision

The Union's proposal to add new language at Rule 3.13 is granted as modified below:

Filling Vacancies of Foreman and/or Lead
3.13 When a year round vacancy occurs assignment to such vacancy will be made in accordance with the provision set forth in Rule 19 with the understanding that the determination of necessary qualifications and ability to perform in accordance with the job requirements of the Foreman and/or Lead position may minimally require an interview process.

Appendix B 1.06 B1a
Weekly Assignments (Reliefs)

Union Proposal

B. Temporary Positions-Less than Forty-Five (45) Days

Job openings of less than forty-five (45) days will be filled at the affected terminal in the following manner:

1. Weekly Assignments
    a. Prior to the weekly job assignments, supervisors will offer Reliefs all work available for the following Sunday through Saturday work week. If the Relief employee does not select forty (40) hours then the Supervisor will assign the Relief work up to forty (40)hours. *The Relief employee must contact the Terminal supervisor prior to the assignments on Wednesday to be able to choose their assignments for the following week. The call-in time will be arranged between the employee and the Terminal supervisor.*

Discussion

The Union presented testimony through Dennis Conklin that Reliefs are currently being assigned after the assignment of part-time and On Call employees resulting in a Relief employee being deprived of the benefit that seniority should provide. While a Relief employee bids into the position itself by seniority, the employee is essentially being assigned the last available weekly job assignments.

Doug Schlief testified regarding his concerns that the proposed language could result in a Relief employee working in a lower classification and an On Call employee working in a higher classification. In that situation the Relief employee would be entitled to the highest classification rate of pay regardless of the assignment and the On Call employee would be entitled to the rate of pay that accompanies the assignment. There is the additional concern that the Relief employee may choose an assignment that leaves an open position that cannot be performed by the On Call employee, specifically the position of Ticket Seller. The Arbitrator agrees with Mr. Schlief's concerns and in their concluding remarks, the Union acknowledged his concerns as well and offered to modify their proposal in a manner that would provide Relief employees the opportunity to choose work assignments as Ticket Sellers only. This modification may meet the interests of both parties however given the fact that there was minimal opportunity to explore the modification at the hearing and what effect, if any, the modification will have on other members of the workforce, the Arbitrator will modify the Union's proposal in a manner that provides an opportunity for the parties to further explore the modification.

Decision

The Union's proposal is modified in the following manner:

a. For a period of six months, beginning July 1, 2013, prior to the weekly job assignments, supervisors will offer Reliefs the available Ticket Seller positions for the following Sunday through Saturday work week. *The Relief employee must contact the Terminal supervisor prior to the assignments on Wednesday to be able to choose a Ticket Seller assignment for the following week. The call-in time will be arranged between the employee and the Terminal supervisor. At the end of the six month period, the parties will evaluate the effectiveness of this provision and make any necessary modifications.*

Addendum L
Memorandum of Understanding Regarding the Employment of Retired Employees

Union Proposal: delete entire MOU

Discussion

The Union is proposing that Addendum L be deleted in its entirety and contends that the language is no longer necessary given the fact that these are recessionary times during which

current employees should be given first consideration for any and all employment opportunities. The MOU was negotiated in 2009 to address an employee shortage that had arisen in 2008 in Anacortes. The Union contends that the language is no longer applicable and given the crew reductions that have occurred there are sufficient employees available to fill the available positions. Retired employees are needed only when there are not enough employees to fill the available positions. The State emphasizes that it had worked hard to obtain the language in the MOU. Although the language at Rule 19.14 in the Agreement provides that the parties will meet *within sixty days of the effective date of this Agreement to discuss modifications to Appendix C Hiring Procedures governing the filling of positions for the Summer Season*, the State indicates that the intent of that language was not fulfilled. The parties were finally able to sit down and negotiate the language of Addendum L and the State can find no good reason to simply throw it away. The State further emphasizes that the MOU at item 3 requires that *All existing part-time and on call employees will be offered work prior to offering an assignment to retirees.* That language is a built-in protection for current employees. The Arbitrator agrees with the State and she finds no compelling reason to delete the language of the MOU.

Decision

Addendum L shall remain in the Agreement without any modification.

Appendix A-Relief Assignment Pay Proposal

Union Proposal:

- Increase assignment pay factor by 7.5%

- Change the Assignment Pay Factor from 0.175 to 0.25 for each Classification listed thereby raising the assignment pay differential for the AB Bos'n/QM from 4.40 to 6.29; for the AB from 4.19 to 5.98; for the OS from 3.78 to 5.39. The wage for each classification with the differential would be 31.46 for AB Bos'n/QM; 29.90 for AB; and 26.97 for OS. The assignment wage is not applicable to Vacation, Compensatory Time, Sick Leave. The figures are based on the pay rates in effect on June 30, 2013. Any increase in the wage rates would change the actual figures.

Discussion

The Union is proposing a modification to language that was negotiated as part of its effort to assist the State during recessionary times. In 2010 this Arbitrator addressed the difficult

issue of travel time that had been the subject of significant media coverage. The parties had presented a cap on travel time with the Union's calculations indicating that a cap of 3.5 hours would be appropriate and the State's calculations indicating that a cap of 2.5 hours would be appropriate. In her 2010 award this Arbitrator capped travel time at 3.0 hours. The 2010 award was not implemented and the parties were forced into negotiations during one of the worst recessionary periods that had been experienced by the State in several decades. The result of those negotiations is the language that is in the current agreement that provides Assignment Pay at Rule 5A.08. Assignment pay is provided for hours actually worked regardless of location. By moving to language that provides Assignment pay for all affected employees whether or not there is any travel time involved the parties have provided an advantage to those employees who do not necessarily travel any distance to their work location. Admittedly there is a disadvantage to those employees who travel a greater distance than may be accounted for in the assignment pay factor of .175. The Union emphasizes that the current pay factor does not come close to the amount that was awarded in 2010 nor is it equivalent to the amount put forward by the State in 2010. That emphasis however fails to take into consideration that the pay is being separated from travel time and is instead being tied directly to the assignment itself, hence the advantage to those employees who do not have to travel a great distance. As Captain Rodgers testified in coalition bargaining there was an *agreement to pay them as compared to other state employees a higher compensation for responsibility and skills.* (Tr. V. 4, p. 89) Presumably the goal is for the Relief Employees to reconsider their preferred work locations. When viewed in that light, the move toward Assignment Pay may in fact accomplish an outcome that will be beneficial to both parties in the long run. That is not to say however that this Arbitrator views the current pay factor to be appropriate. She will however defer that issue back to the parties to resolve in negotiations for future biennia. Given the overall compensation improvement for the Union contained within this award, most notably the move to the General Government Salary Schedule, this is not the time to place any additional financial burdens on the State.

Decision

The Union's proposal is rejected.

AWARD

Consistent with the statutory criteria contained within RCW 47.64.320(3) and consistent with the mandate put forward at RCW 47.64.200 that the Arbitrator shall issue a decision that she deems just and appropriate with respect to each impasse item, and for all of the reasons set forth in the analyses above, the Arbitrator hereby awards that the 2011-2013 Collective Bargaining Agreement between the parties shall be modified according to the decisions accompanying the analyses of each of the impasse items above and according to the agreements reached by the parties through negotiations prior to and concurrent with this proceeding. That modified agreement shall be the 2013-2015 Collective Bargaining Agreement between the parties.

Respectfully submitted on this 24th day of September, 2012 by

Sylvia P. Skratek, Arbitrator