

## In the Matter of the Interest Arbitration

between Teamsters, Local 117 (“Union”)

and

Washington Department of Corrections (“DOC”) /  
Office of Financial Management (“OFM”), State of  
Washington.

Findings,  
Discussion  
and  
Award.

Case Numbers: Washington PERC #128405-I-16.  
Arbitrator’s R18.

Representing the Union: Spencer N. Thal, General Counsel, and  
Tracy Thompson, Teamsters Local 117,  
14675 Interurban Ave S # 307, Tukwila,  
WA 98168, and Anil S. Karia, Public Safety  
Labor Group, 3021 NE Broadway, Portland,  
OR 97232.

Representing the DOC and OFM: Kari Hanson, Senior Counsel, and Valerie B.  
Petrie, Senior Counsel, Asst. Attorney  
General, P.O. Box 401454, Olympia, WA  
98504-0145

Arbitrator: Howell L. Lankford, P.O. Box 22331,  
Milwaukie, OR 97269-0331.

Hearing held: In the offices of the Attorney General in  
Tacoma, Washington, on August 29 through  
September 2, 2016.

Witnesses for the Union: Paul Marvy, Sandra Conner , Michelle  
Woodrow, Carla Pusateri, Jason Bennett,  
and Richard Mate.

Witnesses for the  
DOC / OFM:

Stephen Sinclair, Richard Pannkuk, Elliot R.  
Susseles, Eric Hernandez, Nancy Waldo,  
Ann G. Mitchell, Charlotte Wieman, James  
Rollins, and Melinda Aslakson.

Date of this  
award:

September 27, 2016.

As in 2014, the Union and DOC/OFM entered into a Memorandum of Understanding providing for interest arbitration if two-party negotiations failed to produce a complete 2017-2018 collective bargaining agreement (CBA). The parties stipulate that the preliminary requirements of that MOU have been met, and the issues certified by PERC are properly before me. The hearing was orderly. Each party had the opportunity to present evidence, to call and to cross examine witnesses, and to argue the case. The MOU expressly adopts “the October 1<sup>st</sup> deadline and financial feasibility provisions of RCW 41.80.010(3),” and the parties closed their cases orally in consideration of that deadline.

### *The Context of the Dispute*

This is the parties’ second MOU potentially providing for interest arbitration. I was the arbitrator under the first MOU and issued an award in September, 2014. That 2014 Award (“2014 Award”) begins with a lengthy section captioned “The Department and the Bargaining Unit” (pp. 1-6). The parties agree that that description was accurate (except that I unfortunately scrambled the labels for custody levels at pp. 2-3). I adopt that discussion by reference as part of this Award, but I will not reproduce it except for the reiteration of two particularly important features of the Department and of corrections work.

First, it is important to reiterate the social function of modern corrections (p.2):

[T]hroughout the last decade the commitment of professional corrections work has expanded to include meaningful education, meaningful opportunities for offenders to change their basic behaviors and the increasing use of evidence-based offender management practices. About 95% to 97% percent of the inmate population will eventually go back out into their communities, and DOC’s larger function is to give them more tools to make them a little bit better when they leave and a little less likely to return. Corrections is not just a warehouse anymore.

The thinness of the staffing levels in pursuit of those goals is staggering. On the day shift at medium custody levels, just three COs maintain the custody and security of 256 inmates. For all shifts, the 24/7 staff requirement at medium security is about 30 FTE COs.

And, second, there has been no change in the social cost of that work (pp. 5-6):

COs and Nurses, and to some extent DOC employees in general, are paid to be the public’s interface with a world of traumatic events (in the technical psychiatric sense) of “experiencing, witnessing or learning of actual or threatened death, serious injury, or sexual violence or experiencing repeated or extreme exposure to aversive details of traumatic events” (DSM-V.) It seems to me that those characteristics fairly well describe how the prison population got there: Such repeated exposure is inherent in front-line DOC work. Inmate populations exhibit gang affiliations, and gangs sometimes have “kill orders” out on one another. It is DOC’s function to keep inmates from doing harm to one another, but the

effort required is constant. It is DOC's function to keep inmates from doing harm to staff or to the facility, but the effort required is constant and the continuing threat is the greatest source of stress. Finally, there is no dispute in this record that this is isolating work: "How was your day?" is not an easy question for a Correctional Officer to deal with, or, to a somewhat lesser extent, for a DOC employee in general. DOC employees are exposed to, as one witness put it, "things a human being is not supposed to do." The resulting communications problems help to drive up the social costs that DOC employees pay to keep offenders away from the rest of the population while trying to foster some possibility of rehabilitation. DOC makes staff counselors available to help employees deal with job stress; and DOC also provides an independent Employee Assistance Program (EAP).

Staff size is largely unchanged since 2014, as is inmate population, which is running around 16,530 at the time of hearing. But crowding is substantially reduced, with no one sleeping on the floor over the past year except at Sheldon, and female prisoners at Purdy. Finally, and most happily, the frequency of hostage situations has declined since 2014.

### *Proposals*

The parties offer a smorgasbord of specific classification range increases and premium proposals (which are addressed separately below beginning on p. 17); but with respect to general increases, DOC offered a substantial increase in vacation accrual—which the parties agree on—and proposes 3% on July 1, 2017 and another 3% on July 1, 2018.<sup>1</sup> (DOC would exempt several classes from the general wage increases.) The Union, on the other hand, divides its general wage proposal into two parts. It proposes 3.5% increases on July 1, 2017 and on July 1, 2018 and it also proposes, on each of those dates, to "eliminate 50% of the weighted average of the wage deficiency between all bargaining units' benchmark positions and the comparable positions in surveyed jurisdictions by adjusting class ranges upwards." Although it is not clear on the face of the proposal, the Union indicated at hearing that it one intended or the other of those increases—whichever is greater—but not both.

The Union made it abundantly clear at hearing that its primary concern was the amount of the bargaining unit's general rate increase; and I will therefore address those proposals first and then turn to the targeted proposed range increases and premiums. The general discussion must proceed in terms of the "factors" which the MOU requires the arbitration panel to "take into account...in making its determination." As usual in interest arbitration proceedings, the dispute between the parties focuses on comparability, ability to pay, and recruitment and retention.

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<sup>1</sup> The tentative agreement reached with WFSE after the close of the hearing also included "significantly increased vacation accruals— the first in 40 years!" (quoting WFSE's Tentative Agreement Summary, received into evidence by agreement of the parties).

## ***The Disputed General Rate Increase***

***(I). The financial ability of the Department of Corrections to pay for the compensation and benefit provisions of a collective bargaining agreement.*** The Union points to projected increases in estimated State revenues for the foreseeable future and positive General Fund (GF) balances; and the Union points to the State's known but unbudgetable liabilities.

*McCleary*. Among those known but unbudgeted liabilities, pride of place must certainly go to *McCleary*. *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012), is a gorilla of unknown weight in the middle of any discussion of the State's financial future. In the original, 2012, *McCleary* decision, the Washington Supreme Court held that the State Constitution "confers on children in Washington a positive constitutional right to an amply funded education" and that "the State must amply provide for the education of all Washington children as the State's first and highest priority before any other State programs or operations." In 2014 the Court issued a Show Cause Order asking the State why it was not in contempt; and in August, 2015, the Court assessed a remedial penalty of one-hundred thousand dollars (\$100,000) per day until it adopts a complete plan for complying with article IX, section 1 by the 2018 school year," those funds "to be held in a segregated account for the benefit of basic education."<sup>2</sup>

The State has now argued to the Court that a framework of legislation, including E2SSB 6195 enacted by the 2016 Legislature, should satisfy the requirement of a complete plan for *McCleary* compliance. On July 14, 2016, the Court ordered the parties to appear on September 7 to address a series of questions arising under the contempt finding and the remedial penalty. The briefing schedule for that argument put the State's initial brief and the Plaintiff's answer within the parties' reach at the time of the hearing in this matter; and the State's reply brief was submitted on September 2 and was forwarded to me by DOC/OFM.

The Court asked a series of specific questions, and two of those are particularly important for the case at hand: "how much is [constitutional compliance] expected to cost" and "how the State intends to fund it." (August 13 Slip Opinion at 2.) The State's reply to the first of those questions, very briefly, was that much of the legislative work has been done except for the determination of a system for funding staff salaries, which must

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<sup>2</sup> The 2014 Award was issued after the Show Cause Order but before the finding of contempt.

be addressed by the 2017 legislature.<sup>3</sup> But it is the second of those questions that is equally important for the ability to pay factor in the case at hand.

In the case at hand, DOC's appeal to *McCleary* focuses entirely on the *expense* side of the 2017-19 budget. But the *potential new income* side, the second question asked by the Court, has always been an important part of the *McCleary* puzzle: How is the State going to fund *McCleary* compliance in general and the staff compensation part of compliance in particular? The State's answer to the Court in the current proceedings (Opening Brief at 35, footnote omitted) is that

The 2017 Legislature will determine the sources of State revenue (new, existing, or a combination) to be used in implementing its plan of basic education. Previous reports and bills have identified a variety of options for the Legislature to consider. The following nonexclusive list, for example, was provided without recommendation by the Joint Task Force on Education Funding [in December, 2013]:

- Draw from the Budget Stabilization Account;
- Retain existing taxes set to expire;
- Additional budget efficiencies and savings;
- Eliminate tax exemptions;
- Fund all or part of K-12 transportation using transportation revenue sources;
- Enact an excise tax on capital gains;
- Lift or amend the current one-percent limit on the growth of state property taxes;
- Increase the state school levy rate;
- Use the state school levy to replace all or some local school levies.

