

In the Matter of the  
Interest Arbitration  
between

WASHINGTON STATE PATROL	)	
TROOPERS ASSOCIATION	)	
	)	DAVID M. BLAIR,
Association	)	Arbitrator
and	)	
	)	<b>FINDINGS,</b>
WASHINGTON STATE PATROL	)	<b>DISCUSSION, and</b>
	)	<b>AWARD</b>
State	)	
_____)		

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Hearing location: Washington State Attorney General's Office  
1250 Pacific Avenue, Suite 150  
Tacoma, Washington

Hearing Dates: August 13, 2012, and August 14, 2012

Post-hearing briefs submitted: September 10, 2012

Date of this Award: September 18, 2012

Witnesses for the Association  
John Batiste  
Jeffrey Julius  
Patrick Bracken  
Alyson Cummings  
Rick Jensen  
Tommie Pillow

Witnesses for the State:  
David Karnitz  
Morgan Damerow  
Dory Nicpon  
Karen Durant  
Ron Marshall  
Stan Marshburn

## INTRODUCTION

The parties agreed to place the matter of the resolution of their 2013 – 2015 labor contract negotiations before this Arbitrator for a decision through interest arbitration pursuant to RCW Chapter 41.56. The arbitrator's authority to render a decision in this matter is determined solely according to statute, more specifically RCW 41.56.473 and RCW 41.56.475. Both parties had the opportunity to present evidence, call and cross examine witnesses and argue their case. The hearing was recorded by a court reporter and a transcript of the proceeding was made available to the parties. Accordingly, the arbitrator shall render a decision based upon such statutes, as well as the testimony and exhibits offered at hearing. The parties understand that the final determination of their negotiations rests with the Washington State legislature that has the authority to adopt or reject this award.

The parties were able to resolve all but two of their differences prior to the commencement of the interest arbitration hearing. The two remaining issues are wages and longevity as discussed in great detail below.

The parties further agreed that the Association's representative would be permitted the opportunity to present testimony as his own witness including the presentation of exhibits and other evidence to be included for the record.

Throughout the hearing, the parties were able to agree upon and approve all of the exhibits that were offered into evidence, and each was duly received by the arbitrator. The parties were not able to stipulate to any additional facts other than the two issues that had been properly certified by the Public Employment Relations Commission (PERC) which are now before the arbitrator. Accordingly, the issues before the arbitrator are identified immediately below. Though the overall issues appear to be relatively simple in nature, it is apparent that the underlying considerations associated with these issues are extremely complex with a considerable history between the parties.

By agreement of the parties post-hearing briefs were submitted to the arbitrator on September 10, 2012.

## **ISSUES**

### **ISSUE 1. WAGES**

Should the existing wage rates of the Washington State Patrol, Troopers and Sergeants be increased for the 2013 – 2015 biennium as found within Section 28.1 of the Collective Bargaining Agreement (CBA) between the State and the Association as supported by the evidence required under RCW 41.56.475? If so, what should be the level of increase?

### **ISSUE 2. LONGEVITY STEP**

Should a longevity step for 25 years of service be added to the wages of the Washington State Patrol, Troopers and Sergeants for the 2013 – 2015 biennium as found within Section 28.4 of the Collective Bargaining Agreement (CBA) between the State and the Association as supported by the evidence required under RCW 41.56.475? If so, what should be the compensation for such new wage step?

## **BACKGROUND**

The Association and State are now before an interest arbitrator for the second time in their history of bargaining on behalf of the Troopers and Sergeants. The first occasion was in 2008 before Arbitrator Howell Lankford.<sup>1</sup>

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<sup>1</sup> Arbitrator Lankford found that the employees represented by the WSPTA were entitled to a wage increase on both July 1, 2009, and July 1, 2010, stating, "Thus, I agree with the Association that a CPI-based increase is required even in the face of the State's current financial condition and I agree that a four percent annual minimum is required in light of how far the Patrol is now behind its comparables and the deteriorating recruitment and retention data." [Tr. at 10, L 8-14 quoting Lankford's 2008 Award]

Following a number of Unfair Labor Practice complaints, subsequent PERC decisions and a Thurston County Superior Court Award, the parties appear to be operating within the confines of the contract negotiations process as intended by RCW 41.56.473. As a result of the many twist and turns leading up to this arbitration, there has been no increase in the wages of the Troopers and Sergeants represented by the Association for the years 2009 through 2012.<sup>2</sup>

## POSITION OF THE PARTIES

### ASSOCIATION

The Association proposes the following contract language:

#### Article 28.1

Effective July 1, 2013, all salary ranges and steps of the WSP Commissioned Officer Salary Schedule that was in effect on June 30, 2013 shall be increased by six and eighttenths percent (6.8%), as shown in Appendix A.

