INTEREST ARBITRATION BEFORE
ARBITRATOR MICHAEL ANTHONY MARR

SEATTLE, WASHINGTON

In the Matter of the Interest Arbitration	)	OPINION AND AWARD
	)	
	)	Case 26628-I-14-0652
	)	
between the	)	WATCH SUPERVISORS COLLECTIVE BARGAINING AGREEMENT FOR THE 2015-2017 BIENNIUM
	)	
INTERNATIONAL ORGANIZATION OF MASTERS, MATES, AND PILOTS,	)	
	)	September 16, 2014
Union,	)	
	)	
and	)	
	)	
STATE OF WASHINGTON, OFFICE OF FINANCIAL MANAGEMENT AND THE WASHINGTON STATE FERRIES DIVISION,	)	
	)	
Employer.	)	
	)	

OPINION AND AWARD

The above-referenced interest arbitration was heard before your Arbitrator on August 19 and 20, 2014 in Seattle, Washington.[1] The proceedings were transcribed by Katie A. Eskew, a court reporter from Bryers and Anderson. Therefore, as a general rule, the source for a statement of fact or alleged statement of fact shall be followed by the last name the attorney, witness, or exhibit, shall be in parenthesis, and if applicable, include the page and line number.

[1] This decision and award shall refer to many arbitrators. Therefore, the words "your Arbitrator" shall always be in reference to arbitrator "Michael Anthony Marr."

Your Arbitrator was mutually selected by the parties as the interest arbitrator for the above-referenced interest arbitration. Both parties were represented by professional and competent counsel at the arbitration hearing. The International Association of Masters, Mates and Pilots, Watch Center Supervisors, hereinafter sometimes referred to as the "MMPS"[2] or "Union" was represented by Rhonda J. Fenrich, Esq. The State of Washington, Department of Financial Management and the Washington State Ferries Division, hereinafter sometimes collectively referred to as the "WSFD," or "State" or "Employer" were represented by Assistant Attorney General Morgan B. Damerow. During the arbitration hearing 30 State exhibits and 24 Union exhibits were stipulated into evidence. Union Exhibit 1 was the current Collective Bargaining Agreement between the parties and shall sometimes hereinafter be referred to as the "CBA."

The parties were given full opportunity to present evidence, call witnesses, and cross-examine witnesses. The parties also agreed to make closing oral arguments in lieu of written closing briefs on the second day of the arbitration hearing, August 20, 2014. Your Arbitrator's opinion and award is therefore due on or before October 1, 2014.[3]

Your Arbitrator has reviewed the testimony and evidence presented during the arbitration hearing and the written transcripts of the proceedings. Your Arbitrator does not feel compelled to address all of the numerous arguments and issues raised by these professional advocates. Please note that this is not to be interpreted that your Arbitrator has not read and reread his notes, the transcripts and numerous pages of exhibits and carefully considered all arguments of counsel. Rather, your Arbitrator has elected to

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[2] The acronym "MMPS" shall also refer to "Masters, Mates, and Pilots, Supervisor" or "Master, Mates, and Pilots Supervisors," depending upon the context of the statement in which the acronym is used.

[3] RCW 47.64.170(c) provides that the resolution of all collective bargaining agreements between the Washington State Ferry Division and the unions that represent its employees must be resolved, either by way of bargaining or arbitration, no later than October 1 of each even numbered year.

address only those elements that your Arbitrator is mandated to consider pursuant to the Revised Code of Washington, Chapter 47.64 which have had a significant impact on his decision-making process. Your Arbitrator, as a general rule, will not comment on matters he believes are irrelevant, superfluous, redundant, or rendered moot by his opinion and award.

I. BACKGROUND

The International Masters, Mates, and Pilots Union and the State of Washington, Office of Financial Management and the Washington State Ferries Division were unable to successfully negotiate the content of Rule 11.01, 11.02, and 17.02 to their 2015-2017 collective bargaining agreement using the collective bargaining process. They were also unable to agree during bargaining process whether the relief Watch Center Supervisor is entitled to three percent (3%) premium pay.

The issues, positions, and proposals of the parties were eventually set for interest arbitration before your Arbitrator pursuant to RCW, Chapter 47.64. These matters are more fully discussed below.

II. EXHIBITS

State's Exhibits in Evidence by Number as Marked.

