

IN INTEREST ARBITRATION BEFORE
MICHAEL E. CAVANAUGH, J.D.,
ARBITRATOR

MARINE ENGINEERS BENEFICIAL :
ASSOCIATION, :
and : INTEREST ARBITRATOR'S
WASHINGTON STATE FERRIES, : DECISION AND AWARD
(Interest Arbitration, 2013-15 Licensed and :
Unlicensed CBA's) :
_____ :

For the Employer:

Andrew F. Scott
Catherine Seelig
Assistant Attorneys General
7141 Cleanwater Drive SW
PO Box 40145
Tumwater, WA 98504-0145

For the Union:

Michael R. McCarthy
Reid, Pedersen, McCarthy & Ballew, LLP
101 Elliott Avenue West, Suite 550
Seattle, WA 98119

I. INTRODUCTION

The parties selected the Arbitrator, sitting alone rather than as the Chair of a panel, to decide issues they have been unable to resolve in bargaining. There are two 2013-15 CBA's involved, separate (but very similar) CBA's covering licensed and unlicensed engine room employees of the Washington State Ferries ("WSF"). The current proceedings are subject to the revised procedures of RCW Ch. 47.64 which specifies the following factors as the guiding principles for an interest arbitrator's award:

In making its determination, the arbitrator or arbitration panel shall be mindful of the legislative purpose under RCW 47.64.005¹ and 47.64.006² and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

- (a) The financial ability of the department to pay for the compensation and fringe benefit provisions of a collective bargaining agreement;
- (b) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;
- (c) The constitutional and statutory authority of the employer;
- (d) Stipulations of the parties;
- (e) The results of the salary survey as required in RCW 47.64.170(8);
- (f) Comparison of wages, hours, employee benefits, and conditions of employment of the involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved;
- (g) Changes in any of the foregoing circumstances during the pendency of the proceedings;
- (h) The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature;
- (i) The ability of the state to retain ferry employees;
- (j) The overall compensation presently received by the ferry employees, including direct wage compensation, vacations, holidays and other paid excused

¹ “The state of Washington, as a public policy, declares that sound labor relations are essential to the development of a ferry and bridge system which will best serve the interests of the people of the state.” RCW 47.64.005

² “The legislature declares that it is the public policy of the state of Washington to: (1) Provide continuous operation of the Washington state ferry system at reasonable cost to users; (2) efficiently provide levels of ferry service consistent with trends and forecasts of ferry usage; (3) promote harmonious and cooperative relationships between the ferry system and its employees by permitting ferry employees to organize and bargain collectively; (4) protect the citizens of this state by assuring effective and orderly operation of the ferry system in providing for their health, safety, and welfare; (5) prohibit and prevent all strikes or work stoppages by ferry employees; (6) protect the rights of ferry employees with respect to employee organizations; and (7) promote just and fair compensation, benefits, and working conditions for ferry system employees as compared with public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia in directly comparable but not necessarily identical positions.” RCW 47.64.006.

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.

RCW 47.64.320(3).³

At a hearing held at WSF headquarters in Seattle on August 28-30, 2012, the parties had full opportunity to present evidence and argument, including the opportunity to cross examine each other's witnesses. The proceedings were transcribed by a certified court reporter, and I have carefully reviewed the transcript in the course of my analysis of the issues.⁴ Counsel chose to argue the case orally at the close of the presentation of the evidence, and having carefully considered the issues in light of the parties' presentations, I am now prepared to render the following interest arbitration award.

II. INTEREST ARBITRATOR'S DISCUSSION AND AWARDS

A. Background and General Considerations

1. The Bargaining Units

The Washington State Ferry System operates 23 vessels carrying both passengers and vehicles on scheduled runs across Puget Sound as well as to the San Juan Islands (including an international run through the Islands to Sydney, B.C.). The Union represents the shipboard engine department employees in two separate bargaining units, one covering Coast Guard

³ In interest arbitration proceedings under the prior statute, the Arbitrator was directed to award the "most reasonable" proposal on each discrete issue between the parties, i.e. the statute established what is commonly known as "baseball arbitration." Under the current statute, by contrast, the Arbitrator is free to devise his or her own "best" solution to each disputed issue, applying the statutory criteria.

⁴ In light of the short statutory deadline for issuance of interest arbitration awards (30 days from the closure of the hearing but in no event later than October 1, 2012), rather than wait for the reporter to prepare the official transcript, I chose to utilize a rough draft copy provided to me in electronic form. In reading the draft transcript, I found few errors, and none that I was unable to decipher from my memory and notes. Therefore, I am satisfied that my use of a rough transcript has not prejudiced the parties in any way.

licensed employees including Staff Chief Engineers, Alternate Staff Chief Engineers, Chief Engineers, Assistant Engineers, and Vacation Relief Engineers, and the other representing unlicensed Oilers, Vacation Relief Oilers, and Wipers. These employees, collectively, are responsible for the operation and shipboard maintenance of all of the mechanical and electrical systems of the vessels. The engineer seniority list as of July 25, 2012 contains 180 names, U-42, while the oiler list reflects 174. Exh. U-43.⁵

