In the Matter of the Interest Arbitration between PACIFIC NW REGIONAL COUNCIL OF CARPENTERS (Union or PNRCC) and STATE OF WASHINGTON, WASHINGTON STATE FERRIES (Employer or State)	)))))))))))))))	 OPINION AND AWARD PERC # 130792-I-18 INTEREST ARBITRATION

BEFORE: Kathryn T. Whalen, Arbitrator

APPEARANCES:

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HEARING: August 2 and 3, 2018

RECORD CLOSED: August 13, 2018

AWARD ISSUED: August 22, 2018

I. INTRODUCTION

This interest arbitration is between the State of Washington, Department of Transportation, Ferries Division (State, WSDOT, and WSF) and the Pacific Northwest Regional Council of Carpenters (PNRCC or Union). PNRCC represents 21 journey-level carpenters who work out of WSF's Eagle Harbor Facility on Bainbridge Island.

Under RCW 47.64.300 the parties requested, and Washington Public Employment Relations Commission (PERC) certified, the following issues to arbitration for their 2019-2021 Collective Bargaining Agreement (CBA): Appendix A – Straight Time Hourly Wage Rates; Article 6, Section 1 – Overtime Rate; Article 6, Section 3 – Saturday and Sunday Work; and Article 6, Section 7A – Minimum Hours of Callout.

The parties submitted these disputes to a single neutral arbitrator, Kathryn T. Whalen. I convened the hearing beginning on August 2, 2018 and continuing through August 3, 2018. Buell Court Reporting of Seattle provided recording and transcription services. The parties had a full opportunity to make opening statements, examine and cross-examine witnesses, introduce documents, and make arguments for their respective positions. Closing arguments were filed in writing on August 13, 2018. I closed the record on that date.

II. STATUTORY CRITERIA

RCW 47.64.005 Declaration of policy.

The state of Washington, as public policy, declares that sound labor relations are essential to the development of a ferry and bridge system which best serve the interests of the people of the state.

RCW 47.64.006 Public policy.

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

RCW 47.64.320 Parties not bound by arbitration - Arbitration factors.

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

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

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

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

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

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

(d) Stipulations of the parties:

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

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

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

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

(i) The ability to retain ferry employees;

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

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

III. PARTIES' FINAL OFFERS ON WAGES

The Employer proposes a 2% general wage increase for all positions within the Union's bargaining unit during the first fiscal year of the 2019-2021 biennium and 2% for the second year. The Union proposes an 8% wage increase for the first fiscal year (effective July 1, 2019) and an 8% wage increase for the second fiscal year (effective July 1, 2020).

The Union further proposes modifications to three sections of Article 6 of the CBA. In Section 1, the Union proposes two times the straight time rate of pay (double time) for certain overtime work on Monday through Friday. In Section 3, the Union apparently proposes double time for work after eight hours on Saturday,[1] and double time for all work on Sunday and holidays. In Section 7A, the Union proposes that forepersons receive a minimum of seven, rather than four, hours of pay at the overtime rate for a callout.

Below, I focus my discussion on statutory factors for which the parties' provided evidence and argument.

IV. <u>WAGES</u>

A. <u>Overview</u>

The WSF repair facility is located on Bainbridge Island. WSF does both maintenance on vessels and maintenance at terminals. There are now ten different shops; three are represented by PNRCC. Those three shops are commonly referred to as the carpenters' or shipwrights' shop, the insulation shop and the lock shop. As mentioned above, there are 21 carpenters in the Union's bargaining unit. Transcript (Tr.) 10, 11.

Carpenters in the shipwrights' shop perform many duties, such as: fine cabinetry, windows in passenger cabins, car blocks, flooring, carpentry at terminals (for example, handrails), building repairs, bathrooms, and cable replacement. Tr. 11, 12.

[1] The Union's proposed language for Saturday is not clear. It states that the overtime rate for eight (hours) shall be one and one-half times the straight time rate of pay. It does not spell out double time for work after eight hours. S-4. In its post-hearing brief, however, the Union argues for double time for work after eight hours.