1. RCW 47.64.005
2. RCW 47.64.006
3. RCW 47.64.320
4. LRS Request to PERC - Interest Arbitration
5. 2014 OFM Transportation Outlook,
6. Operating Budget Instructions Cover Memo
7. OFM Marine Employees Compensation Survey/Durocher PPT KD edits
8. Ops Center Watch Supervisor
9. WSF Watch Supervisors Job Duties Breakdown
10. King County Transit Communications Coordinator Job Description
11. Port Captain – Foss

12. Operations Superintendent – Port of Tacoma
13. Watch Center Supervisor Duties
14. King County Comparator Email
15. King County Transportation Contract v.2
16. MM&P Ops Watch Supervisors Shift Differential 2014 Final
17. MM&P Watch Supervisors Costing
18. Leave Cash Out Costing
19. Watch Center Schedule
20. Watch Center Log
21. 2009-11 Opinion and Award MM&P MOW
22. 2011-13 Award 23 Sept 10 Decision and Award
23. 2011-13 Award 23 Sept 2010 Decision (Wages)
24. 2013-2015 Opinion and Award 9/21/12
25. WSF Fact Sheet Feb 2014
26. WSF Ferry map regarding terminals, routes, and interstate highways.
27. WSF Ridership History 1951-2013
28. Ferry Fleet Guide June 2011
29. Letter from Michael P. Sellars, Executive Director, PERC, certifying issues.
30. MM&P 2013-15, Rules 8.7, 8.8 and 29.

Union's Exhibits in Evidence by Number as Marked.

1. Current Collective Bargaining Agreement
2. MM&P Final Offer
3. 2011 OFM Salary Survey
4. WSF Vacation Comparison Chart
5. IBU Vacation Schedule
6. MEBA Vacation Schedule
7. Terminal Supervisor Vacation Schedule
8. IBU Arbitration Award for 2013-2015 CBA
9. MEBA Arbitration Award for 2013-2015 CBA
10. IBU CBA Salary and Vacation Schedule
11. Executive Salary Increases
12. WSF Strategic Plan on Pricing
13. 2013 WSF Ridership Statistics
14. WSF FY 2012 Route Statements
15. WSF Largest Ferry Documents
16. WSF Fuel Cost Mitigation Report
17. ATU Tentative Agreement
18. King Co. Job Description
19. June 2012 Transportation Revenue Forecast
20. June 2013 Transportation Revenue Forecast
21. June 2014 Transportation Revenue Forecast
22. OFM Projections – 2010 and 2012
23. The Culverts Case Injunction

24. Major Transportation Accounts updated June 2010 Revenue Forecast

III. THE WASHINGTON STATE FERRIES DIVISION

The WSFD is a division of the Washington State Department of Transportation. (State Exhibit 25). It was created in 1951, is the largest ferry system in the United States and the fourth largest in the world. (State Exhibit 25). It is also the largest ferry system in the world in terms of the total number of vehicles (10 million per year) transported. (State Exhibit 25). It has 22 auto-passenger ferries, operates 20 terminals on 10 routes, has 450 departures per day, and approximately 1,800 employees. (State Exhibit 25). The WSFD is specifically designed to accommodate commercial vehicles and is the sole link for goods and services to Vashon Island and the San Juan Islands. (State Exhibit 25). The Seattle/Bainbridge Island route is its busiest route, carrying more than six (6) million riders per year. (State Exhibit 25).

IV. THE WATCH SUPERVISORS' JOB RESPONSIBILITIES AND DUTIES

The bargaining unit of Masters, Mates, and Pilot Supervisors consists of six (6) employees. (Williams at 126:9). The MMPS work a 24/7 schedule. (Williams at 126:12). They work together as a group to set their schedules and try to keep their overtime down. (Williams at 126:20). There are times when supervisors work and there is no management official available. (Holder at 213:2-3). The number of hours that a management official would not be available depends on the shift. (Holder at 212:25-213:1).

The MMPS are dedicated and long-term employees. (Williams at 128:21-25). There are no open positions. (Williams at 128:15-16). Two (2) supervisors are "long-term" with the WSFD, two (2) have been with the WSFD for approximately nine (9) to

ten (10) y ears, and two (2) have been with the WSFD for less than two (2) years. (Williams at 129:16). Some MMPS are retired, some were tired of working, and one found other employment. (Williams at 129:22-25). No more than one watch supervisor takes vacation leave at a given time unless there are very unusual circumstances. (Williams at 132:19-20).