2. The Statutory Criteria and “Ability to Pay”

In evaluating the parties’ respective proposals, I am required to apply the statutory criteria quoted above. Those criteria, to the extent applicable to any specific issue that has been certified for interest arbitration by the Public Employment Relations Commission (“PERC”), will be discussed below. One of the criteria, however, influences my decision on virtually every issue before me, at least to some extent, and thus deserves a detailed discussion at the outset, i.e. “the Department’s ability to pay for the compensation and fringe benefit provisions of a collective bargaining agreement.” RCW 47.64.320(3)(a). With respect to each Union proposal to which a cost may reasonably be attached, the State has essentially argued here that the Department’s current financial condition, as well as the projected finances of the Department for the 2013-15 biennium, do not permit the State to agree to *any* cost items except for one, i.e. the restoration (“snap-back”) of an agreed 3% across the board pay reduction the members of the unit agreed to take for the years 2011-13 in light of the State’s dire financial condition. *See*, Exh. S-3, § 6 and Exh. S-4, Rule 19. Because of continuing deficits in projected revenue as compared to projected

⁵ In projecting the costs of the Union’s proposals for the two units, WSF has used employee headcounts that are slightly higher, apparently derived from payroll data. The Union believes the discrepancy may stem from the occasional hiring of temporary employees from the Union hall who are not actually on the seniority list. Tr. Vol. 3 at 63.

ferry operations expenses, the State contends it can afford no more than the restoration of this temporary 3% wage reduction.⁶

The primary evidence relied upon by the State in support of its argument is the testimony of Erik Hansen, a knowledgeable budget analyst with the Office of Financial Management (“OFM”) who works with WSF as well as some other State “clients.” At the hearing, Mr. Hansen presented a Power Point outlining the sources of Department revenue—the most salient point of which is that the Department receives most of its funding from federal and State gas taxes⁷ while fare revenue covers just 65-70% of the cost of ferry operations in any given year.⁸ Hansen also described the limitations the Department faces in moving funds between accounts, e.g. the WSF “capital” account for construction of new vessels and shore side terminal facilities may not, as a matter of law, be utilized for daily operations of the vessels. On the other hand, the Legislature recently increased some license and permit fees, and in the Legislature’s 2012 Financial Plan, \$3.5M of those increased revenues were earmarked for the Major Transportation Accounts (including ferries) in 2011-13 as well as an additional projected \$35M out of \$183.5M⁹ expected

⁶ The State computes its “cost” of the snap-back at more than \$2M for the 2013-15 biennium. See, Exhs. S-42 and S-46 (\$1.347M for the Licensed Agreement and \$701K for the Unlicensed).

⁷ One difficulty facing the Department is that gas tax revenues are projected to decrease for several reasons. As the price of gas increases, people tend to drive fewer miles—which lowers gas tax revenues because those taxes are assessed at a flat per gallon rate, not as a percentage of the cost. Moreover, increased minimum mpg standards for vehicles, scheduled to rise to 50 mpg by the middle of the next decade, will inevitably reduce the demand for fuel, as will the projected increases in the number of hybrids and plug-in electric vehicles. Even when gas prices decline after a temporary spike, commuters and others have often changed their traveling habits and do not necessarily resume their prior level of driving. As a consequence, gas tax revenues may reasonably be expected to decline over time. Exh. S-39, Slide 10.

⁸ The Union properly points out, however, that WSF produces a far larger percentage of its costs than any other component of the State’s “highway system.”

⁹ The Legislature allocated \$35M (of the additional transportation revenue of \$183.5M in 2013-15) to ferry operations, the largest single allocation in their direction as to how the additional money should be spent. Exh. S-39, Slide 8.

to be brought in during the 2013-15 biennium. *See*, Exh. S-39, Slide 13.¹⁰ Despite these new sources of revenue and cost savings, the Ferry Operations Budget is projected to end of the current biennium with just \$7.5M as an ending balance and to face a deficit of \$33.2M at the end the 2013-15 biennium. *Id.*

The Union counters with the argument that overall Department revenues are projected to increase—indeed, that those revenues have grown at a rate well beyond the cost of living increases in the last decade or more—and that sources of additional funds seem to be on the horizon, including various federal grants.¹¹ But given the still uncertain state of the economy, revenue projections carry more downside risk than upside potential. *See*, e.g. Exh. U-22 (June 2012 Transportation Forecast Summary) (projected revenues are up 2.8% from the prior forecast due to new Legislative fee increases, but a mixed overall economic picture results in a projection that “revenues [will be] slightly higher in the near-term [with] no change in growth rates in the long-term”). *Id.* at 3. Moreover, any increases in revenue may well be inadequate to keep up with rising costs in other areas of WSF operations,¹² and taking those projected expenses into account, the Legislative Plan anticipates a \$33.2M deficit at the end of the next biennium, even after the

¹⁰ Mr. Hansen also noted that the Legislature has exempted WSF from the local sales tax on purchases of fuel for the ferries, resulting in a projected savings of \$11M in 2013-15.

¹¹ I think it is fair to say, however, that the potential federal grants cited are uncertain, both in whether they will actually happen and in what amounts. Moreover, all of the potential grants identified appear to be limited to *capital* projects and would presumably not be available for operations expenses such as wages and benefits for WSF employees (although conceivably, if awarded, those grants could replace unrestricted funds that the Department might have intended to transfer to the Ferry Capital Account). On the other hand, the Legislative Plan projects a deficit of more than \$100M in the Capital Construction Account at the end of the 2013-15 biennium as well, so there is little, if any, evidence that capital grants could actually result in an increase in the operations account for improvements in wages and working conditions—unless, of course, the Legislature makes a policy choice to that effect.

¹² For example, in 2011-13 fuel has accounted for 30.2% of the WSF Operations Budget as of August 2012, and I take arbitral notice of recent substantial increases in the cost of petroleum products.

Legislature has planned to provide substantial additional funding and cost savings for the ferry operations account over two successive bienniums.