The carpenters who work in the insulation shop do hull board insulation and pipe lagging. They also are credentialed asbestos workers and perform any asbestos work that must be done. In addition, they have sewing machines to make such things as heat-related pads that go around the exhaust and seat covers which go over bolt docks. Tr. 13.

WSF carpenters in the lock shop do all of the security work. They keep track of, and are responsible for, any mechanical or electronic lock in the ferry system. Tr. 13.

B. Cost of Proposals and Ability to Pay

1. Fact Summary

Kim Grindrod works for the Office of Financial Management (OFM), State Human Resources (HR) division, Classification and Compensation Section. Tr. 93. She provides cost information and support to the collective bargaining process. Grindrod prepared a cost analysis of the State and Union proposals that was submitted as State Exhibit 6. (S-6). WSF Budget Manager Matt Hanby assisted Grindrod with some of the data for that analysis.

The projected biennial cost of the State's 2% and 2% general wage proposal for FY 2019-2021 was calculated as $100,457. The biennial cost of the Union's general wage proposals of 8% and 8% was calculated as $409,810. The projected cost of the Union's overtime proposals for Article 6, Sections 1 and 3 were: $9,910 and $2,662, respectively. The Union's proposed change to Article 6, Section 7A was negligible. S-6; Tr. 95-98.

The difference between the State's proposal and the Union's proposals is $321,925. S-6.

Grindrod also prepared a document showing historical general wage increases from July 1, 2008 to July 1, 2018, for the Union's bargaining unit as compared to the Seattle Consumer Price Index (CPI). For these 11 years, the CPI increased by a total of 26.35% as compared to Union wage increases of 19.41%. S-10.

Erik Hansen works for OFM as a budget assistant to the Governor for transportation. In his capacity as budget assistant, he testified about the State's ability to pay. He prepared a power point presentation similar to those presented in prior interest arbitrations, with updated information. The power point presentation was provided in documentary form. S-5.

The basic budget process is as follows: The Governor proposes a budget, the legislature then passes a budget that goes back to the Governor, and the Governor signs it into law. The Governor has the ability to veto sections of that budget. Only the legislature can authorize revenue, sources, uses of funds, where revenues will be deposited, and into which accounts. Tr. 135.

The State has three budgets: the operating budget, the capital budget and the transportation budget. The legislature passes three separate bills to appropriate money for these budgets. The 2017-2019 Transportation Budget is $9.4 billion; of which $6.45 billion is the budget for the WSDOT. S-5, p. 5; Tr. 135.

Within the WSDOT budget is the WSF budget. For 2017-2019, the WSF budget is $969.8 million, which has operating and capital components. Important here is the WSF operating budget which is $518.8 million. S-5, p. 6. The majority of that, $353.9 million, is allocated to labor costs (salary and benefits). S-5, p. 8.

WSF operating revenues come from ferry fares, fuel tax, backfill,[2] licenses, permits, fees, non-farebox and federal revenue. Ferry fares are the largest revenue source for the Ferry Operating Account, followed by the fuel tax. S-5, p. 7.

Hansen explained certain rules about funding that place restrictions on how revenues can be used. More specifically, he detailed examples of restrictions on the transfer of revenues between ferry operating and ferry capital programs. Hansen described that these rules are important to know as they constitute the sets of money that must be worked within in order to ensure a balance for whatever is approved by the Governor.

Within this context, Hansen described the current economic climate for developing the next budget. A large portion of the transportation budget is debt. Debt is growing as WSDOT debt finances transportation projects. Tr. 136. Of the current budget, 17.1% is debt. Tr. 136. Hansen anticipates it will become a larger portion of the budget. Tr. 137.

The gas tax is the largest revenue source for the transportation budget. Currently, the gas tax is 49.4 cents per gallon. Of that - due to how that revenue

[2] Backfill is revenue transferred from other areas to cover the operating cost in the ferry system at a certain level that is set by the legislature. Tr. 139.

has already been dedicated - only 8 cents is available to pay $2 billion worth of WSDOT operating costs. Tr. 147; S-5, p.11.