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<sup>3</sup> Plaintiffs argue to the Court (Answer Brief at 6-7) that the State “does not give an actual answer” with respect to non-compensation components and that “the most expensive component of its basic education program [is] the compensation required to attract and retain competitive personnel.”

Except for “additional budget efficiencies and savings,” every item in that list points to an *additional source of State income*. That is what makes *McCleary* such a budgetary nightmare. If OFM or the Legislature saw a way to finance *McCleary* compliance out of “additional budget efficiencies and savings,” without a new revenue source(s), funding might well have been achieved by the 2013-15 or 2015-17 Legislatures. Instead, the State’s opening Brief to the Court (at p. 36) lists five *unsuccessful* Senate and House bills from the 2015 legislative session proposing to increase State property tax or create some form of a state capital gains tax as at least partial funding for *McCleary* compliance. As both the State’s Briefs to the Court and the OFM budget witness in this proceeding agreed, the State has no idea of even the “order of magnitude” of *McCleary* or of how to fund it.<sup>4</sup>

In short, *McCleary* leaves huge question marks on *both* the expense and the income sides of the 2017-2019 budget, and the record before me provides no reasonable *quantitative* approach to those uncertainties.

Qualitatively, the Union points out that Washington’s economic environment has undoubtedly improved over the last two years and that national economic indicators are generally positive. The 2014-2015 EFB was still slightly below the common EFB for the four years before the 2008 recession, but the 2015 EFB is substantially above that general average. This time around, State agencies—including DOC—were not asked to submit budgets reduced by 15%, as they were in the prior biennium; and the June baseline income projection from the Economic Revenue and Forecast Council was up by about \$294 million for the 2015-17 biennium and up by \$126 million for the 2017-19 biennium. The September projection increased those numbers again, adding another \$334 million to the 2015-2017 revenue projection and another \$125 million to the projection for 2017-19.<sup>5</sup> Although an increase of \$294 million in a single forecast cycle—and \$628 million in two—is substantial, \$294 million is less than eight-tenths of one percent of a budget of about \$38 billion and \$628 million is about 1.6%. Moreover, as OFM points out, the 2015-17 budget included several painful program reductions, including a 15% reduction in temporary assistance to needy families and other mental health reductions during the

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<sup>4</sup> The State’s argument to the Court focused on the sheer number of uncertainties along the way to determining the cost of compliance and the several Legislative workgroups now addressing those uncertainties. But over the last five or six years the Legislature has required around fourteen special sessions in order to complete the budget process. (1 Tr. 139:5-10.) Moreover, the briefs in the current Court proceeding make it clear that the parties differ substantially on the interpretation of “basic” in “basic education” the term “ample.” The prospect of additional litigation long after the Legislature acts to fund compliance—and of additional substantial budgetary uncertainty due to that continuing litigation—is staggering.

<sup>5</sup> The September report was issued after the record closed, but the parties agreed that I could take notice of it.

great recession. Still, the Union is certainly entitled to point to a recent record of constantly improving economic reports.

Over 70% of the budget's expenditures legally cannot be reduced due to State Constitutional or federal requirements. Corrections is included in the remaining less than 30% and accounts for about \$1.9 Billion out of the \$10.8 Billion unprotected part of the biennial budget.

The Department argues that revenue increases are simply not keeping up with increasing costs. It is noteworthy that the June forecast increases for the 2015-17, 2017-19, and 2019-21 biennia—\$294 million, \$126 million, and \$134 million, respectively—were attributed to increased housing activity, rather than sales tax growth, and that “slightly higher forecasted inflation also played a role.”<sup>6</sup> (June Forecast, Union Exhibit 45, at 1. From the point of view of increasing ability to pay, a revenue increase based on inflation is really no increase at all.) But the September forecast increases were attributed largely to sales tax and REET income.

The Union points out, essentially, that the general economic outlook for Washington is bright: it is one of the top five states for job growth; its domestic product growth is over twice the national growth rate; it has added nearly a quarter million jobs since 2013; and wages and home values continue to grow.<sup>7</sup> The Economic and Revenue Forecast Council projects solid growth in general fund revenues over the next three biennia, and the State's debt rating is strong. Moreover, the State's broad offer of improved vacation accrual—after forty years without change—shows that the State's fiscal situation is far from desperate.<sup>8</sup>

DOC estimates the total increased costs of the Union's proposals—those that *can be* costed—to be about \$252 million in general Fund dollars and \$253 million overall. (Employer Ex. 34.) That is about \$189 million more than the costs for DOC's own proposals (\$53 million General Fund and \$54 million overall). But this estimate is based

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<sup>6</sup> Personal income actually declined slightly from the February forecast, which does not bode well for sales tax receipts; and the slight increase in energy prices has the same dampening effect on personal spending but increased receipts from refineries and gas stations.

<sup>7</sup> The Union also argues that the recent history of the General Fund EFB gives reason for optimism; but the Union unfortunately includes the Stabilization Account in the EFB presentation. The Stabilization Account automatically grows each year by 1% of GF revenues; but getting funds out of that account requires a projected employment growth rate of less than 1% or the Governor's declaration of a catastrophic event impacting life or public safety.

<sup>8</sup> Of course, the Union is not now proposing to trade that improved vacation accrual for any part of its economic proposal.



on *both* the Union's two-step catch-up proposal and on its 3.5% & 3.5% COL proposal, although the Union understands its proposal to be one or the other of those but not both.

***(ii.) The constitutional and statutory authority of the employer, and (iii.) Stipulations of the parties.*** These factors do not play an important part in this case beyond OFM's reminder of DOC's limited call on the financial assets of the State and the parties' agreements to certain features of the Western States survey, addressed below.

***(iv.) Comparison of wages, hours and conditions of employment of like personnel of like state government employers of similar size in the western United States and (vi.) The overall compensation presently received by Department of Corrections employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefit and all other direct or indirect monetary benefits received.*** The MOU picks this specific approach to the general issue of comparability, i.e., comparison of Washington with western state governments of similar size on an "all ... benefits received" basis; and that approach to comparability must therefore certainly be given pride of place both in the discussion and in the decision.<sup>9</sup> Segal Waters did OFM's survey, and the Tedesco Group did the Union's. The parties reached a series of stipulations about how to proceed with that comparison, but still present substantially different methodologies and somewhat different results. Moreover, in addition to the comparison with western state governments of similar size, the record addresses two other approaches to the broad issue of comparability. The first is the Union's proposal to compare bargaining unit compensation with compensation paid by competing Washington counties. And the second is the State's own statutorily mandated, more market oriented survey.<sup>10</sup>

*The surveys of western states.* The parties here have agreed both on the states to be included in the survey and on the classifications to use as benchmarks. Those states are Arizona, Colorado, Nevada, Oregon, and Utah; and the benchmark classes are the seventeen most populous classifications of this bargaining unit of 116 classifications. Taken together, those benchmark classes reflect about 82% of all the employees in the entire unit. The five most populous classifications, alone, account for just over seventy

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<sup>9</sup> "Factors" such as these two are almost always read together, resulting in attempts to *survey* "all ... direct or indirect monetary benefits received."

<sup>10</sup> The term "market" is systematically ambiguous in this context and very seldom refers to a formal market analysis. The first step of a formal market analysis would be determining where employees in a particular classification come from and go to. (We advertise nationally for a new school superintendent and advertise on the sides of the buses for drivers.) "Similar size in the western United States" does a lot to satisfy our sense of fair comparison but is not a market in any technical sense. The State-wide survey conducted under RCW 41.06.160 makes some attempt to reflect a market approach without being very technical about it.

percent of the bargaining unit. Those five, in population order, are CO2 (3,028), CO3— aka Sergeant—(406), RN2 (219), Class. Counselor 2 (161), and Office Assistant 3 (159). The parties also agree on two significant adjustments of the raw salary data: they both adjust it for the length of workweek (some classifications work a longer week in Utah) and they both adjust for the average cost of living in the various states (on the basis of the Price Parity Index). They also apparently agree that the top of the schedule should include any available longevity step.

There the agreements come to an end; and there are significant differences in the patterns of analysis of the two surveys. First, the DOC survey left the identification of matching classifications up to the survey respondents, and the Teamsters made their own matches on the basis of the respondents' class specifications. In some cases the surveys end up with different comparable classifications. The DOC approach has the benefit of leaving the class matching to probably disinterested outsiders, but there is nothing to indicate the level of skill of the employees assigned to respond to Segal Waters' inquiry. (Any given response could have been authored a by twenty-year department head or by a class/comp clerk with less than two weeks on the job.) The Union points out that in a couple of cases the match is different this time around from 2014, and Segal Waters did not inquire further in those instances. On the other hand, the Union's matching was performed by a Union employee and was not disinterested. All in all, I find not much reason to credit one selection over the other.

Second, both surveys compare compensation at base, top, and in the middle. But they determine the 'middle' differently. Three of the five agreed comparables have broad salary ranges rather than defined steps. Segal Waters therefore used an arithmetic mid-point by averaging the base and the top rates. The Tedesco Group survey, on the other hand, took ten years as a mid-career number and sought actual compensation numbers for a mid-career employee by telephone inquiries. Mid-point comparisons are always problematic when dealing with open pay ranges, and I cannot find either approach substantially superior.