In one sense, of course, projected deficits are misleading because the Department, by law, may not spend more money than it has been allocated in the budget process. Thus, the ferry operations account cannot end the 2013-15 biennium more than \$30M in the red as projected. On the other hand, the projected deficit indicates the size of the gap in ferry operations funding that must be filled, either with revenue enhancements such as fare increases or higher taxes, reduced ferry operations expenses (say, through reductions in service),¹³ and/or diversion of funds currently allocated to other State functions toward ferry operations instead.

For all of the above reasons, I take seriously the State's pleas of financial difficulty even though it is clear to me that the situation is not nearly so dire as it was two years ago when the State's General Fund faced projected multi-billion dollar deficits.¹⁴ When the State faced those conditions, to their credit, the marine employee unions (including MEBA) agreed to substantial give-backs in order to assist WSF in maintaining a level of service expected by the citizens of the State.¹⁵ For that reason alone, these employees deserve some consideration now in return. In any

¹³ The Union argues, on the other hand, that the Legislature will never reduce ferry service because the State's citizens will not accept that approach, and there is certainly evidence to support that view. In fact, in 2011, when cuts to scheduled runs were on the table, the Legislature increased some permit and license fees designed to generate an additional \$800M over the next decade, and current levels of service were maintained.

¹⁴ Nevertheless, the most recent budget outlook projects a deficit of \$492M at the end of FY 2015, and that deficit would actually exceed \$1B if the State chose not to utilize the Budget Stabilization Account ("rainy day fund") to help close the gap. Exh. S-40.

¹⁵ The Union calculates its "contribution" to WSF cost savings at more than \$13M since July 1, 2009, considering the wage concessions it agreed to in 2011 as well as the value of wage and benefit increases awarded by Arbiter Vivenzio in his September 25, 2008 interest arbitration award that were never implemented. *See*, Exh. U-14. One can quarrel, I suppose, with the methodology of that computation. For example, the wage and benefit increases awarded by Arbiter Vivenzio were never funded because they were found to be financially infeasible. Nevertheless, MEBA members did agree to temporary wage reductions in 2011-13 worth \$2.364M, as well as permanent reductions in travel time and in how overtime pay is computed. Those contract concessions, together, will amount to savings for WSF of \$3.629M in the 2011-13 biennium—certainly no small contribution to WSF's efforts to weather the recession (in fact, the concessions work out to an average of more than \$10,000 per person in the unit).

event, however, the “ability to pay” factor is not the sole consideration I should take into account in determining whether disputed items should be included in the CBA. As the Union correctly points out, one of the foremost purposes of the statute under which I derive my authority (based on appointment as Arbitrator by the parties) is, to the extent reasonably possible, to ensure that WSF employees receive wages, benefits, and working conditions on a par with comparable employees on the West Coast of the United States and in British Columbia. RCW 47.64.006. Those comparable employers include the Alaska Marine Highway System, BC Ferries, and Black Ball Transport (Port Angeles-Victoria), as well as operators of passenger only vessels (or one small passenger/vehicle ferry), including the Golden Gate Ferry Corporation (San Francisco Bay) and the Marine Divisions of Pierce, King, Skagit, and Whatcom Counties. Taken as a whole, the evidence (discussed in greater detail later) establishes that the members of this bargaining unit trail their statutory comparables by a substantial amount in wages and benefits. Consequently, in reaching my decision here, I must take seriously the express statutory purpose of protecting these employees, where reasonably possible, from the erosion of their relative wages and benefits— and that is so even during difficult economic times for the State.

In light of the current Legislative Plan’s projection of a substantial deficit in the ferry operations fund for the 2013-15 biennium (as well as deficits in most of the other transportation accounts),¹⁶ I concede that it may be very difficult for the Governor to include in the proposed

¹⁶ The Major Transportation Accounts projected to be in deficit condition at the end of the 2011-13 biennium (four accounts totaling a negative \$180.4M) overwhelm the account balances projected to be in the black (four accounts totaling \$22.8M). *See*, Exh. S-39, Slide 13. Moreover, three of the four “in the black” accounts are projected to have surpluses of \$770K or less (essentially a non-surplus position), and the ending balance in the other—the Highway Safety Account—is projected at just \$21.5M. Thus, only the Highway Safety Account appears to offer any hope of transferring available transportation funds to ferries. But simple arithmetic establishes that even if the Department shifted the *entire* Highway Safety balance to ferry operations, it would not be enough to cover the projected ferry deficit. In addition, several other transportation accounts projecting deficits include highway maintenance, transit, light rail, and the Washington State Patrol—each of which reflects an important State function in its own right. The Legislature might need to use some of the surplus in the Highway Safety Account to soften the impact of those deficits as well, not just the projected deficit in ferry operations.

2013-15 biennial budget (and for the Legislature to fund) additional wages and/or benefits for these units beyond the 3% snap-back, particularly if the goal is to maintain ferry service at current levels. That is, additional ferry operations revenue would either have to be transferred from other worthy programs¹⁷ with their own constituencies (assuming those funds were not dedicated by law to those other programs) and/or be generated by *additional* increases in fares, taxes, and/or license and permit fees, beyond those enacted in 2012—at a time when many citizens staunchly oppose such increases.¹⁸ Much of the current financial difficulty of the ferry system, in fact, traces its origin to the voters’ passage of I-695 (\$30 car tabs) a decade or so ago, a successful voter initiative that deprived the Department of a significant source of revenue.¹⁹ It may well be, as Union counsel argues, that the citizens of Washington, at least collectively, want to have their cake (a robust ferry service) and eat it too (with limited increases in taxes and fares to fund it), but that is the reality WSF faces even if it is unfair that State employees have to bear so much of the resulting burden.