Hansen further pointed out that no matter what the price is for a gallon of gas, the state and federal taxes remain the same; they do not grow with gasoline price increases or keep up with inflation. As a result, every year the value of gas tax revenues declines. Hansen also explained that revenues may continue to decline as a result of more fuel efficient engines, electric cars, and climate change pressures reducing dependence on fossil fuels. S-5, p. 12.

Hansen presented estimates of ending fund balances for major transportation accounts. For 2019-2021, the estimate for the Ferry Operations Account is $17.6 million. Tr. 154, 155; S-5, p. 16. According to Hansen, this positive estimate was largely because of an assumed $25 million transfer (backfill) that was not needed for that biennium. Tr. 154, 155.

Hansen reported there remain significant cost pressures on the transportation budget for the next biennium. For example, the *U.S. v. WA Culvert* case in which there was a tie (4-4) in a recent decision by the Washington Supreme Court. As a result, the State must comply with the decision of the Court of Appeals and complete habitat restoration at significant cost which the State has not fully accounted for in the State budget.[3] Tr. 157.

Also, Hansen described that there are the additional pressures as a result of a WSF dispatch system project which was originally funded at $4 million, but

[3] As noted in prior awards for these parties, in the *Culvert* case a federal court agreed with tribes that the State of Washington had the obligation to fix a list of culverts that were created by the construction of roads. These culverts adversely affected the ability of fish to get upstream and, correspondingly, tribes' ability to catch fish.

now has increased to $14 million; a general maintenance request with a five-year biennium average of $57 million; as well as labor costs, projected pension costs and continuation of 2017-2019 salary increases. S-5, p. 17; Tr. 158-160.

The Union submitted 2017-2019 Washington State Transportation Budget and Transportation Economic and Revenue Forecast information. U-3 to U-5. In addition, the Union submitted portions of the State of Washington, OFM, 2017 Data Book for February 2018 and WSDOT information/data on ferry ridership. U-6 to U-9.

For the current fiscal year, total transportation revenues are anticipated to be $3.19 billion, which is a 2.7% increase annually. For the 10-year forecast (2016-2025), the June 2018 revenue forecast is up by $399 million or 0.97% from the last forecast (February 2018) with an annual growth rate of 1.4% beginning in the current year. U-5, p. 4.

WSDOT's June 2018 transportation revenue forecast for the current biennium shows a 10.5% increase over the 2015-2017 biennium. U-5, p. 3. In February of 2018, the transportation revenue forecast was for an increase of 9.5% increase, so there was an upward adjustment from February to June. U-4, p. 3.

With respect to the Ferry Operations Account, the June forecast indicates revenues and distributions of $469.63 million for the current biennium, with a forecasted increased to $488.49 million for 2019-2021. U-5, p. 5. This is largely due to higher fuel tax revenues and enhanced driver's license revenue forecasts.[4] U-5.

Ferry ridership also is at a 15-year high. U-7, U-8. For the third quarter of 2018, ferry ridership increased by 2.7% from the same quarter in FY 2017; slightly less than projected. Still, ridership increased in seven of the nine routes compared to the same quarter in FY 2017. U-9, p. 20. Ferries fare box revenues followed the ridership trend, and increased in the third quarter of 2018, about 5.6% more ($2 million) than for the same quarter in FY 2017. U-9, p. 21.

2. <u>Parties' Positions</u>

Employer

First and foremost, it is imperative that the condition of the State's Transportation Budget be addressed. Of particular importance, is the WSF Operating Account which funds salary increases to its employees. Any Award must be financially feasible. The Union's 16% proposal across the 2019-2021 biennium is not.

Such a high wage increase is not within the State's overall Transportation Budget, as supported by the testimony of Hansen. Debt is growing. WSF cannot rely on fixed gas tax revenues – which are not projected to increase through 2029 – because these revenues are subject to constitutional restrictions. Further, even with a current $20 million backfill, there is not enough revenue to operate the ferry system at a certain level that is set by the legislature.

[4] According to Hansen, by 2020, citizens must have upgraded to an enhanced driver's license. This upgrade is providing some additional revenue; but at the same time, more people are needed to provide the licenses. Tr. 151.

The Union's attempt to show WSF has more money than it purports to have is unavailing; the amounts appropriated to the WSF operating account are just to continue business as usual. The Union's sticker price of $422,382 is not financially feasible and cannot be paid; on the other hand, the State's proposal, costed at $100,457, is much more financially feasible.