Effective January 1, 2014, all salary ranges and steps of the WSP Commissioned Officer Salary Schedule that was in effect December 31, 2013 shall be increased by the percentage equal to 100% of the percentage increase in the CPI-W (Seattle-Tacoma-Bremerton) for the period June 2012 to June 2013 with a minimum of two percent (2%) and a maximum of five percent (5%).

Effective July 1, 2014, all salary ranges and steps of the WSP Commissioned Officer Salary Schedule that was in effect on June 30, 2014 shall be increased by the percentage equal to 100% of the percentage increase in the CPI-W (Seattle-Tacoma-Bremerton) for the period December 2012 to December 2013 with a minimum of two percent (2%) and a maximum of six percent (6%).

#### Article 28.4

E. An additional two percent (2%) longevity pay shall be added for all employees with twenty five (25) or more years of commissioned service.

### STATE

The State proposes the following contract language:

#### Article 28.1

Effective July 1, 2013, all salary ranges and steps of the WSP Commissioned Officer Salary Schedule that was in effect on June 30, 2013, as shown in Appendix B, will remain in effect through June 30, 2015.

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<sup>2</sup> To be fair, the State reminds the arbitrator that, "The remainder of the state has not been so fortunate. The remainder of State employees have actually gone backwards three percent this last biennium." [Tr. At 16, L 4-7] The arbitrator further notes that in addition to this 3% downward adjustment, most state employees also experienced forced furlough days as well.

## DISCUSSION

### JURISDICTION AND AUTHORITY

It is first necessary to examine the authority of the arbitrator as to the size and scope of his charge. The answer to that question will inevitably lead to the decision the arbitrator has been asked to render. The parties agree that the interest arbitrator is completely guided and controlled by RCW 41.56.475, which follows with pertinent sections highlighted in bold. The parties agreed to use a single arbitrator rather than a panel of arbitrators in this interest arbitration.<sup>3</sup>

#### **RCW 41.56.475**

#### ***Uniformed personnel — application of chapter to Washington state patrol — mediation and arbitration.***

*In addition to the classes of employees listed in \*RCW [41.56.030](#)(7), the provisions of RCW [41.56.430](#) through [41.56.452](#) and [41.56.470](#), [41.56.480](#), and [41.56.490](#) also apply to Washington state patrol officers appointed under RCW [43.43.020](#) as provided in this section, subject to the following:*

*(1) Within ten working days after the first Monday in September of every odd-numbered year, the state's bargaining representative and the bargaining representative for the appropriate bargaining unit shall attempt to agree on an interest arbitration panel consisting of three members to be used if the parties are not successful in negotiating a comprehensive collective bargaining agreement. Each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chair of the arbitration panel. Upon the failure of the arbitrators to select a neutral chair within seven days, the two appointed members shall use one of the two following options in the appointment of the third member, who shall act as chair of the panel: (a) By mutual consent, the two appointed members may jointly request the commission to, and the commission shall, appoint a third member within two days of such a request. Costs of each party's appointee shall be borne by each party respectively; other costs of the arbitration proceedings shall be borne by the commission; or (b) either party may apply to the commission, the federal mediation and conciliation service, or the American arbitration association to provide a list of five qualified arbitrators from which the neutral chair shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair shall be shared equally between the parties. Immediately upon selecting an interest arbitration panel, the parties shall cooperate to reserve dates with the arbitration panel for potential arbitration between August 1st and September 15th of the following even-numbered year. The parties shall also prepare a schedule of at least five negotiation dates for the following*

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<sup>3</sup> It is noted that the parties also agreed upon a single arbitrator in their first and only other interest arbitration case as cited earlier.