In the end, as several WSF and OFM witnesses testified, the current fiscal climate presents difficult *policy* choices for the State—choices that are inescapably bound to politics.

¹⁷ For example, a commission appointed by the Governor projects that at least \$3.1B in additional revenue will be required in the next decade to maintain 90% of the State’s highways in “fair or good” condition and to maintain ferry service at current levels. Revenue enhancements enacted by the Legislature in 2012 are projected to generate only \$800M of that total. Thus, other critical areas of the transportation budget will be competing for available funds as well.

¹⁸ I note that the Legislative Plan assumes annual fare increases of 2.5% for FY 2014 and beyond, coming on top of 2.5% increases in FY’s 2010 and 2011, as well as 5.5% in FY 2012. Exh S-39, Slide 12. Thus, the Legislature has not been averse to reasonable fare increases. Even with these past and assumed future fare increases, however, the ferry operations account is still projected to end the decade with a deficit of \$341.9M. *Id.*, Slide 13.

¹⁹ As a testament to the political implications of taxpayer resistance to higher fees, the Legislature adopted the major components of I-695 even though the Washington Supreme Court had invalidated the initiative on procedural grounds. The record establishes that ever since, however, transfers from other accounts have been necessary to make up the 30-35% shortfall in ferry operations revenues derived from the fare box. Sometimes, those transfers have come from general fund sources, and more recently, from other transportation accounts such as the Highway Safety Fund. As previously noted, however, the Highway Safety Fund is not projected to be sufficient, this biennium, to cover the ferry operations deficit.

What level of increases of fares, taxes, licenses, etc.—or reductions in WSF service levels—are politically feasible? Which of the many worthy undertakings of the State might be cut back, deferred, or altogether abandoned so that WSF employees might bear less of the burden of keeping the system alive and fiscally healthy at current levels of service?²⁰ Thankfully, those thorny choices are not mine to make. Instead, the statute contemplates—appropriately, in my view—that ultimately the Governor and the Legislature must determine the ferry wages and benefits that they are willing to fund.²¹ But because I am directed by statute to recommend an appropriate compensation level for the employees in this unit in light of the statutory comparables—*as well as* to take into account the Department’s ability to pay—I cannot refuse to consider at least *some* reasonable increases in wages and benefits for the Masters simply because the State has ample grounds for pleading poverty and/or political difficulty.

B. Union Proposals

1. Wages

The Union has proposed two-stage wage increases for the employees in these units ranging from 10.2% to 16.4% over the biennium, noting that the unit has not received a pay increase since July 1, 2008 (and actually took a 3% wage reduction for the years 2011-12). Exh.

²⁰ To illustrate the dilemma, both candidates for Governor in this election cycle want to increase education funding—certainly an important State goal, and one that has constitutional dimensions, i.e. the State constitution *requires* adequate funding for K-12 schools. One candidate wants to increase K-12 and higher education funding by \$1.7B by 2015. Both candidates apparently believe they can substantially increase education funding without raising general taxes. Exh. S-40. In that context, it is safe to say that any wage or benefit increases I might award here would face stiff competition for available funds within the State’s overall budget.

²¹ Under the statutory process, OFM must certify that any wages and benefits included in my award are “financially feasible,” the Governor must agree to include the award in the proposed budget, *see SEIU Healthcare 775NW v. Gregoire*, 229 P.3d 774, 168 Wn.2d 593 (Wash. 2010), and the Legislature must fund it. It is true, of course, that the statute directs me to take into account “the limitations on ferry toll increases and operating subsidies as may be imposed by the legislature,” but there is no way for me to know precisely what limitations a future Legislature has in mind other than the cryptic projections of the Legislative Plan (which is not binding). Thus, while an interest arbitrator may gather clues about what “limitations on operating subsidies” will be applicable in determining whether to fund an award of improvements in wages and benefits, the statutory procedures leave the final policy choices precisely where they belong—in the political process.

U-1. In the meantime, the comparable employees at Alaska Marine Highway System, BC Ferries, and Black Ball have received increases each year, and each is scheduled to receive additional increases (or to have a wage/benefits reopener) in the 2013-15 period at issue here. *See*, Exh. U-18. Not surprisingly, then, the regular employees in these units trail their statutory comparables in the salary survey by double digits, taking the Alaska COLD (cost of living differential) into account, and by somewhat lesser—but still substantial—amounts when COLD is excluded. Exh. S-26 at 18/24, 20/24.²² WSF proposes no change in wage rates over the life of the 2013-15 CBA beyond the 3% snap-back, which it costs at \$1.347M for the biennium for the licensed unit (Exh. S-44) and \$703K for unlicensed. (Exh. S-46). The State costed the Union wage proposals at a total of roughly \$12M for the two units over the biennium (Exhs. S-44 and S-46), but it became apparent at the hearing that the costing analysis was based on outdated percentages, through no fault of the budget analyst.²³ Just applying rough percentages to the original figures, however, I think it is fair to say that the Union’s combined wage demands would total in the neighborhood of \$8-9M.

There is no doubt in my mind that the Department, already facing the need to find an additional \$33.2M for the 2013-15 biennium, cannot afford to pay wage increases at that level, no matter how deserving are these employees. Nevertheless, in light of the contributions MEBA members have already made to WSF’s efforts at cost containment during the recession and its aftermath—which the Union has calculated at more than \$3.6M in concessions in addition to the

²² Relief employees fare better than regular employees in the survey, apparently because of the “Assignment Pay” differential of 17.5%. The Union correctly notes, however, that Assignment Pay replaced travel time for Reliefs as part of the concessions the marine employee unions made in 2011 to save money for the State, i.e. the change lessened the effective rate of compensation for Reliefs.