Union

The State has the ability to pay the overstated cost difference of $321,925. That amount is overstated because although the State contributes 7.38% to an employee's pension account, Grindrod included unfunded liability contributions and administrative costs in her calculation.

Notwithstanding the inflated cost, the State still has the ability to pay the $321,925 difference. Focusing on the WSF Operating Fund, it is apparently at $521.6 million. The State projects at the end of this biennium a $4 million balance.

Revenue for the upcoming biennium is likely to increase. Only about 10% of the WSF Operating Fund is funded by gas fuel taxes. Most revenue ($385.3 million) comes from ferry fares. Ferry ridership is up and this means more ferry revenue. Likewise, ferries fare box revenue has continued its upward trend. Also, WSDOT's revenue forecasts show an overall upward projection.

Hansen confirmed the overall positive trend, with his presentation showing a positive ending balance for the WSF Operating Fund of $3.977 million for the current biennium and $17.7 million for the next biennium. Like 2014 and 2016, Hansen repeated his economic pressures and projected decline in gas revenues.

Even with these concerns, at the beginning of this biennium, the WSF Operating Fund had a balance of $25.5 million, presumably left over from the prior biennium.

The State cannot claim in good faith that it does not have the ability to pay because of continued ferry fare increases, the positive revenue forecasts, and because $321,925 is a small portion of the projected $17.7 million ending balance for the next biennium.

3. **<u>Arbitrator's Findings</u>**

The WSF Operating Fund total is $521.6 million. The estimated WSF Operating Fund ending balance for this biennium is nearly $4 million and $17.665 million for 2019-2021. As detailed above, there is an increase in Ferry ridership as well as a continued trend in fare box increases. Revenue forecasts are positive for the Ferry Operations Account as well as overall Transportation revenues.

I have taken into account the limitations on ferry operating subsidies and the pressures facing WSDOT as described by Hansen. I also have considered the State's arguments concerning financial feasibility. I agree with the Union, however, that the State has the ability to pay the cost difference in the parties' proposals, which is modest. That is to say, I find the record establishes that the State has the ability to pay either party's proposal.

C. **<u>2018 Negotiations and Historical Evidence</u>**

Senior Negotiator Jerry Holder was lead negotiator for WSF in this bargaining cycle. Union Contract Administrator Jimmy Osborne negotiated on behalf of the PNRCC. Bargaining began in March of 2018. They had five sessions and reached impasse on July 19, 2018.

The State, through Grindrod, submitted historical evidence of the Union's general wage adjustments from 2008 until 2018. That history is as follows: July 1, 2008, 2%; July 1, 2009, 0%; July 1, 2010, 0%; July 1, 2011, -3% (wage reduction); July 1, 2012, 0%; July 1, 2013, 3.08% (wage reinstated) and 1.5% increase; July 1, 2014, 1.5%; July 1, 2015, 3%; July 1, 2016, 3%; July 1, 2017, 4%; July 1, 2018, 3%. S-10. [5]

Over those eleven years, the members of the PNRCC have received a total of 19.4% in general wage increases. Grindrod also provided historical data on the Seattle Consumer Price Index (CPI) for that same 11-year time period. That CPI has increased a by a total of 26.35%. S-10.

Osborne described the historical relationship between wages for construction carpenters and maintenance carpenters. According to Osborne, construction and maintenance carpenters have the same skill set, but construction carpenters do not get holidays or vacation; they do, however, as a result of recent legislative changes, receive sick leave. Currently, the prevailing wage rate for construction carpenters is $43.92 per hour. U-21; Tr. 232, 233.

For maintenance carpenters in the public sector, like those at WSF, the Union takes into account, vacation, holidays and sick leave when the Union

[5] On July 1, 2011, the Union took a wage reduction of 3% which was reinstated in the next biennium. In my prior decisions (2014 and 2016) for this bargaining unit there was an error in my reference to this wage reduction. It was identified as a 3% wage reduction in each fiscal year of the biennium for a total of 6%. As clarified in this record, there was only one 3% wage reduction in 2011. Tr. 107; S-10; S-14; S-15.

negotiates on their behalf. Typically, the Union attempts to negotiate 85% to 88% of the construction prevailing wage rate. Tr. 217.