Third, the parties disagree starkly on how to treat health insurance benefits: Segal Waters uses PPO insurance coverage as its benchmark and bases its average employer cost on the actual distribution of the Washington DOC bargaining unit (44% employee only, 19% employee +1, etc.). The Tedesco Group, on the other hand, inquired of each comparable employer and used the most popular insurance coverage in that unit (HMO, PPO, etc.) and then used full family medical costs, arguing that full family is inevitably the most popular coverage. Both approaches make sense, but the Tedesco Group was apparently wrong about the most common insurance coverage in Washington (which appears to be employee only).

More importantly, with respect to insurance benefits, Segal Waters's numbers reflect employer costs but not employee cost-sharing, and the Tedesco Group survey reflects employee contributions but (for reasons which entirely escape me and which are not explained in the record) does not reflect the employer costs. Best practice, it seems to me, is for a benefit survey to reflect both components of this factor.<sup>11</sup>

Fourth, there is some difference in how the surveys deal with optional pay premiums. The only significant optional benefit in this group of comparators is Oregon's two levels of professional BPSST certification. Segal Waters assumes intermediate certification, and the Tedesco Group by policy assumes that every employee has every pay incentive that is universally available and therefore credits every employee with the advanced certification. Neither party apparently actually inquired, although both the Oregon DOC and the corrections union(s) could have supplied that information.

Fifth, the parties offer somewhat different numbers with respect to both employer and employee retirement contributions. That difference is not surprising considering the current complexity of state retirement plans—particularly for units including some uniformed personnel—but the Tedesco Group survey is inaccurate in several particulars. On the other hand, it is not entirely clear whether the pension contribution numbers affect that survey's bottom line.

Finally, and most significantly, the Segal Waters survey is expressly a survey of the "total compensation *costs to the employer*"<sup>12</sup> and not, as the MOU requires, of "wages, *hours* and conditions of employment *of personnel*," while the Union's survey adjusts for difference in hours produced by differences in vacations and earned paid time off.<sup>13</sup>

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<sup>11</sup> This is not a perfect solution, and it leads to the interesting result that a 50% co-pay arrangement counts as a net zero insurance benefit. But I submit that that potential result seems stranger on first blush than on reflection.

<sup>12</sup> Quoting DOC's Segal Waters Consulting witness, 2 Tr. 189:20-21.

<sup>13</sup> Paradoxically, Segal Waters adjusts for differences in workweek, but not for differences in paid time off. Besides ignoring the language of the MOU, which contemplates a comparison including "wages, *hours* and conditions of employment," the failure to reflect differences in vacation and other paid time off means that two employers would be exactly comparable even though one offered \$25/hour and one paid day off per month and the other offered \$25/hour and one paid *week* off per month. From an employees' point of view those two employers would not be seriously competitive. The MOU, to repeat, refers to "The overall compensation presently received by Department of Correction employees, including ... all ... *direct or indirect monetary benefits received*." (emphasis not in the original). That unambiguously calls for an employee benefits survey, not an employer cost survey.

Table 1, on the following page, sets out the resulting bottom-line numbers from the Segal Waters survey (Ex. E18 at pp. 128-131) and from the Tedesco Group survey for the five classifications that account for over 70% of the bargaining unit (CO2 and CO3 alone account for about 60%). The snapshot date for both surveys was January 1, 2017. Therefore, in order to reflect conditions at the beginning of the contract period at issue—July 1, 2017—we have to project both Washington rates and comparator average rates up to that date.<sup>14</sup> The 2014 award included a 4.3% increase effective July 1, 2016; and Segal Waters’ survey found an average increase of 1.75% among the comparable by July 1, 2017, which the Union does not contest. Table 2 shows those corrections and advances the snapshot date to the end of the current CBA.

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<sup>14</sup> Strictly speaking, this adjustment more properly comes under factor vii, “Changes in any of the factors listed in this subsection during the pendency of the proceedings.”

Table 1: Western States Comparability on January 1, 2016.  
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Table 1: Western States Comparability on January 1, 2016.		Segal Waters Average		Tedesco Group					
Class & population		% of average	% to reach average	Base		10 Year Mid Career		Top / 25 years	
				% of average	% to reach average	% of average	% to reach average	% of average	% to reach average
CO2 (3028)		85%	17.6%	92.0%	8.4%	82.4%	21.3%	80.3%	24.5%
CO3 (406)		84%	19.2%	90.6%	10.3%	82.6%	21.0%	81.0%	23.4%
RN2 (219)		91%	9.4%	90.0%	11.0%	92.8%	7.7%	96.6%	3.5%
CC2 (161)		80.4%	24.4%	79.4%	26.0%	72.5%	37.9%	72.9%	37.1%
OA3 (159)		78%	27.8%	104.7%	-4.7%	92.9%	7.6%	89.7%	11.5%
Average.		0.8	22.7%		10.2%		19.1%		20.0%
Average weighted by class population			18.3%		8.9%		20.4%		23.2%
Table 2: Western States Comparability on July 1, 2017.									
Table 2: Western States Comparability on July 1, 2017.		Segal Waters Average		Tedesco Group					
Class & population		% of average	% to reach average	Base		10 Year/Mid		Top / 25 years	
				% of average	% to reach average	% of average	% to reach average	% of average	% to reach average

CO2 (3028)	87.3%	14.5%	94.5%	5.8%	84.5%	18.4%	82.3%	21.4%
CO3 (406)	85.9%	16.3%	93%	7.6%	84.7%	18%	83.1%	20.4%
RN2 (219)	93.7%	6.8%	92.4%	8.3%	95.2%	5.1%	99%	0.1%
CC2 (161)	82.4%	21.4%	81.3%	23%	74.3%	34.5%	73.7%	35.7%
OA3 (159)	80.3%	24.5%	107.2%	-6.7%	95.3%	4.9%	91.9%	8.8%
Average.	85.9%	16.7%	93.7%	7.6%	86.8%	16.2%	86%	17.2%
Average weighted by class population	87%	14.9%		6.3%	84.8%	17.7%		20.2%

*County comparison.* In the 2014 proceeding the Union proposed to consider Washington counties as comparables and offered Clark, King, Pierce, Snohomish, Thurston, Walla Walla, and Yakima Counties, without any very clear justification for that choice. DOC objected, first, that comparison with counties was inherently improper and, second, that comparison with those particular counties was unjustified. I rejected the claim that comparison with counties is inherently improper (at p. 17, footnote omitted):

In the 2010 Strategic Plan, DOC noted that it continued “to be challenged with recruiting for hard to fill jobs in competing labor markets; especially in healthcare markets.” Indeed, the very facts of the retention-driven location pay in the existing CBA—which DOC proposes to continue—and the additional retention driven increases it proposes to add show that local labor markets matter. RCW 41.06.157 requires the State’s Comprehensive classification plan to (1)(f) “Consider rates in other public employment and private employment in the state,” and authorizes “salary surveys of positions in other public and private employment to establish market rates.” I take that to be a statutory directive for the State to “take a look at the market,” and, of course, a look at the market is a common part of bargaining compensation.

That response takes on additional punch this time around because DOC has again formally recognized—this time in a mandated response to the Legislature—that it must compete with counties (see the discussion of overtime, pp 14-15).

The Union has addressed the earlier criticism of its selection criteria by analyzing the work addresses and residence addresses of the members of the bargaining unit. About 84% of the members of the bargaining unit reside, and about 95% work in ten counties (and there is a sharp drop off in incidence of both work and residence after that): Snohomish, Walla Walla, Spokane, Grays Harbor, Pierce, Thurston, Mason, Franklin, Benton and Clallam. I agree with that selection of counties except for the inclusion of Benton. Unlike the other selected counties, Benton County has no State DOC facility. The percent of bargaining unit members living in the county—5%—is comparatively low, and for all of the other selected counties, the percent living in the county combined with the percent working there is well over 10%, whereas Benton comes to a mere 5%. I have therefore removed Benton County from the calculations.

The overall county corrections enterprise is dissimilar to state corrections in many respects, and many of the classifications that are necessary at the state level are found only rarely if at all at the county level. For nine out of the seventeen stipulated state benchmark classifications, the Union found two or fewer matches in the group of counties. But it found a match in every county for CO2 and CO3, which, combined, constitute about 60% of the bargaining unit. DOC really has no substantial argument against comparing at least custody staff with custody staff in the counties where DOC employees live and work; and, most importantly, to repeat, DOC's 2015 Report to the Legislature recognized that the counties are among its major competitors for custody staff (Exhibit E9 at 3): "Custody position vacancies ...are hard to fill. *The DOC competes with counties, cities, other states, and federal and tribal governments who typically pay higher wages.*"

On the Union's system of comparison (set out above with reference to the western state surveys) the Union found it would require a 37.2% increase at the entry level to catch DOC CO2s up to the county average and a 62.4% to catch CO3s up to the county average. Those numbers decline a bit at the ten year mark—35.5% and 42.3% respectively—and at the top of the schedules, 29.1% and 35.8%. Even if we exercise every *reasonable* doubt about the Union's method of analysis, those numbers are staggering and certainly validate the Department's report to the Legislature that "*DOC competes with counties...who typically pay higher wages.*"

*The State's General Compensation Survey.* Finally, RCW 41.06.160 requires the Department of Personnel to "give full consideration to prevailing rates in other public employment and in private employment in this state" by "comprehensive salary and fringe benefit surveys." The 2016 general State workforce survey, too, was conducted by Segal Waters, and one of the benchmark classes in that survey was CO2. That survey is of limited usefulness here, because it included thirteen states as well as seven public sector employers. But that survey found the unadjusted base midpoint Washington salary for CO2s to be 82.6% of the survey average—86.9% of the 95% bottom of the "market"—which would require a 21% increase to match the survey average, or a 14.9% increase to reach the 95% bottom of "market." (Using figures from Exhibit U12, p. 129, and Exhibit E18, p. 48.)