The MMPS have a wide variety of tasks and responsibilities. (State Exhibit 8, Williams at 123:16-17). They are the focal point between the fleet management and terminals, law enforcement, Coast Guard, aid cars, and different fire departments that connect with the WSFD. (State Exhibit 8, Williams at 123:17-20, 148:21-149:25). The watch supervisors are responsible for disseminating communications between all of these groups. (State Exhibit 8, Williams at 123:20-22).

Additional duties were added to the MMPS after September 11, 2001. (Vol 2, Braymer at 8:4-5). These duties included monitoring security issues and responding to the Coast Guard. (Vol. 2, Braymer at 9-13). The Coast Guard watches the MMPS very closely to make certain they respond with proper and timely reports. (Vol. 2, Braymer at 14-16).

The MMPS does "massive" amounts of recordkeeping which relate to vessels, the EPA, and oil spills. (Williams at 123:23-25). They are also responsible for tracking revenue trips that are lost and ones that are regained due to service disruptions or a breakdown in the system. (Williams at 123:25-124:3). They track 835s, which are similar to deficiencies which the Coast Guard issues for repairs, and make certain that the 835s are closed in a timely manner. (Williams at 124:4-6). They work after hours with the dispatch department when it is necessary to contact Captain Williams, their supervisor, or

a port captain for advice. (Williams at 124:7-10). Other duties of the MMPS include assisting the captains, after hours between 10:30 pm until 6:00 am, with dispatch. (Williams at 124:10-12). The watch supervisors make everyone's life easier as they each are a jack-of-all-trades. (Williams at 137:1).

The MMPS are evidently the eyes and ears of the decision makers in the absence of a port captain. (Vol. 2, Saffle at 43:11). The MMPS have saved Captain Saffle many sleepless hours at night. (Vol. 2, Saffle at 2-3). No other group of WSFD employees has the scope of authority that the MMPS has except for the port captain who is their supervisor and the crew resource manager who is in charge of the dispatchers. (Vol. 2, Braymer at 30:17).

V. WITNESSES

During the arbitration hearing the State called six (6) witnesses, Dwayne E. Hanson,[4] Captain Pete Williams,[5] Kamaron Durocher,[6] Kim Grindrod,[7] Matt Hanby,[8] and Jerry Holder.[9] The Union called three (3) witnesses, Scott Braymer,[10] Marie Waterman,[11] and Captain Tim Saffle.[12]

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[4] Mr. Dwayne E. Hanson has worked as a budget assistant to the Governor of the State of Washington, Office of Financial Management. (Hanson at 20:8-10). One of his duties is to assist the Governor who in turn submits a budget to the Legislature regarding transportation finances. (Hanson at 20:11-13). He has held this position for six (6) years. (Hanson at 20:25).

[5] Mr. Pete Williams has been a Captain with the Washington State Ferry System for the last three (3) to four (4) years. (Williams at 122:22-23). He oversees supervisors. (Williams at 122:18-19).

[6] Ms. Kamaron Durocher has been employed for approximately two (2) months in the State's Human Resource Department and does salary compensation reports. (Durocher at 141:25).

[7] Ms. Grindrod has been employed since October, 2013 with the State as a compensation and policy analyst. (Grindrod at 172:3-4).

[8] Mr. Matt Handy has been an operating budget program manager for the State for ten years. (Hanby at 198:17-18, 20).

[9] Mr. Jerry Holder represents the Governor's office as the lead negotiator for the State with the Union. (Holder at 202:25-203:3).

[10] Mr. Scott Braymer is the senior MMPS with 17 years of experience in the positon. (Vol. 2, Braymer at 5:2).

[11] Ms. Marie Waterman has been with the WSFD for 15 years, the last seven (7) to eight (8) of which has have been as a watch center supervisor. (Vol. 2, Waterman at 35:19).

[12] Mr. Tim Saffle is the regional representative for the International Organization of Masters, Mates & Pilots for the last five (5) years. (Vol. 2, Saffle at 41:9-10, 12). He also worked for the WSFD for 35 years, the last nine (9) years in various port captain positions. (Vol. 2. Saffle at 42:20-19).

VI. STIPULATIONS

Most of the following stipulations were preliminary matters prior to taking evidence:

1. All exhibits were admitted into evidence. (Arbitrator at 64:1-5).

2. Mediation as required by RCW 47.64.210 had been met or waived pursuant to RCW Chapter 47.64.230. (Fenrich at 4:18-19, Damerow at 4:21).