²³ As I understand it, the parties continued to attempt to reach a resolution of the issues right up to the time of the hearing, and the Union reduced its wage demands during that process, but those new demands did not make their way into the State’s formal exhibits.

“loss” of \$9.7M in wage increases and additional vacation accruals ordered by Arbiter Vivenzio in 2008 but which were never implemented—something beyond the 3% snap-back is in order, if only as a symbolic recognition that the tide has turned. I will therefore award additional across the board wage increases for both units of 1% effective July 1, 2013 and an additional 1% effective July 1, 2014.²⁴ The combined biennial cost of these increases—again, using rough percentages—I calculate at approximately \$1.3M for the two units. Finding the funds necessary to implement this award may well be a challenge, but I find it is the right result, and it is now up to the political process to make the difficult choices.

AWARD: I award an across the board wage increase for both the licensed and unlicensed units of 1% (beyond the 3% snap-back offered by the State) effective July 1, 2013, and an additional 1% effective July 1, 2014.²⁵

2. Vacation Accrual

The Union also seeks an increase in the vacation accrual rates to a level comparable to the levels enjoyed by WSF’s IBU unit. Arbiter Vivenzio awarded such an increase to these units in his 2008 award (for the 2009-11 CBA’s), but for reasons already described, the award was not implemented. In 2010, Arbiter Ford again awarded the increased vacation accrual rates for the MEBA 2011-13 CBA’s, but that award also was not implemented. WSF proposes no change, i.e. that the accrual rates remain where they are, i.e. roughly comparable to the rates for general State employees.

²⁴ These are the precise wage increases I recently awarded to the Masters unit of MMP, and that fact adds an additional reason to award the same increases here, i.e. internal comparability.

²⁵ Just to be clear, I envision taking each individual base wage rate as reflected in Exh. U-1 as of July 1, 2013, i.e. with the 3% snap back, and multiplying each one of those individual base wage rates by 1.01 to calculate the new rate with the 1% increase. For example, the Staff Chief Engineer rate will be $\$45.36 \times 1.01 = \45.81 ; the Alternate Staff Chief Engineer rate would be $\$42.16 \times 1.01 = \42.58 , and so on. The effective base wage rates for July 1, 2014 shall be determined by multiplying the base wage rates as computed above by 1.01 again, e.g. $\$45.81 \times 1.01 = \46.27 for Staff Chief Engineer; $\$42.58 \times 1.01 = \43.01 for Alternate Staff Chief Engineer, etc.

As background, Arbiter Beck granted the IBU unit increased vacation rates in his 2005 interest arbitration award. Exh. U-8, dated September 9, 2005 (but retroactive to 2001). Two months later, I awarded comparable vacation rates to the MMP unit (then comprising both Mates and Masters) as a matter of internal comparability. Exh. U-9, dated November 7, 2005 (also retroactive to 2001).²⁶ Arbiter Vivenzio then awarded the additional vacation accruals to these units for the 2009-11 CBA based on the wage and benefit survey, as well as the internal comparability considerations set forth in my MMP award. Exh. U-7 at 36-37. In 2010, Arbiter Ford utilized the same form of analysis in *again* finding that the additional vacation accruals should be awarded MEBA, but based on the cost in relation to WSF's ability to pay, she delayed implementation of the increased vacation benefit until the second year of the 2011-13 Agreement. Exh. U-5 at 6-7.

From this history, it is clear that the MEBA employees deserve to receive vacation benefits on a par with IBU and MMP. These increased benefits are justified not only by internal comparability, but also by the statutory salary and benefits survey, and that has been true for a number of years—a fact demonstrated by repeated interest arbitration awards granting the MEBA units increased vacation. The only issue, then, is whether these deserved benefits should *continue* to be denied engine room employees—alone among shipboard WSF workers—because of the Department's alleged inability to pay. I find that they should not. First and foremost, the Department has found ways to *continue to pay* these benefits to IBU (and in the case of MMP, a negotiated equivalent) essentially since 2001 (the effective date of the IBU and MMP

²⁶ Following my MMP award, WSF approached MMP and offered to “buy back” the increased vacation benefits in exchange for a 5% wage increase and one-time lump sum payments to employees of between \$4000.00 and \$10,000.00 depending on seniority. The membership voted to accept the proposal and received those alternative economic benefits. Therefore, while it is true that the MMP units, at least as of the 2011-13 Agreement, do not currently receive vacation accruals comparable to the IBU accruals, those employees received equivalent substantial one-time cash payments as well as a 5% wage increase that continues to this day. Consequently, the MMP “buy back” does not affect the internal comparability argument here.

improvements, although they were not awarded until 2005), and thus it rings hollow that the Department cannot afford the same benefits for their MEBA shipmates. Although I find that these employees have waited far too long already for an improvement in their benefits that has the strongest possible support in the statutory criteria, I recognize that it will not be easy for the Department to find the approximately \$1.5M it would cost to implement as of July 1, 2013 in addition to the \$1.3M in wage increases I have already awarded. Therefore, like Arbiter Ford, I will award the increased vacation accruals to these units in the second year, i.e. effective July 1, 2014, reducing the projected cost (using the State's numbers, although the Union contends they are inflated) to approximately \$770K from \$1.5M for both units (\$624K for licensed, \$146K for unlicensed).

AWARD: I award the Union's vacation accrual rate proposal effective July 1, 2014.