*year, absent an agreement to the contrary. The parties shall execute a written agreement before November 1st of each odd-numbered year setting forth the names of the members of the arbitration panel and the dates reserved for bargaining and arbitration. This subsection imposes minimum obligations only and is not intended to define or limit a party's full, good faith bargaining obligation under other sections of this chapter.*

***(2) The mediator or arbitration panel may consider only matters that are subject to bargaining under RCW [41.56.473](#).***

*(3) The decision of an arbitration panel is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to wages and wage-related matters of an arbitrated collective bargaining agreement, is not binding on the state or the Washington state patrol.*

***(4) In making its determination, the arbitration panel shall be mindful of the legislative purpose enumerated in RCW [41.56.430](#) and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:***

***(a) The constitutional and statutory authority of the employer;***

***(b) Stipulations of the parties;***

***(c) Comparison of the hours and conditions of employment of personnel involved in the proceedings with the hours and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;***

***(d) Changes in any of the foregoing circumstances during the pendency of the proceedings; and***

***(e) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under RCW [41.56.473](#).***

Accordingly, the arbitrator agrees to limit his authority and decision in this case, to that of the statute. A review of the factual elements of the statute as raised by the parties follows together with a discussion of those elements applied to the evidence that was presented to the arbitrator.

## ISSUE 1. WAGES

The following is a review of the evidence presented at hearing in conformance with the applicable state statutes addressing each statutory element as offered and argued by the parties.

## Comparables

The first question to be determined is what is meant by the term “west coast” as found within RCW 41.56.475(4)(c). Arbitrator Lankford found that since each party to his 2008 interest arbitration included one or more of what he called “second tier” states, (those being immediately adjacent to states that actually touched the Pacific Ocean), that it would be appropriate to include such states as Nevada and Arizona. Conversely, neither party proposed the states of Alaska and Hawaii, which are clearly as west as one can get in the United State and which touch the Pacific Ocean. Accordingly, those states would not be included, especially where the arbitrator presumably would have had no data for these states in which to compare.

The parties are certainly free to offer the most favorable states as a comparable in order to win their respective arguments. This may explain the inclusion of Alaska and not Hawaii by the Association, and the state of Idaho now new to the list of comparables as offered by the State. All seemingly agree that the states of California and Oregon must be in the mix. It also seems reasonable as the State proposes, that an appropriate sampling be large enough to be meaningful to the process.

Wikipedia defines “west coast” as follows:

***West Coast or Pacific Coast** are terms for the westernmost coastal [states](#) of the [United States](#). The term most often refers to the states of [California](#), [Oregon](#), and [Washington](#). More specifically, the term refers to an area defined on the east by the [Cascade Range](#), [Sierra Nevada](#) and [Mojave Desert](#) and on the west by the [Pacific Ocean](#). Although not part of the [contiguous United States](#), [Alaska](#) and [Hawaii](#) do border the [Pacific Ocean](#) and can also be included in the West Coast. The [U.S. Census](#) groups the five states of California, Oregon, Washington, Alaska, and Hawaii together as the [Pacific States](#) division.<sup>4</sup>*

The State argues that this list should be expanded to include the “second tier” that Arbitrator Lankford had acknowledged, in order to provide for a better sampling. Citing Arbitrator Wilkinson’s 2007 interest arbitration between the City of Tacoma and International Association of Firefighters Local 31, the sampling should include comparables that are in geographic proximity with one another.<sup>5</sup>

It would appear that the parties would be best served if there was an element of consistency that could be applied in this and any subsequent interest arbitrations. As the parties had not contemplated the state of Alaska in their 2008 arbitration, it would seem