**(v.) *The ability of the Department of Corrections to retain employees.***<sup>15</sup> In 2014 I concluded (at p. 17) that "the record as a whole does not show a substantial problem of

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<sup>15</sup> Retention and recruitment, although analytically different, are often addressed hand in hand, but the parties' MOU specifies only retention. In the case at hand, DOC argues that it has adequate employees initiating the hiring process although far too many satisfactory applications fail to produce actual scheduled employees. Is that a problem of recruitment or of retention? In any event, employee recruitment is certainly an "other factor" "normally or traditionally taken into

recruitment and retention.” This time around the DOC’s own report to the 2015 Legislature prohibits that conclusion.

DOC has long been acutely aware of its recruitment problems. The 2014 Award (at 16) quoted DOC’s 2009-2015 Strategic Plan:

Staff turnover, retirements, and prison expansion will still require the Department to focus on its recruitment and retention efforts. Vacancies in both custody and health services occupations continue to be a major issue as DOC must compete with higher salaries in most job markets throughout the state. Hiring for these occupations is a nationwide issue.

These vacancies have resulted in increased overtime to cover mandatory posts and provide adequate levels of service. This problem has translated into higher costs for overtime for both custody and health services. Unfilled vacancies have also forced the Department to rely on more expensive contracted healthcare workers to provide essential services to offenders.

This problem has been exacerbated by the generally improving Washington economy which has made recruitment “challenging,” in the words of the Asst. Secretary of Prisons.

New custody employees spend about five weeks in an Academy, and the drop out rate during that period is quite low. After the mandatory training, they may become on-call employees of may be offered a regularly scheduled position. On-call employees are offered work, or not, at the need of the Department and have no expectation of any particular minimum hours of employment and no right to any particular schedule. (Some on-call employees may become long-term replacements for regular employees who are on extended medical leave; some have work, or not, day by day.) There is no dispute that the departure rate among Academy graduates in on-call status has been very high, but since those are not really “employees,” it is not clear whether their departures are counted as employee turnover.

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consideration in the determination of matters that are subject to bargaining under RCW 41.80.020(1).”



It is therefore not entirely clear that DOC has a firm handle on the size of the recruitment problem. The average turnover rate for on-call “employees” in FY 2015 was a breathtaking 40%. This strongly suggests that DOC essentially provides free employee selection and training for the benefit of other employers, the worst possible outcome from a recruitment and retention perspective.<sup>16</sup> That is just what DOC told the Legislature in DOC’s legislatively required 2015 overtime report (Employer 3 at p. 3): “It is common to lose custody staff to law enforcement and other corrections facilities after DOC has invested in training these staff. \*\*\* The most recent wage increases for custody employees may help reduce the vacancy and turnover rates.”<sup>17</sup> The recruitment problem is not limited to custody employees. A management representative testified that there are continuing difficulties in recruiting psychiatrists, psychologists and nurses (including PAs and ARNPs)

*Overtime.* The Union points to DOC’s spectacularly high overtime rates as an indicator of a chronic recruitment and retention problem and to that recruitment and retention problem as an indicator of uncompetitive pay rates. High overtime experience can have several different causes: the staffing model might be deficient in the first place, so even if all the budgeted positions were filled, overtime would be necessary to bring the *actual* staff up to the required staffing minimums. Only the legislature can deal with that cause of excessive overtime; no amount of pay rate increase can fix it. On the other hand, the pay rate might be noncompetitive, so that an adequate budgeted FTE staff cannot be filled with actual employees. Since pay rates in Washington are set through collective bargaining, no amount of legislated FTE increase can fix that cause of high overtime expense.

DOC’s own official report to the 2015 Legislature identified both of those causes. There is no reason, on the record before me, to dispute DOC’s own three-part explanation of its high overtime costs: First, DOC is legislatively *required* to staff inadequately, and the difference between the permitted inadequate staffing level and the unavoidable actual staffing needs must be made up largely on overtime. Second, DOC is unable to compete against local governments and the private sector in the face of an improving economy. And finally, DOC is currently unable to retain newly recruited employees through the

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<sup>16</sup> DOC has recently concentrated on reducing the exposure period to this high turnover rate by reducing the time between initial selection and hire into a permanent position. The period between completed application and hire offer has been reduced from about 96 days in 2013 to about 45. Additionally, DOC is making efforts to change its traditional hiring pattern by reducing the dependence on ‘on-call’ employees and hiring directly into scheduled positions.

<sup>17</sup> This was the hope behind the 2014 interest arbitration award. The economy’s improvements between then and now may actually have eaten away at that hope.

intake process and into permanent positions quickly enough to solidify them as permanent hires.

Both the overtime and the turnover pictures have not improved in the recent past. In 2014 CO2s worked an average of 132 hours of overtime—3.3 full weeks of overtime per employee—and in 2015 that rate increased by eighteen hours, over two additional full days of overtime per employee. Similarly, the official CO2 turnover rate—which does not reflect loss of on-call employees or employees who transfer anywhere else in State service—grew steadily over the last three years: 3.7% in 2013, 4.5% in 2014, and 5.9% in 2015. The annualized rate through July, 2016 appears to be about 4.9%. (Employer 26 & 27.) The fact that DOC has requested to offer Step D rates to new CO candidates at Monroe, Clallam Bay, and Olympia strongly suggests that low pay is a significant part of the problem.

In short, nothing in the record before me contradicts DOC's own official report to the Legislature that a substantial part of its CO overtime problem is a DOC pay scale that is not clearly competitive in the currently improving economy.

***(vii.) Such other factors which are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under RCW 41.80.020(1).*** Three 'other factors' stand out in this record: current changes in the cost of living; the consequences of changes in the cost of living and increasing medical premium and pension cost sharing over the recent past; and the relative burden or value of the Corrections enterprise in Washington.

*Changes in the Cost of Living.* The Union's Net Gain/Loss Over Time analysis reflects recent changes in the Seattle-Tacoma-Bremerton CPI-W index. For all of 2015, the index increased by only 0.9%; but for the first half of 2016 it rose by 2.3%. (Union Ex. 34.)

*Net Gain/Loss over time.* Besides its county comparison, the Union also offers a sort of net-gain-over-time analysis which it refers to as "wage erosion." The compensation history of this bargaining unit was addressed in detail in the 2014 Award (at p. 11):

*Recent pay rate history.* The State's fiscal fortunes have had serious consequences for its workforce in general and for this bargaining unit in particular. That part of the history goes back at least to 2002 when, after 48 months of rate stagnation, all State employees got a 3.2% rate increase and many classes that had fallen behind by more than 25% at the top were brought up to put the top within 25% of the comparators' mid range. In 2006, all bargaining units (and unrepresented employees) except this one got a 1.6% increase, and this unit got an additional 1.3% for a total of 2.9%. That 1.3% was viewed as the "Corrections Differential," and it has been undisturbed ever since. In 2007, all bargaining units got a 3.2% increase

(delayed two months for non-rep employees) and the lagging classes were again brought up within 25% of the comparators' middle rates. The final increase came in 2008, at 2%, for all State employees. But, quoting the most recent, November, 2013, CAFR, "[o]ver a four year period, nearly every quarterly state revenue forecast brought more bad news. In all, Washington's revenue projections for 2009-2011 and 2011-2013 fell by \$10 billion—a nearly 16 percent decline compared to original forecasts." During the seven year period from July, 2008, through the end of the current contract on June 30, 2015, there was a 3% decrease— mostly accompanied by unpaid time off—for 2011 and 2012 and the addition of a new longevity step "M" for employees who had been at the top of the step series for six years or more. During that same seven year period, according to the PEBB, employee medical costs increased by an average of 10.5% per year, from \$78.63 average in 2008 to the current \$165.01. Employer funding rates grew by about 25% from 2008 to 2011 but then fell back by 2014 to an overall average growth rate since 2008 of under 10.6%, barely ahead of the employee average increase rate.

In the case at hand, the Union has gone a step further and quantified the change in purchasing power of the compensation received by bargaining unit employees since the year before the great recession of 2008. That analysis begins with pre-recession 2007 as a base year and CO2 top step salary schedule wage as the measuring wage rate. It then adjusts, year by year, for location pay, inflation (using the Seattle-Tacoma-Bremerton CPI-W index), employee pension contribution, and weighted average employee medical premium. The result over the period from 2007 to 2016 was at its worst in 2012, when CO2 had suffered a 13% net loss in purchasing power compared to 2007. That was somewhat ameliorated to a 10.2% net loss in 2016, largely as the result of the 2014 Award, both parts of which are included in the Union's figure for 2016 compensation.

*Value to the Public.* Finally, no analysis of corrections compensation would be complete without mentioning that Washington once again has the far least expensive corrections program of the comparable states: state corrections costs range from almost 11% of the general fund budget in Arizona to 4.2% in Colorado.<sup>18</sup> But Washington's remarkable 3.2% is less than half of the almost 7% average. The citizens of Washington get a lot of bang for their Corrections buck.

**Conclusion.** Once again, as in 2014, the record includes "two surveys reaching substantially different conclusions about the same base data" (2014 Award, p. 20). This time, however, the Segal Waters survey cannot be ignored even though it does not adjust total compensation for overall hours.

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<sup>18</sup> Of course, total corrections costs reflect many differences in different states' judicial philosophy and approach to corrective action and recidivism as well as the costs of the corrections establishment itself.