3. Increased Contribution to the Calhoun School

The Union has also proposed that WSF increase its contribution to the Calhoun School in Maryland, a college-level institution teaching marine engineer skills that is operated by a joint labor-management Taft-Hartley Trust.²⁷ Currently, WSF contributes \$1.00 per day per licensed employee into the MEBA Training Plan, and \$0.50 per day per unlicensed employee. The Union proposes that these amounts both be increased to \$6.00 per day per employee, which the State costs at roughly \$520K for the biennium. The State notes that none of its required training for employees is conducted at the school, that it supports MEBA members who wish to improve their skills by granting them time off to attend (and incurring some replacement employee expense, as well as the expense of reimbursing leave taken to attend the school when an employee has successfully completed a course). Thus, while WSF appreciates the good work of

²⁷ Although a substantial number of WSF employees have taken courses at the school over the years, as a public entity, WSF representatives are ineligible to serve as management trustees. Therefore, WSF does not participate in management of the school.

the school and recognizes that it receives a benefit in terms of increased levels of employee skills, the Employer proposes no change.

At the outset, I note that Arbiter Vivenzio refused to award a similar Union proposal in his interest arbitration award covering the 2009-11 CBA (the Union had proposed that the amounts be increased to \$3.00 per day per employee, half the current demand). Exh. U-7 at 38 *et seq.* Arbiter Vivenzio did not find the proposal supported by statutory criteria or the comparables. *Id.* at 40. That fact, standing alone, would not preclude me from awarding the present request, but in light of the level of monetary commitments that will be required for WSF to comply with the wage and vacation increases I have awarded above, I do not find this an opportune time to consider additional increases of more than \$500K that might tip the balance and endanger those other improvements by making the entire package “financially infeasible.” Consequently, I will not award the Union’s Calhoun School contribution increase.

AWARD: The Union’s proposed increases in WSF contributions to the Calhoun School are not awarded.

C. WSF Proposals

1. MapQuest

WSF has proposed that travel time and/or mileage between locations not included in the parties’ negotiated “Schedule A” be calculated on the basis of the shortest distance in MapQuest “unless otherwise mutually agreed to.” Exhs. S-11 (Licensed) and S-17 (Unlicensed). Schedule A has existed for many years, and it contains the agreed time and mileage between common points in the system that employees might need to travel, e.g. between a home port (the WSF terminal closest to an employee’s home) and another terminal. The problem, according to the Employer, is that Schedule A only provides a yardstick for judging travel time and mileage for

the destinations it covers, and WSF needs an objective basis by which to audit claimed travel time and mileage for travel to non-Schedule A destinations. According to Senior Port Engineer Elizabeth Nicoletti, there have been several occasions on which two employees traveling between the same points on the same day claimed substantially different time and/or mileage. The Union's objection to the use of MapQuest for this purpose is that it allegedly does not calculate traffic delays, and marine engineers tend to begin and end their 12-hour shifts at rush hour. Thus, the Union proposed that the MapQuest travel times be applied with a multiplier of 1.5. WSF made no counterproposal, and the matter was certified for interest arbitration. At the hearing, Union counsel suggested that WSF engage an expert, at its expense, to calculate the appropriate times and distances incorporating appropriate traffic patterns.

I understand the Employer's need for some reasonable parameters by which to judge employee requests for time and mileage, but I am not certain that MapQuest, standing alone, is the answer. Even if the parties agreed to use a tool that *does* incorporate traffic information, such as Google Maps, the actual travel time on any particular day at a particular time will vary widely.²⁸ Similarly, the "shortest distance" is not necessarily the "shortest travel time." In that case, which route would the proposed WSF rule apply to determine travel time? In sum, I am not convinced that the answer to WSF's dilemma is as simple as this proposal seems to suggest.

In any event, as I remarked during closing argument, the record does not convince me that the parties have thoroughly exhausted the possibilities of coming to an agreed resolution of this issue. If the proposed MapQuest solution appeared to provide a clear solution to the Employer's needs, I might consider awarding it. But because the Union has raised legitimate concerns, and because I believe that, given more time, the parties should be able to work out this

²⁸ As I understand it, Google Maps "directions" program formerly incorporated historical "worst case" traffic data, i.e. it projected that travel between points on any given day *could* take that long. Currently, however, the program incorporates actual current traffic data. See, <http://mashable.com/2012/03/29/google-maps-traffic-data/>.

problem for themselves, I will not award the WSF MapQuest proposal at this time. Nor will I award the Union's alternative suggestion of engaging an expert at WSF expense. Instead, I will remand to the parties for further discussions in an attempt to find an agreed solution that takes account of the legitimate interests on both sides.

AWARD: Neither party's proposal on calculating travel time and mileage between points not on Schedule A is awarded.²⁹

2. Friday Harbor Per Diem and Shore Side Facilities

Engine room employees permanently assigned to the Inter-Island run out of Friday Harbor are now entitled to an allowance for one round-trip per week from Anacortes to Friday Harbor.³⁰ When staying at the WSF shore side housing, employees are entitled to State per diem under the following existing language:

[E]mployees staying in State provided facilities in Friday Harbor will be entitled to daily maximum per diem in accordance with State per diem regulations and provided with adequate shore side accommodations.

WSF now proposes to alter this provision in three ways. First, the Employer proposes to eliminate the word "maximum" because it is confusing to some employees (e.g. there is only one appropriate per diem rate under the law, so "maximum" is legally superfluous, but the word tends to make some employees think they are entitled to something beyond the prescribed rate).

On the other hand, the Union points to a pending grievance about how many meals the

²⁹ This award applies both to the Licensed Agreement, i.e. Section 12(a), and the Unlicensed Agreement, Rule 3.03(a).