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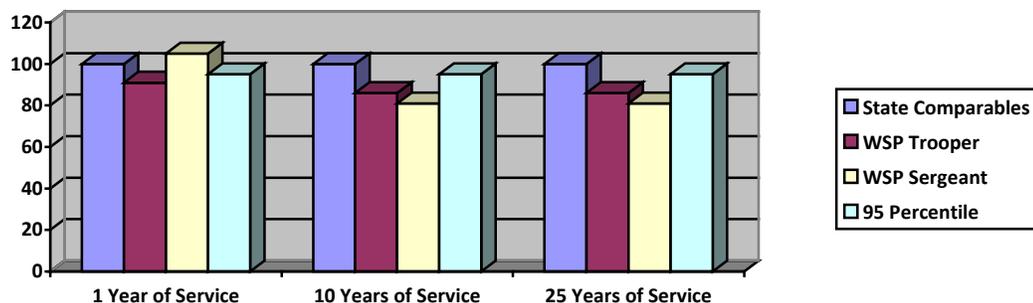
<sup>4</sup> [[http://en.wikipedia.org/wiki/West\\_Coast\\_of\\_the\\_United\\_States](http://en.wikipedia.org/wiki/West_Coast_of_the_United_States)]

<sup>5</sup> “Arbitrators also prefer using comparable employers having geographic proximity because they more accurately reflect the subject jurisdiction’s labor market. City of Redmond (IAFF Local 2829), PERC No. 17577 I030406 (Krebs, 2004); City of Mukilteo (IAFF Local 3482), PERC No. 163781020382 (Lankford, 2002); Walla Walla County (Walla Walla Deputy Sheriff’s Guild), PERC No. 14798199327 (Greer, 2000); City of Bellevue (IAFF Local 1604), PERC No. 14037198309 (Beck, 1999); Kitsap County (Kitsap County Sheriff’s Guild), PERC No. 13831198299 (Buchanan, 1999); Jefferson Transit (Amalgamated Transit Union, Local 587), PERC No. 11148194239,(Axon, 1994).” [Wilkinson 2007, PERC NO 20635 1060481]

logical to once again set it aside.<sup>6</sup> Though the state of Idaho may not have been included earlier, it appears to be as close a fit as any being a “second tier” comparable state. This is especially true given its close geographical proximity to the state of Washington.

Based on the foregoing discussion and the fact that the selected comparable states of either party render a relatively minor difference in outcome, the arbitrator selects the comparables offered by the State with “west coast” comparables being Oregon, California, Arizona, Nevada, and Idaho.

Assuming a baseline wage equals that of a 10 year Trooper and Sergeant (consistent with the highest proportion of its officers currently employed at such years of service), with no additional education, the State’s comparables would tell us that the State’s Troopers and Sergeants with 10 years of service are **-14%** behind the “west coast” comparables for Troopers,<sup>7</sup> and **-19%** behind for Sergeants.<sup>8</sup> This same data shows the starting wage for a Trooper to be approximately **-9%** compared to the comparable range, and a Sergeant at approximately **+5%** above the comparable “west coast” average. At the other end of the spectrum we see a 25 year Trooper’s wage at a **-14%** level and a Sergeant at a **-19%**. This data is shown graphically immediately below.



The graph above includes a fourth column as a wage comparison at the 95<sup>th</sup> percentile of the State’s “west coast” comparables. State’s witness, Patrick Braken, with the Segal Company, testified that a range of 95 to 105 of the average wage comparators would be considered within acceptable parameters as a market competitive corridor.<sup>9</sup> Overall, Mr. Bracken offered the following response to the State’s market wage competitiveness.

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- 10 Q. What about with respect to base pay alone?
- 11 A. With respect to base pay, at none of the
- 12 intervals of years of service we collected information
- 13 for are trooper compensation levels market

<sup>6</sup> The arbitrator notes Arbitrator Lankford’s finding of a significant difference between the state of Alaska and the other western states with fewer geographical challenges, as well as the testimony of State’s witness Deputy Chief Karnitz identifying the functional differences between the respective state police forces for the states of Alaska and Washington. [TR. at 274]

<sup>7</sup> [Association Exhibit E 9, Page 10]

<sup>8</sup> {Association Exhibit E 9, Page 14]

<sup>9</sup> [Tr. at 200 – 201, Ln 22-9]

14 competitive.  
15 Q. What about sergeants?  
16 A. We found that for sergeant base pay at the  
17 minimum and one year of service intervals base pay is  
18 market competitive and is non-competitive from that  
19 point out. And from a comparison of base pay plus  
20 longevity plus geographic differentials, we found the  
21 same finding.  
22 Q. And that finding is that State Patrol is  
23 non-competitive.  
24 A. Non-competitive after five years of service.  
25 Market competitive at the minimum and one year of  
202  
1 service intervals.