The biggest change between 2014 and 2016, it seems to me, is the difference in the record with respect to recruitment and retention, particularly in DOC's 2015 official response to the legislature's inquiry about continuing, monstrously high overtime. DOC told the legislature that the legislatively mandated staffing formula was out of date so that overtime would be required even if the Agency were "fully" staffed and that "The DOC competes with counties, other states, and federal and tribal governments who typically pay higher wages. It is common to lose custody staff to law enforcement and other corrections facilities after DOC has invested in training these staff." (Employer Ex. 9 at p. 10). That certainly invites a look at the wages paid for corrections personnel by the counties where DOC employees already live and work. And the result of that inquiry is staggering: according to the Union's analysis, those counties pay more than a third more at the mid-career, ten year mark and even more than that at the bottom of the schedule.

Faced with such a record, it seems to me that it would be irresponsible of me to award an increase that would leave this bargaining unit lagging behind in every possible sense. On the other hand, *McCleary* is a very real budgetary uncertainty; and funding *McCleary* compliance, even *with* some additional sources of revenue, may well take priority for available General Fund dollars. But there is also no way to avoid the fact that inmates must be safely housed; and that requires at least a roughly competitive corrections staff.

The State essentially quantifies "roughly competitive"—another sense of "market"—as 95% of the average compensation, and Table 3 is the calculation of the most modest version of market for these employees, i.e. what the "market" (5% off the average) requires based on Segal Waters' western states analysis adjusted for scheduled increases between now and July 1, 2017. (Segal Waters' state-wide general survey for 2016 shows CO2s slightly further behind than the western states survey.) This is the *smallest* number that can reasonably be defended on the basis of this record: the bargaining unit requires a 9.5% increase to catch up to the "market" as the State generally applies that term. Besides the Segal Waters western states

numbers, every other consideration in the record demands more. The Tedesco Group analysis of western states data—which runs on a proper employee benefit basis rather than an employer cost basis—would require much more; and considerations of the ‘market’ in the proper ‘labor market’ sense certainly demand more: DOC says it has to compete with counties, and it is far more than 9.5% behind in that contest.

I will therefore award the one percent more than the smallest defensible increase, for a total of 10.5% over the life of the contract. That will also bring bargaining unit members back to just barely above the net purchasing power they had before the 2008 recession. In light of the specter of *McCleary* I would not award so large an increase if the record did not absolutely require it. I will back-load the award in order to slightly reduce the cost; and I will keep the costs awarded on other issues to a minimum.

The bargaining unit shall receive an increase of 4.5% on July 1, 2017, an increase of 3% on July 1, 2018, and a final increase of 3% on January 1, 2019.

### ***Other Issues and Proposals***

**Article A17: Overtime.** The Union proposes “Double time for all voluntary hours worked” and “Double time for all overtime hours worked in BFOQ positions.” The second of those proposals will be addressed below, under the Union’s BFOQ premium proposal in Article 32, Section 9.

The Union argues that double time for all *voluntary* overtime would reduce the amount of *mandatory* overtime. That would not decrease the total amount of overtime,

Class	Pop.	.95*1.0175 Av 1.043*WA	% Avg.	% to Avg.
CO2	3028	\$70,073	91.9	8.8
		\$64,418		
CO3	406	\$78,775	90.5	10.5
		\$71,272		
RN2	219	\$95,993	98.6	1.4
		\$94,650		
CC2	161	\$84,517	82.4	21.4
		\$69,626		
OA3	159	\$60,429	84.5	18.3
		\$51,080		
Average			88.2	11.5
Average weighted by population			92.1	9.5

but it would increase the total cost of that same total amount. DOC has been forced to apply to the Legislature repeatedly for funds to cover its overtime expenses. This proposal would substantially increase overtime expense overall, and that increase would carry forward into subsequent biennia—assuming this part of the CBA were extended. Moreover, it seems to me that OFM would have to view such a provision as a camel’s nose under the tent, soon to become a general goal in bargaining and interest arbitration for every bargaining unit in the State. For that reason, I must conclude that this proposal, if granted, would be a poison pill for purposes of OFM review. Moreover, if this sunrise somehow slipped past the OFM rooster, I submit that such an addition would be a poison pill for the Legislature which has repeatedly had to deal with DOC’s over-budget overtime costs. I cannot award the proposal.

***Article 37: Licensure and Certification.*** The Union proposes to “Reimburse up to \$200 for the cost of professional certification and license renewal.” (The Union stipulates that that proposal would not apply to CDL licensing costs.) The current language of that article provides,

When a license and/or certification is required as part of the minimum qualifications for a job classification or the position requires any specialized license (e.g., driver’s license, including CDL), the employee will be responsible for the cost of the certification and/or license and all renewal costs. When a new certification/license is required, the Employer will reimburse the employee for its cost and all renewal costs.<sup>19</sup> \*\*\*

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<sup>19</sup> Training costs are specifically addressed elsewhere and the Union does not propose any changes to that provision.

The Union does not argue that this change is supported by comparability: nothing suggests that corrections employees in other western states or on comparable Washington counties commonly have such a benefit.<sup>20</sup> DOC estimates the biennial cost of the proposed change at about \$243,500; and the record provides no compelling driver for that additional expenditure. I cannot award the proposed change.

**Article 32 Section 1: Pay Range Adjustments.** There are a series of these proposals, several of which are close to proposals by DOC. At hearing the Union agreed to DOC's proposals to remove the references to Licensed Practical Nurse 2 at MCC, Sex Offender Treatment Specialist statewide, Corrections Mental Health Counselor 2 or 3 statewide, and Psychologist 2 from the Group C list in the Assignment Pay Appendix. In Appendix G they also agree on the following changes: Corrections Mental Health Counselor 2 from Range 47 to Range 49 and CCMH 3 from Range 49 to Range 51; Corrections Specialist 2 from Range 51 to Range 53; Dentist from Range 83E to Range 87 (but the Union proposes to maintain the Step E minimum); Sex Offender Treatment Specialist from Range 51 to Range 55 and Sex Offender Treatment Supervisor from Range 55 to Range 59; Licensed Practical Nurse 2 from Range 41 to Range 48 and LPN 4 from Range 44 to Range 51; Psychologist 3 from Range 57 to Range 63 and Psychologist 4 from Range 67 to Range 73; Psychiatric Social Worker 3 from Range 50 to Range 66, Psychiatric Social Worker 4 from Range 55 to Range 71, and Psychiatrist from Range 95 to Range 106.<sup>21</sup> They also agree on increasing Office Assistant from Range 25 to Range 27, increasing OA2 from Range 28 to Range 29, and increasing Maintenance Custodian 2 from Range 30 to Range 31. They disagree about the appropriate Range increases for three classes of Registered Nurses and about DOC's proposal to exclude these RNs from any across-the-board pay increase in light of their substantial Range increases.

*Dentist.* There is currently a Step E minimum for Dentists. DOC proposes to eliminate that floor as part of the agreed four Range increase. The Union agrees to the Range increase but proposes to keep the Step E floor. The record does not show the history of the prior Step E floor; but the four Range rate increase provides a hiring floor for Dentists far above the old Step E floor. The Department has the discretion to hire at

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<sup>20</sup> In addition to the Western States survey contemplated by the MOU underlying this case, the State conducts periodic public and private sector market surveys to illuminate pay rates for the entire State workforce. The 2016 State Survey noted that 48% of surveyed employers reimburse "fees associated with certification/licensing attainment of maintenance." Union Exhibit 11, p. 18.

<sup>21</sup> The increases for Psychiatrists, Psychologist 3 & 4 and Psychiatric Social Worker 3 & 4 are backdated to July, 2016, and were driven by DSHS's critical staffing shortages in these areas, which have led to substantial pay increases there. These DOC range increases are legislatively funded. Psychologist 4s at Monroe received an additional two Ranges as of June 30, 2016. But DOC now proposes to exclude Psychiatric Social Worker 3s and 4s and Psychiatrists from its across-the-board rate increases, arguing that the Range increases bring these classes over market in the State's survey.

Step E if appropriate; and the record does not support the Union's proposal to maintain the Step E minimum.

*RNs.* DOC proposes to move RN 2s from range 54N2 to range 62N2 (about 22%); and the Union proposes an increase of two additional ranges (about 28%). Similarly, DOC proposes to move RN 3s from range 58N2 to range 66N2 and to move Physician Assistant Cert/Adv RN Pract Leads from 64N2 to 72N2, and the Union proposes placing them two ranges higher.<sup>22</sup> In every case, DOC argues that its proposed Range increase would bring the nurses up above market and therefore proposes to exempt these classes from its across-the-board increases.

At the time of hearing, DOC's RNs made more than RNs in other bargaining units, including those who work for DSHS, even though their steps may have the same designation, because the Teamster schedule itself is substantially above the WSFE schedule. But by the date of this Award market advantage will have ended. The federal Center for Medicaid and Medicare Services has determined that patients at Western State Hospital and other State mental health facilities are in immediate jeopardy due in part to DSHS being critically understaffed in RNs. DSHS has been given one last chance to meet staffing standards on pain of loss of federal funding. On September 1, 2016, therefore, in an act of recruitment desperation, the RNs at DSHS got an increase of about 12.5% with no additional budget from the legislature. (New RN hires at are also eligible for a \$5,000 incentive plus moving expenses.) DSHS recruiters promptly broadcast the new rates and incentives to DOC nurses, and DOC's Health Services Administration finds the poaching potential is "absolutely" concerning for DOC's RN staffing prospects.