Osborne testified that in 2004, the WSF bargaining unit was at about 77% of the prevailing wage, but currently is just under 70% of the prevailing wage rate. According to Osborne, the Union's proposal would not quite put the WSF bargaining unit back into the position that existed in 2004. Tr. 238.

D. Salary Survey, Comparability and Overall Compensation

1. Factual Summary

Joe Antczak works for State OFM/State HR, Classification and Compensation Section. Antczak is responsible for managing, preparing, analyzing and producing the WSF marine employee salary survey for purposes of RCW 47.64.320 (3) (e). S-7. That survey encompasses 11 WSF unions and is divided into three sections: vessel and terminal, shipyard trades (which includes carpenters) and administrative. S-9.

Antczak reviewed feedback from the 2016 survey and then made minor modifications for 2018. He went on a tour of the ferries and met with Kelly as well as with the management team to find out how the survey could be better. He also sent out letters to the unions for feedback to improve the survey. Tr. 62-64; S-9; S-11, S-12.

Ultimately, for the PNRCC bargaining unit, three organizations provided market data for carpenters: Vancouver Shipyards, Puglia Engineering, Inc. (Bellingham), and Pacific Fisherman. S-9. Many organizations were invited, but only these three responded. Two were new participants to the survey. S-9; Tr. 68-70.

According to Antczak, by the survey, WSF is trying to "sniff" the market and gauge what is happening. WSF is, however, at the mercy of organizations that may or may not be willing to participate. Antczak explained that if more organizations participate the numbers may or may not change, but the usual rule of thumb is that the more organizations who participate, the better representation of the marketplace. Tr. 72. Here, there were a small number of participants, and two out of the three participating organizations were new to the survey. Antczak stated that this can, from year to year, cause wide fluctuation in the data. Tr. 68.

Antczak did not receive fringe benefit data from the three organizations, but did get base hourly rates. The average base pay rate was $40.81 compared to $29.71 for WSF carpenters. That is, WSF carpenters were below the market average by 37.4%. S-7, p. 85; Tr. 71. This is lower than the 2016 survey. Tr. 72. WSF carpenters also receive fringe benefits worth an average hourly amount of $6.43 and a 7.38% pension contribution. S-7, p.85; 98.

The Union did not dispute the results of the salary survey, but submitted additional compensation evidence. Tr. 239; U-15 to U-20.

Anders Black is a Business Representative for PNRCC. By trade he is a general carpenter and shipwright; he worked in shipyards. Tr. 266, 267. He has personal knowledge of the work of carpenters who work for WSF and those outside the ferry system. Tr. 268. He also is familiar with the PNRCC data base which includes CBAs with signatory employers.

Together with Osborne, Black submitted existing CBAs between PNRCC and Foss Maritime Company, Lake Union Dry Dock Company, Pacific Fisherman Shipyard, Performance Contracting, Inc. (PCI), the Port of Seattle, and Vigor Shipyard. U-15 to U-20. All of these employers were invited to participate in the State's salary survey, but did not. S-7, p. 9, 10.

Their CBAs with PNRRC show that they pay wage and benefit packages as follows: Foss Maritime – wages $27.40/hour, fringe benefits $15.91/hour (total $43.31/hour); Lake Union Dry Dock – wages $28.15/hour, fringe benefits $15.60/hour (total $43.75/hour); Pacific Fisherman Shipyard – total package $41.96/hour (2016); PCI – wages $36.45, fringe benefits $15.28 (total $51.73/hour); Port of Seattle – wages $43.07, fringe benefits $13.31 (total $56.38/hour); and Vigor Shipyards – wages $32.31/hour, fringe benefits $11.38/hour (total $43.69/hour).[6] U-15 to U-20.

As mentioned above, the Union further offered area prevailing wage information as historical data for compensation of this bargaining unit.

2. Parties' Positions

Employer

The Arbitrator must consider the historical wage increases of the PNRCC members. It has never been near eight (8) percent during any given fiscal year. Further, PNRCC carpenters are not that far behind the Seattle CPI when looking at the increases over 11 years.