When the State's witness was asked what percentage increase would be necessary for the State of Washington's Troopers and Sergeants to become market competitive, Mr. Bracken responded with the figure of "roughly 20%."<sup>10</sup> For the Trooper classification, on average, such an adjustment would amount to an annual increase of \$11,958.00.

The arbitrator concludes that based on the conservative comparable sampling the arbitrator has selected, the State of Washington is significantly non-competitive after five years of service, and barring other offsetting considerations, a significant wage adjustment would be justified.

### **Other Factors**

#### **A. Cost of Living**

The Association aptly notes that the cost of living is often an element that is considered in interest arbitrations. The State did not offer any evidence surrounding the cost of living, or any of the variables surrounding its consideration as it was not offering a wage adjustment or longevity step based predominately on the State's inability to pay regardless of what the cost of living may have been in recent years.

This arbitrator concurs with Arbitrator Lankford's 2008 conclusion where a similar argument was made, noting that the Seattle-Tacoma-Bremerton CPI-W (hereinafter COLA) would appear to be the most appropriate measure for cost of living consideration between the parties.<sup>11</sup> The Association's calculations show a 37.3% rise in COLA for the period 1998 – 2011, while the wages for the Troopers and Sergeants increased by only 30.2% for this same period, with the largest gap occurring in recent years as a result of zero wage adjustments since 2009. The arbitrator also notes that the State provides a geographic pay differential to accommodate such cost of living variances around the

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<sup>10</sup> [Tr. at 206, Ln 7-11]

<sup>11</sup> [Association Exhibit Ax 2-3, pages 15 -17]

state.<sup>12</sup> The highest amount differentiated is 10.0% for those Troopers assigned to King County, with lesser amounts for neighboring counties. Such an adjustment would seem in large part to negate the Association's argument that the Troopers and Sergeants have not maintained balance with the cost of living.

## B. Recruitment

The Association next argues that the State has been unable to recruit sufficient Troopers so as to jeopardize the mission of the Washington State Police, as the organization is unable to fill natural vacancies as well as those that may be wage related. The later point will be addressed more fully below.

The State reminds the arbitrator that it does not generally hire Troopers as new recruits, but instead it is one of the few police agencies in the State of Washington and possibly the country that operates a Cadet program as the source of potential new Troopers. The Cadet program is not represented and appears to be funded separately from that of the Washington State Police.<sup>13</sup>

The arbitrator heard testimony from the Chief and Deputy Chief that confirm the Association's finding that recruitment is down in recent years. However, neither were particularly concerned with the overall ability to attract Troopers, most generally through the State's Cadet program. Though the 20 year trend in applications is down from a high of 4,371 in 1992, according to State's Exhibit 13-4, it shows that applications have actually increased to 2,628 in 2010, and have been on the rise generally from an almost record low of 978 applicants in 2005. More importantly, the State appears to have ample applications to ensure 68 or more candidates are able to attend Phase 1 of the Cadet training each month.<sup>14</sup>

Accordingly, the arbitrator concludes that the State does not appear to be experiencing a recruitment issue at this time, at least not from the State's Cadet program which is its primary source for new recruits.

## C. Retention

The parties both recognize that the State's ability to retain experienced officers is very important to the success of the organization and a practical solution to budgetary problems due to the high costs associated with training replacement personnel. The Association points to State's Exhibit 13-9 as proof that the number of officers leaving the State's employment is due in large part to a low wage. From February 2009 to May 2012, approximately 113 officers left employment with the State as Troopers or Sergeants. Of those, it appears that 73 or 64% retired from the State's service as a Trooper or Sergeant, though 4 returned to work in a different capacity. It is also true that Troopers and Sergeants can retire with full retirement benefits after 25 years of service.