3. The interest arbitration was properly before your Arbitrator pursuant to RCW 47.64. (Fenrich at 4:25, Damerow at 5:1).

4. The interest arbitration before your Arbitrator is governed by the RCW Chapter 47.64. (Fenrich at 5:5, Damerow at 5:6).

5. The parties agreed to submit the interest arbitration dispute for consideration and determination by a single arbitrator, that arbitrator being your Arbitrator, pursuant to Section the RCW 47.64.300(1)(2). (Fenrich at 5:12, Damerow at 5:13).

6. The parties agreed that the classification of Ferry Employees covered by the interest arbitration are the Watch Center Supervisors, Relief Watch Center Supervisors, and On-Call Watch Supervisors. (Fenrich at 5:17, Damerow at 5:18).

7. Executive Director Michael Sellars certified specific issues for the interest arbitration. (Fenrich at 5:23-25, Damerow at 6:4-5, State Exhibit 29).

8. None of the certified issues have been settled by the parties. (Fenrich at 6:10, Damerow at 6:11).

9. The parties agreed to oral closing argument in lieu of written closing briefs. (Vol. 2, Fenrich at 63:10, Vol. 2, Damerow at 63:11).

VII. APPLICABLE LAW

As noted above, the parties stipulated that the interest arbitration before your Arbitrator is governed by RCW 47.64. The policy declaration for RCW 47.64 is set forth in RCW 47.64.005 and provides as follows:

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 serve the interests of the people of the state.
RCW 47.64.006 further sets forth several public policy considerations for RCW 47.64:

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.

Also, RCW 47.64.320 (3) provides that your Arbitrator must be "mindful" of the legislative purpose and public policy set forth in RCW 47.64.005 and RCW 47.64.006 and is directed to consider 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 the public and private sector employees in states along the west coast of the United States, including

Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved;

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

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

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

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

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

Accordingly, your Arbitrator has applied the declaration set forth in RCW 47.64.005, the public policy considerations set forth in RCW 47.64.006, and the factors set forth in RCW 47.54.320 (3) to the certified issues that are the subject of this Opinion and Award as set forth below.

VIII. CERTIFIED ISSUES

Michael P. Sellars, Executive Director of the Public Employment Relations Commission, by letter dated July 23, 2014 (State Exhibit 29) certified the following issues for interest arbitration:

Rule 11	Classification of Wages
Rule 11.01	Basic Wage Rate
Rule 11.02	Shift Premium
Rule 11.03	Relief Position Premium
Rule 17	Vacations
Rule 17.02	Vacation Leave

Rule 11 Classification and Rates of Pay

IX. OVERVIEW OF BARGAINING HISTORY

RCW 47.64.320 (3) (b) provides that a factor that your Arbitrator must be mindful of in awarding or denying any proposal is past collective bargaining contracts and bargaining that led to those contracts. The Watch Center Supervisor classification was created in 1995. (State Exhibit 21-3). At this time they were paid under the regular government employee schedule. (State Exhibit 21-2). In October of 2004 the International Organization of Masters, Mates, and Pilots became the bargaining unit for the MMPS. (Employer Exhibit 21-3). The 2005-2007 and 2007-2009 collective bargaining agreements were negotiated by the Union on behalf of the MMPS. (State Exhibit 21-3).

Since 2007, the State and the MMPS have been unable to successfully negotiate their differences regarding Rules 11.01, 11.02, and 17.02. Each round of bargaining has led to interest arbitration proceedings and arbitration awards regarding each Rule. In the interest arbitration proceeding before your Arbitrator the Union proposed for the first time that the Watch Center Supervisor working the relief position receive a premium of an additional three percent (3%) pay.

The State in each interest arbitration argued that it had an inability to pay. The first interest arbitration award was issued by Arbitrator Michael H. Beck who issued a decision and award on September 26, 2008. (Employer Exhibit 21). The second interest arbitration award was issued by Arbitrator Timothy D. W. Williams on September 23, 2010. (Employer Exhibit 22). The third interest arbitration award was issued by Arbitrator Luella E. Nelson on September 21, 2012. (State Exhibit 24). The awards of

Arbitrators Beck and Williams were never implemented due to the State's financial situation. The award of Arbitrator Nelson was implemented and is part of the current CBA. Each arbitrator's award regarding the proposals of the parties as they relate to the interest arbitration before your Arbitrator shall be discussed more fully below.