[6] The fringe benefit amounts include health and security and retirement (also pension rehab) but omit contributions to apprenticeship funds.

The CPI evidence is another important economic indicator because, as Grindrod testified, the marine survey is not always a reliable indicator of what is really happening with any given bargaining unit. This especially is true when there are few participants.

State Exhibit 10 further demonstrates that since 2008, the largest single increase that PNRCC members have received in a single year is four (4) percent (July 1, 2017) and never more than seven (7) percent across a single biennium.

In addition, the only wage reductions imposed on PNRCC carpenters occurred pursuant to legislative mandate which a majority of employees received in the 2011-2013, whereby state employees' base salaries were temporarily reduced by 3%.

To summarize, the State's proposed general wage increase of 2% and 2% in each fiscal year is consistent with past contract negotiations and historical wage increases.

Other than Osborne's testimony about the Union's desire to obtain between 85% and 88% of private construction carpenters, the Union provided no compelling evidence to support its proposed 16 percent increase for the 2019-2021 biennium. The State's proposed 4% increase results in a general wage increase percentage coming within 2.94 percent of the current Seattle CPI.

Union

Past CBAs show that an adequate raise is long overdue. Maintenance carpenters, unlike construction carpenters, receive holidays and vacation so in the public sector the Union tries to negotiate 85-88% of the prevailing wage rate for construction carpenters.

In 2004, WSF carpenters were making only 77% percent of the prevailing wage rate; today they are barely making 70% of the $43.92/hour prevailing wage for construction carpenters. Even with the increase proposed by the Union, their wage rate will still be less than 77% of the prevailing wage.

WSF carpenters have less buying power than they did 11 years ago. The CPI has increased by 26.35% while the WSF carpenters wage rate has increased by 19.41%.

These figures show the WSF carpenters have been severely underpaid and their situation only has gotten worse as the economy recovers. This cannot continue.

The State's salary survey shows WSF carpenters' wage rate is 37.4% less than other maintenance carpenters, which is worse than the 2016 salary survey.

In terms of a comparison of wages, hours, employee benefits and conditions of employment, WSF carpenters receive a $29.71 wage rate, $6.43 in benefits (excluding pension) and a 7.38% pension contribution. This is a total package of $38.33. That package is lower than the package of comparable maintenance carpenters in the public and private sector.

The Union provided compensation information from employers who the State invited to participate in the salary survey, but who did not. This information shows that Foss Maritime pays its employees a total package of $43.31; Lake Union Dry Dock pays a total package of $43.75; Pacific Fisherman Shipyard pays a total package of $41.96; PCI pays $51.73; Vigor Shipyards pays $43.69; and the Port of Seattle pays a total package of $56.38. In fact, the Port of Seattle pays an hourly rate equal to 88% of construction carpenters prevailing wage.

This evidence shows that WSF carpenters lags behind comparables by 12%-32%.

3. Arbitrator's Findings

I am not persuaded by State arguments that historical CPI and wage increase evidence favors the State's proposal. Rather, historical evidence shows that WSF carpenters have not kept up with the Seattle CPI, and would still be behind that CPI with the State's proposal. It also shows that WSF carpenters remain at a lower relation to the prevailing wage than they were in 2004.

The results of the salary survey show that WSF carpenters are below the market average by 37.4% with respect to base pay rates. Because of the limited information obtained, however, the results do not provide a complete picture of employee wages and benefits.

The Union's data on wage and benefit rates from other CBAs also show that WSF carpenters are substantially behind marketplace comparators in the public and private sector with respect to pay rates and basic fringe benefit packages.

E. Conclusion: Appendix A Wages

The State has the ability to pay these employees the Schedule A wages proposed by either party. As found above, the State's salary survey shows that WFS carpenters lag behind marketplace comparators in base pay; and Union evidence corroborates that WSF carpenters are significantly behind market place comparators in wages and fringe benefit packages.

On balance of the relevant factors, the State's proposal is too little for this bargaining unit. At the same time, the Union's proposed increases are too much for the biennium in the greater context of the State's other financial pressures and obligations.