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<sup>12</sup> [TR. at 280, Ln 16-21, and Association Exhibit 2-15 (2012-2013 Labor Agreement), Page 83]

<sup>13</sup> [Tr. at 411, Ln 9-19]

<sup>14</sup> [Association Exhibit E 13-6]

It was unclear to the arbitrator whether or not any Trooper or Sergeant could retire after 25 years of service and return to work as a Trooper or Sergeant without jeopardizing their retirement benefit. Of those Troopers and Sergeants retiring, 4 appear to have gone to work for another law enforcement agency. The arbitrator will address the impact of retirement in greater detail as it relates to the longevity issue.

The Association believed that the State's exhibit was slightly in error as they believed that an additional 4 Troopers or Sergeants had also retired or resigned from State employment to assume positions within other police departments within the State of Washington. Assuming the Association's position is accurate, there appear to be approximately 13 or 11.1% Troopers or Sergeants that left employment with Washington State Patrol to accept gainful employment with a different law enforcement agency within the State of Washington.<sup>15</sup>

Though the State would prefer not to lose any of its officers to competing law enforcement agencies or any other employer, it could not be said definitively that such loss was the direct result of low wages or a deficient wage scale within the Washington State Patrol. Deputy Chief Karnitz responded to such line of questioning as follows.

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15 Q. (By Ms. Hanson) Now, we saw yesterday  
16 testimony and this chart indicates there have been a  
17 number of troopers in recent years who have left the  
18 Washington State Patrol to work for other law  
19 enforcement agencies in Washington.

20 Do you recall that?

21 A. Yes.

22 Q. Are you concerned by those departures?

23 A. Mostly no.

24 Q. Why not?

25 A. Again, because people leave for a variety of

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1 reasons, and we don't always lose our best employees  
2 short of retirement. Reasons such as disciplinary  
3 issues, issues of attitude play in there as well.

4 Q. Has it ever occurred in your experience that  
5 troopers or sergeants who have left the State Patrol  
6 for more lucrative employment elsewhere have sought to  
7 return to employment with the State Patrol?

8 A. Yes.

9 Q. What do you know about that?

10 A. Captain Lamerl, when he was in charge of  
11 our human resource division, reported at one of our  
12 strategic advancement forums. His research indicated

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<sup>15</sup> Officer Pillow for the Association recalled at least 9 officers that retired and went to work for other law enforcement agencies in the State of Washington. [Tr. at 428, Ln 9-13]

13 that in recent years approximately half of those  
14 employees, troopers, who left have asked to return or  
15 reapply.

16 Q. And do you know whether any of those who  
17 asked to return were rehired?

18 A. Again, from what Captain Lamer reported,  
19 we hire back about half of those who have applied to  
20 return.

21 Q. And are you also -- has it ever happened in  
22 your experience at the State Patrol that a trooper  
23 will reach 25 years employment with the State Patrol  
24 and then choose to retire, but go on to another career  
25 at that point?

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1 A. The vast majority of troopers that leave at  
2 25 years or soon after get other employment, whether  
3 law enforcement or another line of work.

4 Q. And is that something that you find unusual?

5 A. No. That's the norm.

6 Q. Do you consider that to be a retention  
7 issue?

8 A. No. That's one reason the state gave  
9 troopers a 25 year retirement; and we hire as low as  
10 19 and a half years old. So many, if not most of our  
11 retirees are still of a working age, and they take  
12 advantage of, if you want to call it, double dipping,  
13 enjoy a career and then a retirement for the rest of  
14 their life, and then still be able to work full time,  
15 and essentially be on time and a half for the rest of  
16 their working years.

17 Q. And are you aware of some of the reasons why  
18 a trooper with 25 years in would choose that path?

19 A. Why they would?

20 Q. Yes.

21 A. Most cannot retire and live off the  
22 retirement when they retire in their 40s, so  
23 economically it makes sense to continue to work.

24 Q. Is there also a burnout factor in your  
25 experience?

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1 A. Yes. People tend to want a change of pace  
2 at some point.

As shown on State's Exhibit 13-9, approximately 10 officers resigned their employment prior to retirement to take other jobs. Of those, only half or 4.4% took other positions of

employment with alternate law enforcement agencies within the State of Washington. Such a modest number does not, by itself, suggest a serious retention issue at this time.

However, the arbitrator notes the obvious conclusion that based on the comparable wage finding previously discussed, and without appropriate market adjustments, retention issues could become a serious problem for the State of Washington in the future.