³⁰ Formerly, the employees were entitled to a *daily* allowance for the trip, but the parties agreed in 2011 to reduce that amount to one trip per week (engine room employees work 7 consecutive 12-hour shifts and then have 7 days off) in order to reduce costs to WSF. As a result, more employees chose to stay in Friday Harbor during the week in WSF supplied shore side housing which has strained the capacity of the shore side accommodations.

employees are entitled to receive during a seven day assignment.³¹ The Union worries that deleting “maximum” might prejudice its arguments in that grievance. Second, for similar reasons, WSF proposes to change “regulations” to “rates.” The Union points out, however, that the “rates” are determined by the “regulations,” so there is no need for the change. Next, WSF initially proposed explicit language that would make clear that employees breaking-in or on familiarization on the Inter-Island run would not be eligible for State provided shore side accommodations. During bargaining, however, the WSF proposal morphed into a slightly different suggestion, i.e. a proposal to provide that such employees “may be provided” such accommodations “if preapproved by the Employer.” Exh. S-11 at 3. The intent, says the Employer, is to indicate that employees breaking-in are welcome to stay in the WSF shore side accommodations if there is room for them. If not, they can stay on the vessel in Coast Guard approved crew quarters, or travel back to Anacortes on their own time.³² As further background, testimony at the hearing established that a number of grievances and ulp’s relating to various Friday Harbor issues have been combined for mediation with a PERC mediator, and a meeting had been scheduled to discuss the issues on or about September 10, 2012.

Taking these issues one at a time, I do not find that WSF has made a sufficient case for the removal of the word “maximum” at this time. The Union apparently intends to argue that the present wording of the provision supports its position in a pending grievance regarding the number of per diem meals during a seven-day assignment, and I find it would be inappropriate

³¹ The issue, which was outlined only briefly in the testimony, apparently revolves around whether employees are entitled to receive per diem for a meal that occurs during a shift, i.e. a “lunch.” The regulations apparently provide for meals only when an employee is away from home *and* from his or her duty station, but according to WSF, the vessel *is* the employee’s duty station.

³² The Union argues that WSF is trying to erode the deal in which the Union gave up daily travel time between Anacortes and Friday Harbor to save the State money, but only in exchange for a promise that employees would have a reasonable place to stay in Friday Harbor between shifts. The staterooms on the older Inter-Island Evergreen State, says the Union, are not “adequate” within the meaning of the parties’ agreement.

for me to foreclose that argument, whatever its merits might be, by preemptively deleting the language. Rather, that is the kind of issue that should be resolved in mediation or, if necessary, in grievance arbitration. Therefore, I will not award the WSF proposal to delete “maximum.”

For similar reasons, I will not award the proposed change from “regulations” to “rates.” I do not understand the change to have any substantive intent or impact, but rather to be designed to lessen employee confusion about what the language means. That is a laudable goal, but one that is better addressed, in my view, in the parties’ discussions, with the assistance of PERC. Consequently, I will not award this WSF proposal at this time.³³

With respect to shore side accommodations for licensed employees undergoing vessel familiarization or breaking-in on the Inter-Island run, WSF originally proposed that the language of Section 12(d) be amended to expressly *exclude* such employees from the requirement that WSF provide adequate shore side accommodations. During negotiations, however, WSF revised its proposal to provide that such accommodations “may be provided” to licensed employees. Exh. S-11 at 3.³⁴ WSF did not revise its unlicensed proposal, however, apparently maintaining its position that employees who are breaking-in on the Inter-Island or Port Townsend-Keystone routes “shall not be provided shore side accommodations.” The Union made counterproposals during

³³ The WSF proposals relating to the deletion of “maximum” and substitution of “rates” for “regulations” apply to two different sections of the Agreement, i.e. Section 12(d), which applies to the Inter-Island run, and Section 12(g), which applies when a vessel is in a commercial shipyard. Exh. S-11. My decision not to award these language changes applies to both proposals.

³⁴ I note that Senior Port Engineer Nicoletti, in her testimony, pointed out that the language at issue refers only to “regular employees permanently assigned to the Inter-Island vessel route.” Section 12(d); Tr. Vol. 1 at 170. I understood her to be arguing that employees breaking-in are not entitled to shore side accommodations under the current language because they are not “permanently assigned,” a reading of the Agreement that leaves Relief employees and those on break-in ineligible for shore side housing. Nevertheless, Ms. Nicoletti reiterated the Employer’s willingness to provide Friday Harbor housing on a “space available” basis—for example, by amending the language in the licensed Agreement to provide that such housing “may be provided.”

bargaining on these issues, but as I understand the Union's position at the hearing, it suggests no change in the language of either Agreement on these questions. *See*, Tr. Vol. 1 at 62-63. On the other hand, the Union appears to believe, contrary to Ms. Nicoletti's argument, that the *current* language covers employees breaking-in. *See*, Tr. Vol. 3 at 30 (Duncan); *see also*, Tr. Vol.3 at 207 (counsel arguing that the Employer's position on shore side housing for break-ins is "nibbling away" at the deal the Union made in giving up its daily travel time to Friday Harbor by removing part of the *quid pro quo* the Union received in exchange).