Based upon the record before me, I find a just and fair wage to be an 8% increase spread over the two fiscal years: FY 2019/2020—4% and FY 2020/2012—4%.

V. OVERTIME AND CALLOUT

A. Factual Summary

The Union proposes modifications to overtime and callout provisions of Article 6. The current overtime rate of pay is one and one-half (1 ½) times the straight time rate of pay.

In Section 1, the Union proposes Monday through Friday, after two hours of overtime at one and one-half (1 ½) times the straight time rate of pay, any additional overtime will be paid at two times ("double time") the straight time rate of pay. In Section 3, the Union also proposes double time for work performed after eight hours on Saturdays, and double time for all hours worked on Sunday and Holidays.

In Section 7A, the Union proposes that rather than a minimum of four (4) hours, the foreperson or acting foreperson will receive a minimum of seven (7) hours pay at the overtime rate for a callout.

Osborne explained that members of the WSF Metal Trades bargaining unit receive double time after 12 hours. Also, many of the PNRCC maintenance carpenter agreements provide for overtime at the double time rate typically after ten or 12 hours. Tr. 240, 241. Similarly, other maintenance carpenters usually get double time for overtime on Sundays and holidays. Tr. 241.

Osborne reported the Union's callout proposal also is comparable to what other maintenance carpenters receive; some have even better language. Tr. 242. Some maintenance carpenters, for example, are compensated for overtime for carrying a telephone and being available after the regular workday.

According to Osborne, Union membership wanted parity with those covered by the WSF/Metal Trades Agreement. They work alongside those employees. Tr. 245.

As recalled by Osborne, in 2011, double time was removed from WSF agreements for alleged abuses by unknown employees. Osborne explained that no carpenters were alleged to have abused the overtime system and there is no longer a fiscal crisis. The Union believes that the requested double time is overdue for its membership. Tr. 242, 243.

Osborne reported that when these proposals were discussed in negotiations, management advised Union negotiators that double-time language for the Legislature was highly controversial – like a third rail – and would kill the proposal because of it. Tr. 244. Management also told the Union that double time had been awarded only in interest arbitration, and if the Union wanted it, they would have to seek it there. Tr. 245.

Holder offered that, historically, when WSF carpenters were still a part of the Metal Trades Council, double time was paid for overtime and that it was negotiated out of the CBA in supplemental bargaining in 2011. At that time, Holder explained, callback was added to agreements so when employees were called back to work they received callback pay. Tr. 46.

Holder also recalled that the State was experiencing extreme budget shortfalls. In addition, double time was being abused by some (not specifically carpenters) who were manipulating the system to obtain more double time. According to Holder, the legislature gave a clear mandate to address these matters. Tr. 47.

B. <u>Parties' Positions</u>

Employer

In interest arbitration, the party seeking change to the status quo bears the burden of showing that a compelling need for the change exists. PNRCC has failed to show a compelling need for its proposed changes.

First, PNRCC is not seeking parity with the Metal Trades employees. It is seeking more than parity. As provided through testimony, Metal Trades employees receive double time only for work after 12 consecutive hours. PNRCC is seeking double time after ten hours of work.

Second, there is no evidence in the record that awarding parity is appropriate for the PNRCC bargaining unit. Not a single WSF/PNRCC employee testified in this hearing. There is no evidence about any need to change the current overtime situation. To the contrary, the only evidence comparing the work of Metal Trades employees with that of the carpenters was from Kelly, and that was about callout compensation for forepersons.

PNRCC relies upon a prior arbitration award granting Metal Trades employees double time; PNRCC, however, presented no evidence about the basis of that award or why the same rationale applies to WSF carpenters. Further, Metal Trades employees are the exception with respect to double time; there is no evidence that any other WSF CBAs contain such a provision.

In addition, the parties removed the double time provision out of the then governing CBA in exchange for one and one-half times the straight time rate of pay for overtime and callback pay.

Osborne testified that CBAs between PNRCC and private employers contained double time and callback provisions. While these agreements contain both overtime provisions and minimum pay for callback, there is no parity. The Union's proposal here is more generous. In addition, there is no evidence about the basis for these provisions in the other CBAs or why the same rationale applies to the WSF/PNRCC employees.