#### D. Ability to Pay

The State leans heavily on its argument that it has an inability to pay for the increases that the Association has proposed during the 2013-2015 biennium, and therefore it would be inappropriate for this arbitrator to award that which the State could not afford. Such financial concern is the basis for its offer to freeze wages for the Troopers and Sergeants. The Washington State Patrol Chief John Batiste, noted that if the State could afford it, he would prefer to see a wage adjustment for the Troopers and Sergeants. The parties also reminded the arbitrator that any award here would have to be approved by the state legislature which essentially has final say on the wages to be paid to the Troopers and Sergeants. Though the arbitrator's award may not be final and binding upon the parties, nevertheless the arbitrator is charged with the responsibility to determine whether or not a wage adjustment is appropriate for the Troopers and Sergeants pursuant to the statutory guidelines set forth above.

The State furnished considerable testimony and exhibits to outline the budgetary process and sources of funding that are applicable to the Washington State Patrol. Though the Association has shown that there have been instances where the State of Washington has moved funds around from one account to another to address budgetary shortfalls, with two examples involving the Washington State Patrol,<sup>16</sup> there was no evidence presented to the arbitrator that would show that the State had a continued requirement to do so in the future, or that there was any expectation of such creative bookkeeping to settle accounts. Likewise there was no evidence to show that such could not be accomplished in the future if needed. And of course, the State could once again raise fees in order to help balance its budget.

State's witness Stan Marshburn, Deputy Director with the State's Office of Financial Management, educated the parties as to financial prognosis for the State of Washington over the next biennium. He spoke with authority and considerable knowledge on the subject, highlighting his explanation of the likelihood of a 1.5 billion dollar general fund deficit by the end of the 2013-2015 biennium.<sup>17</sup> However it is also noted that the general fund is not the primary source of funding for the Washington State Patrol, as there is a transportation budget for that primary purpose. The transportation budget has a projected deficiency of 159.6 million dollars over the next biennium, including a projected 15.2 million dollar deficit for the Washington State Patrol Highway Account within such overall budget.<sup>18</sup> State's Exhibit 8, page 6 shows the State Patrol Operating

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<sup>16</sup> [See Association's Exhibit 15-1]

<sup>17</sup> [Tr. at 351, Ln 13-19]

<sup>18</sup> [State Exhibit 8, Page 8]

Budget to include 74% funding from the transportation budget and 26% from the State's general or Omnibus fund.

Certainly the arbitrator may factor the State's projected budgetary deficits into the "such other factors" consideration as noted in RCW 41.56.475(4)(e). The extent of such factor may be tempered by the fact that ultimate authority to evaluate and fund the State's budget rests with the Washington State legislators.

#### E. Local Labor Market

The Association encourages the arbitrator to consider the local labor market as one of the additional factors to be evaluated. As the differences between the State's own non-competitive admission compared to the Association's data following a very thorough and elaborate cost analysis, is de minimus, there appears no need to delve into such specifics.

As both issues before the arbitrator are significantly related and completely intertwined, the arbitrator's position on the first issue will be answered simultaneously with that of the second issue.

#### ISSUE 2. LONGEVITY

Many of the same factors evaluated above also have application here as to the proposed premium pay for Troopers and Sergeants with 25 years of service. This evaluation will focus on those components or factors that require further evaluation relative to the unique attributes of such proposal.

#### **Comparables**

Having determined that the State's comparables will be adopted for purposes of this arbitration, we note that the same spread exists between the 10 year service mark and that of 25 years in order to bring the Trooper and Sergeant wage schedule into line. Had the spread been greater at the 25 year service mark, then a longevity premium pay adjustment would clearly have been indicated. As the converse appears to be true, then there is no justification for such adjustment purely based on the comparables.

#### **Other Factors**

The only other issue that may require evaluation, save the State's ability to pay argument, is that of RETENTION.