He also testified that DOC's proposed Range increase for RNs—RN2s, RN3s and ARPNs—would bring the Department up to competitive rates, and the comparability data for RN2 seems to support this judgment, although just barely. Within State service, DOC's proposal would bring its RNs just over 1% above the RNs under the WFSE contract at DSHS and the Department of Veterans' Affairs. But the snapshot date for that data is July 1, 2016, which means that DOC RNs would be over 11% behind in DOC's proposed ranges when the 12% DSHS desperation rate increase takes effect on September 1. As the manager pointed out, the heart of this problem is, first, a nation-wide nursing shortage, and second, the prospect of losing nurses and potential nurses to DSHS. Moreover, there is no dispute in the record before me that the increases proposed by the Union would create compression problems between the RN3s and ARPNs and their supervisors in management service.

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<sup>22</sup> The range separation between RN2s and RN3s must be maintained because RN2s are eligible for far more overtime.



Besides the western states surveys, the record contains two other perspectives on bargaining unit RN competitiveness. The Union's county survey found only three counties with RN2 equivalents—Pierce, Snohomish, and Spokane—but the Union found DOC nurses would need a total 33% increase to catch the average pay rates in those three. On the other hand, the State-wide general compensation survey appears to show Washington RNs generally about 18.6% behind at the base, 8.1% behind at mid point, and 1.5% behind at the top. (The numbers are based on Union Ex. 12 p. 116 and Employer Ex. 18 p. 103.)

This issue is quite unlike the dispute over across-the-board increases. That larger dispute involves all the factors listed in the MOU; but the RN dispute focuses mostly on recruitment and retention: Will DOC be able to compete for RNs at the ranges it proposes?<sup>23</sup> And will it probably be able to compete throughout the life of the CBA? DOC proposes about a 22% increase at the very beginning of the contract period, and the RNs would remain there for two years while the rest of the bargaining unit gets 4.5% in the first year and then 6% in the second. That still leaves the RNs with a substantially greater overall increase, but there is no reason to think the nursing shortage or the market competition for RNs will ease up by 2018-19, and I will therefore award these three RN classes with one additional range on July 1, 2018 and another additional range increase on December 31, 2018, but will exempt these classes from the general wage increases.

***Psychiatric Social Worker 3 and 4 and Psychiatrist.*** The only dispute here is whether to exempt these three classes from the general across-the-board increases. The agreed Range adjustments for these three classes are very substantial, about 48% for the PSWs and about 31% for the Psychiatrists. None of these are benchmark classes for the western states survey, and only Psychiatrist ("Psychiatrist 4) was included in the broader, State-wide survey. For what it is worth—since there were only six state government and one in-state private sector respondents for this class—the agreed increase will bring Psychiatrists from roughly 18% behind the average to almost 12% ahead of it.<sup>24</sup> The record supports DOC's proposal to exempt these classes from the across-the-board increase, and I will order that exemption.<sup>25</sup>

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<sup>23</sup> Although there were only 13 RN2 "turnovers" in 2015 as DOC tabulates turnovers, DOC was forced to hire 36 RN2s above the base rate, including some at the very top step of the range.

<sup>24</sup> These are very rough estimates since they compare the adjusted base numbers in the survey with raw salary schedule numbers for Washington.

<sup>25</sup> The chronology here—range increase bargained in January of 2016 followed by general bargaining and this interest arbitration process many months later—prevented the parties from taking this award into account when determining how many ranges to increase these classes. DOC's proposal here will create a striking irregularity in the rate schedule, to the great inconvenience of those who have to administer that schedule; but DOC is aware of that consequence and presses the proposal anyway.

***Sergeant and Classification Counselor 3 Spread Corrections.*** The Union would increase CO3s by two ranges and Classification Counselor 3s by five ranges. There is no real dispute that such increases would bring these classifications close to the Management Service pay rates for their own supervisors. Management Service pay rates have been frozen for eight years and are just beginning some slight growth. There is currently about a 14% difference in rate between CO3s at the very top Step and the bottom “band” of Management Service supervisor rate and a 10.5% difference between CC3s at the very top step and that Management Service rate.<sup>26</sup> A Sergeant looking at the loss of access to overtime and holiday pay could easily decide that he or she could not afford to promote to Lieutenant.

In the 2014 IA proceeding, the Union proposed “a five range separation between supervisory employees and the top range of employees they supervise in the same class series” (IA Award at 27). I rejected that general proposal but awarded a single range increase for CO3s (at 29-30) with this explanation:

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<sup>26</sup> Management Service rates are broad ranges—“bands”—and the numbers used here are the state-wide average for the first tier Management Service supervisory rates.

The record does offer support for the specific proposal to increase the supervisory spread between CO2 and CO3/Sergeant. While the difference between CO and Sergeant is 10%, the difference between Sergeant and Lieutenant is 49% (with another 20% between Lieutenant and Captain). As far as this record shows, the regional average spread between CO and Sergeant is between 15% and 20% and the difference between Sergeant and Lieutenant is 20%-25%.<sup>27</sup> Sergeants have less opportunity for overtime than COs, and a single overtime shift in a two-week pay period brings CO earnings up to Sergeant earnings. That record more than justifies the Union's proposal to lift CO3s up one range\*\*\*

The Union now argues that there is still a substantial problem of compaction between CO2s and CO3s and proposes an additional two Ranges for CO3s on that basis; but the Union does not contest DOC's argument about compression between CO3s and Lieutenants. DOC estimates the biennial cost of the proposed two-Range increase at about \$2.7 million, and on the basis of the record as a whole, I must decline those additional costs.

Turning to CC3s, Corrections Counselor schedules are generally fixed shifts with weekends and holidays off. CC2s process new inmates, connecting those inmates to the available programs, including both those required by the inmate's sentence and those that the CC2 offers as possibly helpful to reduce recidivism. Most CC3s supervise CC2s, although some CC positions in the Intensive Management Unit at WSP require a CC3 without supervisory responsibilities. CC3s also do investigations and deal with various outside trips for the inmates (funerals, etc.).

There is some career movement between CO and CC, but mostly that movement is from the CO ranks, including CO3s, into the CC ranks motivated by the greater regularity of the CC schedules. CCs generally require at least an AA degree, and many have BAs. After the 2014 IA award increased the spread between CO2 and CO3s—by a single Range—a Union witness testified that some CC2s have chosen to move to Community Corrections (outside the bargaining unit) rather than to move up to CC3.

The proposed five range increase for CC3s would bring their pay rate to 4% *above* the rates of their Band One supervisors and would come at a biennial cost of about \$2.1 million, and once again I must decline the proposal.

***Convert Longevity Step to Standard Step.*** The prior CBA included a longevity step, specially added some years ago by the legislature in response to so many State employees having been topped out on the salary schedule for so very long. The contractual trigger for that final step movement is “six (6) years after being assigned to” what was the prior top of the schedule. Before the move to the longevity step, step movement usually occurs annually.

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<sup>27</sup> That conclusion came from a survey conducted by a Union witness. Segal Waters did not take CO3/Sergeant as a benchmark in the 2014 western states survey.

The Union's proposal would hasten the movement to that last Step of the schedule by reducing the time on the prior step from six years to one.

Longevity steps usually work pretty much as the one in this CBA does. They provide relief for employees who are topped out on the regular step schedule and provide a reward for continuing service beyond the last regular step. In this case, an employee hired at Step A will top out at Step L of the regular schedule in only five and a half years, and the Longevity Step provides some reward for sticking with DOC for the next six years. The Union's proposal would eliminate that extended period of promise by making what is not an extraordinary Step into just another annual increase. There is some reason to believe that longevity steps actually reduce retention problems at the top of the schedule (although the argument may be cynical from a union perspective): An employee who is *absolutely* topped out only six and a half years into his or her career is likely to be young enough to look seriously for higher pay elsewhere, while an employee who may still get one last increase until he or she has been with DOC for eleven and a half years, is firmly mid-career and may be less likely to seriously consider changing employers.

DOC also argues that the current language dates back to 2013 and has been clarified by a grievance settlement and by a set of agreed Q&As addressing many issues that arise under the current language.

More importantly, the Union offers no compelling reason to make this change, and the Department estimates the biennial cost at well over \$4 million, which would carry on into future contracts. Moreover, this would be similar to the sort of structural change that OFM has been particularly sensitive to in the past. I cannot award the Union's proposal.

***New Premiums.*** Despite its proposal to “embed the Assignment Pay into the salary range,” the Union would

Add to Appendix F[, Assignment Pay]:

- 5% premium for BFOQ positions at WCC/MCCW
- MCCW/MCCW Transfer/Relocation Incentive – any transfer to a vacant BFOQ position = \$5,000.00 transfer bonus plus moving expenses
- \$15.00/hour for all instructors of staff (modify reference \$42)
- \$15.00/hour for all hours worked as shift commander at stand-alone minimums
- 5% premium pay for the following Special Team Members:

Special Emergency Response Team (SERT)  
Emergency Response Team (ERT)  
Inmate Recovery Team (IRT)  
Critical Incident Stress Management (CISM)

Crisis Negotiations Team (CNT)

*BFOQ incentives.* The problem, in a nutshell, is that the female COs at the State's two women's institutions find themselves on a never-ending treadmill of mandatory overtime. In men's institutions, court decisions have determined that female COs may almost always be assigned to oversee male inmates. But in 2009 the female inmates brought a class action against supervision by male COs, and the Court restricted some CO posts in the women's institutions to females. About 60% of the CO positions at MCCW and 40% of the CO positions at MCCW now are designated "BFOQ" (bona fide occupational qualification) and cannot be staffed by male COs. Unfortunately, first, the staffing model was apparently never amended to reflect that new reality, and second, there are not enough female COs at the two women's institutions to adequately staff those BFOQ posts. That means that female COs who have bid into *non*-BFOQ positions are commonly assigned to cover mandatory staffing vacancies in BFOQ posts, including long-scheduled vacation vacancies. The overall CO2 turnover rates for the two women's institutions took a substantial jump in FY 2016, from 3.5% up to 8% at MCCW and from 2% up to a very concerning 24% at MCCW.<sup>28</sup>