It appears to me, then, that the parties have a disagreement about what their present language means, at least in the Licensed Agreement. The Employer's proposal to "clarify" that language, moreover, suggests a recognition that the current language does not necessarily unequivocally support the WSF position that breaking-in is already excluded from shore side housing—or at the very least, that the employees' understanding of the deal they made to give up daily travel to Friday Harbor differs from the Employer's view. These are the kinds of issues that are best left to discussions between the parties (perhaps as part of the broader Friday Harbor mediation process) or to grievance arbitration.³⁵ Awarding WSF's proposed language, moreover, might well compel a specific resolution to the underlying contract dispute, i.e. the proposed language, if added in interest arbitration, would necessarily suggest that the parties'

³⁵ One possibility, of course, is that despite what the language seems to say, in grievance arbitration the Union might be able to present evidence of the parties' negotiations and/or of a past practice in support of its argument that employees familiarizing or breaking-in on the Inter-Island run were intended to receive shore side accommodations even though not "permanently assigned." That kind of evidence is not typical in interest arbitration, however, and thus it would be improper, in my view, to foreclose the Union's arguments, if it has any, based on bargaining history and/or past practice.

Agreement does not currently *require* shore side accommodations for breaking-in and familiarization by Reliefs.

For these reasons, I find that to award the WSF proposal would improperly affect the merits of a pending contract dispute, and thus I will award no change to the shore side accommodations language of the Licensed Agreement.

AWARD: I do not award the WSF proposed changes to Sections 12(d) or 12(h) of the Licensed Agreement with respect to elimination of the word “maximum,” substitution of “rates” for “regulations,” nor with respect to shore side accommodations in Friday Harbor for licensed employees on break-in or familiarization. Similarly, I do not award WSF proposed changes to Rule 3.04 of Appendix B of the Unlicensed Agreement.

3. Miscellaneous Changes in Section 12

WSF has proposed two additional changes in Section 12 of the Licensed Agreement. First, in Section 12(h)(2), dealing with the Employer’s option to provide reasonable living quarters in lieu of daily travel pay and mileage while a vessel is in a shipyard, WSF proposes additional language specifying that “[e]mployees electing not to stay in State furnished quarters will not be reimbursed lodging costs without the preapproval of the Employer.” Exh. S-11 at 4. The Union argues that the change is unnecessary, and further notes that the apparent genesis of the Employer’s proposal was a grievance, ultimately dropped, that grew out of an incident in Friday Harbor involving the Inter-Island run, not a shipyard assignment. Second, the Employer has proposed a nonsubstantive grammatical edit of Section 12(i)(3).

Taking the second issue first, I am not certain that interest arbitration is the best forum in which to consider grammatical changes to contract language that are simply designed to improve

how a contract provision reads (which is something of a matter of individual taste, in any event) rather than to change the *substance* of the provision or to *clarify language* that may be confusing for one reason or another. Be that as it may, to my ear, the WSF proposal does not improve Section 12(i)(3). For both reasons, I will not award the proposed edits.

As to the substantive proposal, I am somewhat confused why a problem (at least, it is a “problem” from the Employer’s perspective) that developed in Friday Harbor led to a proposal to change language in the shipyard assignment provisions of the Agreement—although the issues would appear to overlap. In any event, I agree that it is an improvement in the contract language to make clear to employees that if they elect not to stay in appropriate³⁶ State furnished quarters that have been made available to them while a vessel is in the shipyard, they will not be reimbursed for lodging expenses without preapproval from the State. I will award the WSF proposal to Section 12(h)(2).

AWARD: I do not award the WSF proposal to amend the language of Section 12(i)(3). I do award the WSF proposal to change the language of Section 12(h)(2), as reflected in Exh. S-11 at page 4 of 5, insofar as it relates to employees who elect not to stay in State provided housing while a vessel is in the yard.

4. Cancelling of Scheduled Vacation

WSF has proposed that the following language be added to both Agreements:

Once a vacation request has been approved, employees shall not cancel the approved leave. Employees may not submit a request for vacation leave if the employee does not have, or will not have accrued enough leave to cover the vacation request at the time the vacation is to commence. If due to unforeseen circumstances an employee does not have adequate leave at the time a vacation

³⁶ I note that the shipyard provisions of the Licensed CBA refer to “reasonable living quarters.” Thus, the parties have defined, at least in a general way, what kinds of “State furnished quarters” must be provided. If the State arranges for suitable accommodations according to these standards, it is altogether fair that employees accept them or waive their rights to lodging reimbursement unless the Employer has preapproved other arrangements.

leave is to commence, the employee shall use all available leave and shall take leave without pay for the remainder.

The Union proposes no change and asks that the Interest Arbitrator remand the issue to the parties for further discussion. Tr. Vol. 3 at 169.

The purpose of this WSF proposal is to ensure that the Employer will be able to accurately predict how many reliefs it will need during the year. Ms. Nicoletti conceded, however, that there has been no rash of last minute vacation cancellations from the members of these units, but she expressed the desire to be able to manage that situation should it occur. The Union, in response, labels the proposal “a solution in search of a problem,” and while I do not find that comment to be entirely fair (managers should be proactive in anticipating potential problems), I agree with the Union that this is a complicated issue that requires further discussion between the parties. Given that there is no *current* problem that needs to be solved, it seems to me the parties have time to work through those complicated issues to ensure that the legitimate interests of both management and the employees have been accommodated. I will not award the WSF proposed changes to add Section 18(p) and Rule 20.13(d) to the Agreements.

AWARD: I do not award the WSF proposals to add Section 18)(p) and Rule 20.13(d) to the Licensed and Unlicensed Agreements respectively.

III. CONCLUSION

With respect to the issues that were certified for interest arbitration by PERC, I hereby render an award on each such issue as set forth above. I will reserve jurisdiction to assist the parties in the unlikely event there are any disputes about the specific CBA language necessary to incorporate this Award into the 2013-15 Agreements that the parties are unable to resolve on their own.

Dated this 18th day of September, 2012

A handwritten signature in blue ink, appearing to read "Michael E. Cavanaugh", is written over a horizontal line.

Michael E. Cavanaugh, J.D.
Interest Arbitrator