State's witness Deputy Chief Kranitz testified that it was not unusual for an officer to leave employment with the Washington State Patrol once they had worked the minimum 25 years in order to attain their full retirement benefit.<sup>19</sup> As many officers came into employment in their late teens or early twenties, most would be eligible for full

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<sup>19</sup> [Tr. at 277 – 278 Ln 21 – 23]

retirement while they were still young enough to take on a second career. It appears obvious that a retiring officer could maximize their income if they were to “double-dip.” The only question then is whether or not a longevity premium pay adjustment would be sufficient to entice an officer to remain employed with the Washington State Patrol. State’s witness Karen Durant testified that an officer retiring with 25 years of service would receive roughly 50% of their pay as their retirement benefit.<sup>20</sup> It is hard to see how a 2% premium pay adjustment could offset one’s full retirement benefits and entice an officer to remain employed from an economic standpoint. We also learned from Officer Tommie Pillow that a retiring officer currently could return to work for the Washington State Patrol, but only if they returned to work in a non-commissioned capacity.<sup>21</sup> Certainly, the current retirement options and economic realities available to Troopers and Sergeants may be too tempting for an officer to forego such consideration. As the arbitrator has no jurisdiction over issues such as retirement and health insurance benefits, it is too much for the arbitrator to comment on the current retirement formula and possible retention issues that may be inherently damaging by design. That matter will be left to the Washington State legislators.

## CONCLUSIONS

Since the Association’s argument involves only those officers that have obtained 25 years of service, and for all of the reasons noted above where the economic forces at work would seem to nullify the value of a 2% longevity premium pay step for 25 years of service, the arbitrator will not award such benefit. The arbitrator upholds the State’s position relative to the second issue – longevity, but only as it pertains to a new 25 year longevity step.

As for the former issue – wages, the arbitrator finds the following:

1. The State’s inability to pay argument is of concern to the arbitrator but of insufficient weight given the precarious nature of budgets and the taxing authority of the state to completely negate the economic realities concerning the current wage structure of its Troopers and Sergeants. The parties further recognize that the Washington State Legislature will ultimately determine the priority of its funding responsibilities and the means by which these priorities can be realized.
2. The Association has proven (largely by the State’s own admission) that the wages for Troopers and Sergeants are sufficiently lacking and that a wage adjustment is appropriate during the period of the 2013-2015 biennium. The following adjustments are deemed appropriate based upon the “west coast” comparables identified herein, and the totality of such other factors as discussed above, including the dire economic forecast facing the State of Washington:

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<sup>20</sup> [Tr. at 432 Ln 17-19]

<sup>21</sup> [Tr. at 429-430, Ln 22-3]

- A. Effective July 1, 2013, all salary ranges and steps of the WSP Commissioned Officer Salary Schedule that was in effect on June 30, 2013, shall be increased by three percent (3%) as shown in Appendix A.
- B. Effective July 1, 2014, the Longevity Premium Pay identified on Article 28.4 of the WSPTA 2012-2013 Agreement shall be increased from two percent (2%) to three percent (3%).

**AWARD**

Based upon the testimony presented and the record established by the parties to this proceeding, in accordance with the authorization and responsibility placed upon the arbitrator under RCW 41.56.475, the arbitrator hereby Awards the Association a wage adjustment for the 2013-2015 Collective Bargaining Agreement between the State of Washington and the Washington State Patrol Troopers Association, as identified immediately above.

Respectfully submitted,

David M. Blair  
*Arbitrator*

## Arbitration clarification to award received on September 25, 2012

### **28.4 Longevity Premium Pay**

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

- A. Two percent (2%), longevity pay based upon the top pay step of the Commissioned Officer Salary Schedule shall be added to the salaries identified in the applicable Appendix for all employees with five (5) through nine (9) years of commissioned service. Effective July 1, 2014, longevity pay based upon the top pay step of the Commissioned Officer Salary Schedule shall be added to the salaries identified in the applicable Appendix for all employees with five (5) through nine (9) years of commissioned service shall be increased to three percent (3%).
- B. An additional two percent (2%) longevity pay shall be added for all employees with ten (10) through fourteen (14) years of commissioned service.
- C. An additional two percent (2%) longevity pay shall be added for all employees with fifteen (15) through nineteen (19) years of commissioned service.
- D. An additional two percent (2%) longevity pay shall be added for all employees with twenty (20) or more years of commissioned service.