The parties' CBA allocates MOT on a fairly common pattern, i.e., by juniority up the seniority list until the most senior employee has had an assignment, at which point the list flips back to the beginning. The list flips in any event at the beginning of each new month. That controlling language in Article 17F was apparently negotiated long before the 2009 court decision and long before a substantial part of two facilities' duty slots were limited to one gender. Apparently, from the limited record before me, the parties at least tacitly agreed to apply the existing language to the changed environment by running dual MOT lists, one for the BFOQ positions and one for all the positions together.<sup>29</sup> The consequence of that arrangement is that the male COs are not liable for MOT to fill BFOQ positions; but female COs are liable for MOT to fill both BFOQ positions and to fill gender-irrelevant positions. The BFOQ seniority list is relatively short; and there is no dispute in this record that the MOT list for BFOQ positions is sometimes flipped more than once in a *week*, and female COs sometimes draw MOT twice or more in the same month.<sup>30</sup>

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<sup>28</sup> HR points out that the departures giving rise to the 24% turnover included two "mom breaks," one female CO who left to follow her spouse, and two who departed for "parental reasons." It is at least possible that such reasons for departure are more common for female COs. As of July, 2016, MCCW had four BFOQ vacancies and only three female COs in training.

<sup>29</sup> The record is not crystal clear in this administrative detail. It is uncontroverted, however, that female COs are liable for MOT on both the BFOQ positions and the non-BFOQ positions and consequently draw far more MOT than their male colleagues.

<sup>30</sup> A problem of excessive MOT always tends to magnify itself as employees in the positions at hazard look for ways into other positions which are not so exposed to MOT, and the record here strongly suggests that pattern.

Thus there are two facets to the MOT problem for the female COs at these institutions. Based on the testimony at hearing, the female COs' frustration is not only the *amount* of MOT, but its unequal *distribution*. But the Union's proposals here are all aimed at reducing the overall amount rather than the distribution of MOT.<sup>31</sup>

Turning to the overall *amount* of MOT at these facilities, the heart of the problem is that most COs are male and there are simply not enough female COs on the staff at the women's institutions. The Union's first proposal—a \$5,000 transfer incentive and reimbursement of moving expenses—is designed to encourage female COs at other institutions to transfer to the women's institutions. Unfortunately, as DOC points out, that proposal has open-ended cost consequences. OFM is unlikely to accept an award that obligates DOC to commit to costs with no calculable limit (even if “common sense” seems to suggest that those costs would not be gargantuan). The MOU requires me to do my best to issue an award that OFM will find financially feasible, and provisions with inestimable cost consequences seem to me to invite a contrary judgment. I cannot award that proposal.

The Union's second proposal is double time for all BFOQ overtime hours. The Union argues that that would encourage management to adequately staff the facilities in general and to adequately staff the female CO complement in particular. It would also encourage female COs to volunteer for BFOQ overtime, thus reducing the need for MOT, and it would reward them for the inconvenience to their personal lives.<sup>32</sup> But, once again, it seems to me that a provision substantially *increasing* overtime costs would put the entire award at hazard in light of the legislature's instruction to take steps to reduce overtime. The actual cost of the double time proposal would depend on the available overtime during the period of the contract, but by way of illustration DOC estimates its cost for 2016 to be about \$327,000; and the annual costs for the two years of the contract at issue would increase substantially due to the awarded across-the-board increases. I must respectfully decline to poke the legislature in the eye in that fashion.

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<sup>31</sup> On the record before me, this may well be a classic case of gender-discriminatory unintended consequence of an apparently gender-neutral rule. The ‘rule’ at issue is the parties’ agreed administration of Article 17F, the determination of MOT which was drafted before there was such a thing as BFOQ staffing restrictions. Because the ‘rule’ is a CBA provision, it may well be that both parties would be liable for the resulting unintended gender-based discrimination.

<sup>32</sup> One part of the problem would be untouched by this proposal, i.e., female employees who have bid into non-BFOQ positions are commonly shifted to cover BFOQ vacancies on a day by day basis without any overtime being involved.

Finally, the Union proposes a 5% premium for BFOQ positions. OFM estimates the biennial cost of that premium at about \$0.7 million, almost entirely in GF dollars. I will award a version of this proposal but will leave DOC with a potential way out from under that premium: Quarter by quarter, DOC must track overtime at these facilities by gender and must pay a 5% premium for all hours worked in a BFOQ position if the prior calendar quarter's mandatory overtime for female COs was 30% or more greater than the mandatory overtime for male COs.

Appendix F, Group A, shall be amended to include "Corrections and Custody Officer 2," and "Corrections and Custody Officer 3," showing a two range premium with this reference explanation: "REFERENCE #IA1: Corrections and Custody Officers shall receive a two range premium for all hours worked in a BFOQ position if and only if the facility in question assigned more than 30% more mandatory overtime hours to female Corrections and Custody Officers than to male Corrections and Custody Officers during the preceding calendar quarter (January through March, April through June, July through August, and September through December)."

*Modify Reference 42 to provide \$15/hour "for all instructors of staff."* Reference 42 currently provides a \$10 hourly premium for "certified instructors of defensive tactics, firearms and fitness," and the Union would extend that premium to "all instructors of staff." I must agree with the DOC that the expression, "all instructors of staff" is hopelessly ambiguous, and the record offers no support for such a proposal.

*\$15/hour premium for Shift Commander hours at Standalone Minimums.* DOC operates four "camps" or minimum security facilities that are not adjacent to major facilities, Olympic Corrections Center (400 beds), Cedar Creek (480 beds), Larch Corrections Center (400 beds), and Mission Creek Corrections Center for Women (400 beds). Every inmate in a minimum security facility is within five years of completing his or her sentence, and the average time to release is about 18 months. Because none of the inmates are looking at decades of captivity, the level of violence in the minimum security facilities is generally less than in the other facilities and use of force is rare, even though the inmates' reasons for incarceration run more or less the entire spectrum found in the larger facilities.<sup>33</sup> The minimum security facilities have an unarmed and unpatrolled single perimeter fence.

Sergeants take on the duty of Shift Commander on a fairly regular basis. Some CO3s—but necessarily quite a small number—regularly serve as Shift Commander four

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<sup>33</sup> It is possible, but not clear on this record, that minimum security facilities have a somewhat higher incidence of escapes than larger facilities, possibly due to the lesser security features. The record is also unclear about whether a record of non-violent behavior is a prerequisite to assignment to a minimum security facility.

times every week, working established shifts designed to cover the regular days off of the Shift Commander on two different shifts. A Sergeant working as Shift Commander is the highest ranking Corrections Officer on duty but there is a rotating Duty Officer assignment for higher-ranking managers who are available as necessary. A Sergeant as Shift Commander does not supervise other supervisors and does not have the authority of Lieutenant in some respects. For example, a regular Shift Commander has the authority to place an inmate in segregation, but a Sergeant acting as Shift Commander must get the approval of a Duty Officer except for emergency situation.<sup>34</sup> On the other hand, regular Sergeants in the camps can review serious infractions, a role reserved for Lieutenants or other managers in a larger facility. The staff commonly on duty under an acting Shift Commander is often quite small, e.g. a total of seven on graveyard shift at Olympic Corrections Center.

DOC points out that this increase, on top of overtime availability and holiday pay, would bring such a Sergeant's Shift Command pay—if the Sergeant were Commander for the entire shift—to about 27% more than that of a Lieutenant doing the same work and not so far off the rate for some of the camp Superintendents. The biennial cost of the \$15/hour premium would come to about \$1.25 million; and the record before me does not justify it.

*Specialty Team Premiums.* The parties agree that some specialty team members should receive extra recognition, but they disagree on which teams should be eligible and on whether the premiums should be limited to the hours of assignment to that team or should be for all hours for each designated team member.<sup>35</sup>

Only one specialty team is in dispute: the Critical Incident Stress Management Team (CISM). As far as the record shows, the members of this team do just what the team title suggests. The Union offers no convincing argument that any team members should be compensated beyond the time they are actually engaged in team training or activities. On the other hand, the Department offers no convincing argument that CISM hours are less valuable than the hours of the other teams. The one obvious difference is that the other teams are activated only *during* the triggering events—inmate recovery, crisis negotiation, etc.—and CISM is activated *after* a triggering event; but it seems to me

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<sup>34</sup> In an emergency situation, such as after breaking up a fight between two inmates, the Sergeant acting as Shift Commander may immediately place the inmates in segregation but must inform the DO.

<sup>35</sup> Specialty teams are inherently costly for DOC because their time in training or in team actions has to be covered by other employees. One of the factors identified by DOC as a driver of overtime is the increase in average training time from eight to almost twelve days a year, and the Department asked the Legislature for the staffing increase to reflect that change. (Exhibit E8 at 8-9.)



that the Department's proposed language adequately addresses that problem by making it clear that only hours *assigned* as CISM work will be eligible for the increased rate. DOC costs its own proposal at \$76,764. DOC does not offer a cost estimate for *only* the CISM hours spent in assigned team duties, but the size of the team is smaller than all the others except IRT, so that additional cost should be substantially less than \$10,000 and managing the psychological aftermath of a crisis is a reasonable step in employee retention. I will therefore award what is essentially DOC's proposed language with the addition of CISM:

Basic salary plus two (2) ranges shall be paid to trained and qualified employees who are assigned members of the following designated specialty teams: Emergency Response Team (ERT), Special Emergency Response Team (SERT), Inmate Recovery Team (IRT), Crisis Negotiation Team (CRT), and Critical Incident Stress Management (CISM). Assignment pay under this reference shall be paid on an hour for hour basis for every hour worked during an authorized team related assignment or training.