PNRCC also proposed double time for Sundays and holidays. The only reasoning provided was that the membership wanted parity with the Metal Trades employees. There is no evidence, however, of the rate of pay Metal Trades employees receive for work on Sundays and holidays. The Metal Trades CBA is not in evidence.

PNRCC proposes a change to Article 6, Section 7.A. so that a foreperson receives a minimum of seven (7) hours pay at the overtime rate for a callout, as opposed to the current minimum of four (4) hours pay. There is no evidence before this Arbitrator that the Union's request mirrors a similar provision in the Metal Trades CBA; that agreement was not introduced into evidence.

Kelly described the callout process and testified that callouts for forepersons are "pretty straightforward." There is no evidence about any need to change the current minimum callout hours.

Union

In 2011, the State took away double time because of a fiscal crisis and alleged abuse of overtime from an unknown number of employees. Since then, WSF carpenters have only received 1.5 times the straight time wage rate as overtime no matter how many hours of overtime they work.

Osborne testified that maintenance employees usually get double time for overtime after 10-12 hours of work. He stated that the Union is seeking changes to the overtime rate because members want to have parity with the Metal Trades agreement. Osborne further testified that Holder told him that the only way to get double time was through arbitration. Carpenters work side-by-side the Metal Trades workers.

The State concedes the cost the Union's proposal for overtime and minimum callout hours is extremely small. According to Osborne, the only reason the State was unwilling to agree to double time for WSF carpenters is because it does not like the language. This is not a legitimate reason to withhold double time for overtime.

C. **Arbitrator's Findings**

As the State points out, as the party proposing modifications to the existing language of the CBA, the Union has the burden of establishing a strong need for its proposed changes. I agree with the State that the Union has failed to meet its evidentiary burden for its Article 6 proposals.

It is understandable that PNRCC bargaining unit members, who work alongside members of the Metal Trades, would want to receive the same overtime rate. That desire alone, however, is insufficient to establish a specific problem or demonstrated need for modification to the existing overtime rate and minimum callout hours for the Union's bargaining unit.

Similarly, evidence that double time and minimum callout provisions are common for maintenance carpenters does not establish a specific and strong need for the Union's specific proposals here for its bargaining unit.

As emphasized by the State, the record does not reflect the facts which caused double time to be awarded to members of the Metal Trades Council bargaining unit. The Metal Trades agreement, itself, is not in evidence. In addition, Holder's undisputed testimony was that there were trade-offs negotiated (callback) when double time was discontinued.

For these basic reasons, I will not award the Union's proposed changes to Article 6.

VI. <u>CONCLUSION</u>

Consistent with the above findings, I will enter an award for a 4% increase for each of the two fiscal years of the 2019-2021 biennium, for a total of an 8% increase over the biennium. I will deny the Union's proposed changes to Article 6, Sections 1, 3, and 7A.

In arriving at my findings and conclusions, even if not specifically mentioned, I have reviewed and considered all of the evidence, authorities and arguments submitted by the parties.

In the Matter of the Interest Arbitration between PACIFIC NW REGIONAL COUNCIL OF CARPENTERS (Union or PNRCC) and STATE OF WASHINGTON, DEPARTMENT OF TRANSPORTATION, FERRIES DIVISION (Employer or State)	)))))))))))))))))	AWARD PERC # 130792-I-18 INTEREST ARBITRATION

Being mindful of the legislative purpose under RCW 47.64.005 and 47.64.006 and taking into consideration the factors of RCW 47.64.320 (3), the Arbitrator awards the following wages:

1. FY 2019-2020: Effective July 1, 2019, the PNRCC bargaining unit will receive a 4% wage increase.

2. FY 2020-2021: Effective July 1, 2020, the PNRCC bargaining unit will receive a 4% wage increase.

3. The Union’s proposals to modify Article 6, Sections 1, 3, and 7A are denied.

4. Pursuant to RCW 47.64.300(3), the parties will share equally in my fees and expenses.

Respectfully submitted,

Kathryn T. Whalen
Arbitrator
Date: August 22, 2018