***Modify Call Back Shift Premium Provisions.*** The Union would make these changes:

32.14            Modify so that all employees are eligible for callback pay.

32.15            Increase basic shift premiums [currently \$0.65/hour] to one dollar and fifty cents (\$1.50) per hour. [DOC proposes an increase to \$1.00]

32.16            Increase nurse shift premium [currently \$1.50/hour] to two dollars and fifty cents (\$2.50) per hour.

32.17            Modify supplemental shift premium for nurses to include CNAs and MAs.

32.18E          Add Dentists to section; increase call pay from fifty dollars (\$50) to one hundred dollars (\$100) per day[;] for all others increase from twenty-five dollars (\$25) to fifty dollars (\$50) per day.

DOC estimates the combined cost of these proposals—less the cost of DOC's proposed shift premium increase to \$1.00 / hour—to be about \$7 million for the biennium. This does not count the cost of the proposal to extend callback pay to non-scheduled employees, which is not calculable.

*32.14 (Callback).* The current provision applies to “scheduled work period employees” and the Union proposes to extend the Callback benefits to those employees who work a less definite schedule and do not incur overtime except when they top forty hours in a week. The record does not adequately support this proposal in light of the cost of the across-the-board increases awarded. More particularly, this is another proposal whose cost cannot readily be calculated and which, therefore, invites a determination that the award overall is not financially feasible. I cannot award it.

*34.15 (Shift Premium).* The shift premium has been \$0.65 / hour since the 2007-2009 contract. DOC proposes to increase it to \$1.00; and the Union proposes to increase it to \$1.50. DOC costs the difference at about \$3.6 million. In light of the very substantial cost of the general across-the-board increase, I must decline to increase the cost of the award by an additional \$3.6 million and I award DOC's proposed increase to \$1.00 per hour.

*32.16 (Shift Premiums for Registered Nurses and Related Classes).* The factual record on this proposal is limited to the testimony of a management witness that there is, indeed, some problem in filling the late shifts, but DOC apparently finds any resulting overtime costs to be less than the estimated biennial cost of the proposed increase (about \$318,000). Once again, in light of the overall cost of the across-the-board increases awarded here, I cannot increase these shift premiums.

*32.17 (Supplemental Shift Premiums for Nurses).* This provision increases the rate for hours a nurse is assigned to work while on paid leave at night and on the weekends. There is no dispute about the rate, but the Union proposes to extend the provision to cover CNAs and MAs. DOC estimates the biennial cost at about \$64,000, and that cost of maintaining adequate staffing for these positions is plausibly modest. I will award this proposed amendment.

*32.18E. (Standby.)* The Union proposes three changes. First, it would extend the standby provision to Dentists. The record does not show that Dentists have ever been placed on standby or that they reasonably might be, and I cannot award this part of the proposal. Second, the Union would increase the standby rate which is currently \$50 per day for PA/ARNP, PA/ARNP Lead, Psychiatric Social Worker 3 or 4, Psychiatrist 4, Psychologist 3 or 4, and Psychology Associate and \$25 per day for "all other overtime-exempt employees." DOC estimates the biennial costs to be about \$518,000.

There is a dispute in the record about the burden placed on nurses on standby. The only nurse who testified said that her standby status actually increased her workload during her regular shift, but a Health Services Administrator testified that standby status applies only outside the regular shift. Since he testified that he "manages largely the business aspect" of health services, I must conclude that the nurse witness has the better command of the actual consequences of standby status, regardless of the hours that that status technically pays for. Nonetheless, an additional half million dollars cannot be justified on the basis of the record before me, and I cannot award the increase.

*32.19 (Relocation Compensation).* The Union's proposal to provide additional relocation incentive for BFOQ vacancy candidates is addressed above under that heading.

### ***Housekeeping/Cleanup Proposals***

DOC proposes this change to the language of Article 32.3:

**Recruitment or Retention—Compression or Inversion— Higher Level Duties and Responsibilities—Inequities.**

Effective July 1, 2015, targeted job classifications will be assigned to a higher salary range due to documented recruitment or retention difficulties, compression or inversion, higher level duties and responsibilities or inequities. Appendix G identifies the impacted job classifications and the salary range for which it will be assigned.

The Union does not offer a substantial argument against this proposal, and I note that “higher level” fits into quite a different pattern of analyses than “increased” for class/comp purposes and appears to better capture the parties’ agreement. I award DOC’s proposed change.

DOC also proposes this change in the language of Article 32.2E:

Step U will be designated as twenty-six (26) years of experience and employees will advance to step U in accordance with Article 32.6, Periodic Increases.

But part of DOC’s objection to the Union’s proposal to make longevity just another step is that the parties have the benefit of a grievance settlement agreement and a bargained Q&A with respect to application of the existing language. That language does not use a twenty-six year trigger, and it seems to me that the introduction of one here would potentially cause mischief in a part of the CBA which DOC extols as well settled. I cannot award the proposed change.

## AWARD

17. Overtime [No change awarded]

### 32.1 Pay Range Assignments

B. Effective July 1, 2017, all salary ranges and steps of the Teamsters Salary Schedule will be increased by four and a half percent (4.5%) as shown in Appendix B. This salary increase is based on the Teamsters Salary Schedule in effect on June 30, 2017. This general wage increase does not apply to Psychiatric Social Worker 3, Psychiatric Social Worker 4 and Psychiatrist salary ranges and steps.

C. Effective July 1, 2018, all salary ranges and steps of the Teamsters Salary Schedule will be increased by three percent (3.0%) as shown in Appendix B. This salary increase is based on the

Teamsters Salary Schedule in effect on June 30, 2018. This general wage increase does not apply to Psychiatric Social Worker 3, Psychiatric Social Worker 4 and Psychiatrist salary ranges and steps.

Effective January 1, 2019, all salary ranges and steps of the Teamsters Salary Schedule will be increased by three percent (3.0%) as shown in Appendix B. This salary increase is based on the Teamsters Salary Schedule in effect on December 31, 2018. This general wage increase does not apply to Psychiatric Social Worker 3, Psychiatric Social Worker 4 and Psychiatrist salary ranges and steps.

### 32.2 "N2" Pay Range Assignments

B. Effective July 1, 2017, all salary ranges and steps of the "N2" Range Teamsters Salary Schedule will be increased by four and a half percent (4.5%) as shown in Appendix D. This salary increase is based on the "N2" Range Teamsters Salary Schedule in effect on June 30, 2017. This general wage increase does not apply to Registered Nurse 2, Registered Nurse 3, and Physician Assistant Cert/Advanced RN Pract. Lead salary ranges and steps.

C. Effective July 1, 2018, all salary ranges and steps of the "N2" Range Teamsters Salary Schedule will be increased by three percent (3.0%) as shown in Appendix D. This salary increase is based on the "N2" Range Teamsters Salary Schedule in effect on June 30, 2018. This general wage increase does not apply to Registered Nurse 2, Registered Nurse 3, and Physician Assistant Cert/Advanced RN Pract. Lead salary ranges and steps.

Effective January 1, 2019, all salary ranges and steps of the "N2" Range Teamsters Salary Schedule will be increased by three percent (3.0%) as shown in Appendix D. This salary increase is based on the "N2" Range Teamsters Salary Schedule in effect on December 31, 2018. This general wage increase does not apply to Registered Nurse 2, Registered Nurse 3, and Physician Assistant Cert/Advanced RN Pract. Lead salary ranges and steps.

E. [No change awarded.]

### 32.3 **Recruitment or Retention—Compression or Inversion— Higher Level Duties and Responsibilities—Inequities.**

Effective July 1, 2015, targeted job classifications will be assigned to a higher salary range due to documented recruitment or retention difficulties, compression or inversion, higher level duties and responsibilities or inequities. Appendix G identifies the impacted job classifications and the salary range for which it will be assigned.

32.14 [No change awarded.]

32.15 Shift Premium

B. A basic shift premium of one dollar (\$1.00) per hour will be paid for all hours worked.

32.16 [No change awarded.]

32.17 Supplemental Shift Premium for Nurses

For the classes of Certified Nursing Assistant, Medical Assistant, nurses and related job classifications [etc.]<sup>36</sup>

32.18 [No change awarded].

#### APPENDIX F, ASSIGNMENT PAY

[Add to Group A:]

Corrections and Custody  
Officer 1, 2 and 3. 2  
ranges See Ref. IA1.<sup>37</sup>

REFERENCE #IA1: Corrections and Custody Officers shall receive a two range premium for all hours worked in a BFOQ position if and only if the facility in question assigned more than 30% more mandatory overtime hours to female Corrections and Custody Officers than to male Corrections and Custody Officers during the preceding calendar quarter (January through March, April through June, July through August, and September through December).

<sup>36</sup> The Union's written proposal refers to "CNAs and MAs." "CNA" usually abbreviates Certified Nursing Assistant, but that class title does not appear in DOC's list of bargaining unit classes. "Nursing Assistant" does. If there are indeed no certified nursing assistants, this award should be amended to "Nursing Assistant."

<sup>37</sup> I am using "IA" to designate a reference rooted in interest arbitration. The parties are, of course, free to adjust the title by agreement.