X. OVERVIEW OF ABILITY TO PAY

RCW 47.64.320 (3) (a) provides that a factor that an interest arbitrator must be mindful of is the financial ability of a department to pay for compensation and fringe benefits. The record of testimony indicates that the financial ability of the WSFD to pay for compensation and fringe benefits is largely dependent upon the financial condition of the State of Washington, the actions of the Governor, and the approval of the Legislature. The ability to pay is most certainly a paramount consideration that an interest arbitrator will consider in determining if a proposal for either the Union or the State should be awarded.

The burden of proving the inability to pay in this is on the State. As noted in Elkouri & Elkouri, *How Arbitration Works*, (7th Edition, 2012), at page 22-97:

> Employers who have pleaded inability to pay have been held to have the burden of producing sufficient evidence to support the plea. The alleged inability must be more than speculative and failure to produce sufficient evidence will result in a rejection of the plea.
>
> While an employer who claims "inability to pay" has the burden of proof on the issue, if financial exigency appears to be continuing and the employer is using reserves to pay for current costs, arbitrators will temper any wage increase. But even if past dismal financial results support the employer's position, the claim may be discounted if the evidence shows that the employer's fiscal prospects are improving.
>
> An employer's deteriorating ability to pay may be established by financial projections of future expenses and income. An arbitrator observed that interest arbitration awards that are issued in the present period and that

cover wage and benefits paid out over future periods must rely on financial data that are prospective in nature.

The WSFD's inability to pay argument was presented by Mr. Dwayne E. Hanson, a budget assistant for the Office of the Governor. He began by explaining exhibits and data through an impressive power point presentation that related to the State's operating budget ($67.6 Billion Dollars), its Capital budget ($3.6 Billion Dollars), and the transportation budget ($9.3 Billion Dollars). The evidence indicates that the State of Washington and the WSFD has budget problems. (State Exhibit 5). The Legislature has restricted portions of the Ferry System budget for specific uses such as $113.2 million dollars strictly for fuel. (Hanson at 39:5-13). Capital expenditures, by statute, cannot be used for operating expenses. (Hanson at 39:14-24).

Seventy-five percent (75%) of the transportation budget is supported by a gas tax. (Hanson at 27:20, State Exhibit 5). Gas tax revenues are expected to drop. (Hanson at 47:5-10). Gas taxes are the largest source of revenue for the transportation budget. (Hanson at 28:2-3). The Legislature funds the transportation budget. (Hanson at 30:12-25). The transportation budget includes 1.2 billion dollars in bond retirement and interest payments. (State Exhibit 5).

Although there is a directive to look for ways to conserve and cut expenditures up to 15%, all transportation agencies were specifically excluded from the directive. (Hanson at 69:22). Ferry fare box revenues are not enough to fund the ferry account. (Hanson at 28:19-23). Other revenue sources include taxes, fees, permits, and tolls. (Union Exhibits 19, 20, 21, and 22). While discretionary ferry trips declined after fare increases they are beginning to rise again but peak usage has not been reached. (Hanson at 34:13-14, State Exhibit 27).

For the 2015-2017 budget the Office of Financial Management requested that agencies rebase state program budgets to a level below the maintenance level budget request for programs not protected by either state constitutional provisions or by federal law. (State Exhibit 6).

The State must "continue phasing in Legislative commitments to increase K-12 education by at least 5 billion dollars over the next two biennia to meet responsibilities and obligations mandated by *McCleary v. State of Washington.* (State Exhibit 6). In addition, the Culvert case could cost the State an additional $2.4 billion dollars. (Hanson at 53:19-25, Union Exhibit 23).

As of June 13, 2014 the State of Washington's economy was slowly recovering from one of its deepest recessions in 70 years. (Hanson at 25:20-25; 41:1-3, State Exhibit 6). While state revenues were rebounding at a rate much slower than after previous recessions, the demands on the State of Washington's resources have outpaced revenue growth through inflation and mandatory caseloads. (State Exhibit 6). The State of Washington faces cost pressures to address workforce compensation needs and to meet continuing and emerging policy issues. (State Exhibit 6).

Mr. Jerry Holder, the lead negotiator for the State of Washington, testified that although the MMPS is "an integral part and very important to the operation of the ferries" (Holder at 204-11-25) the State does not have the ability to pay an increase in salary and benefits requested by the Union but has offered a three percent (3%) wage increase. (Holder at 204:11-25).

Mr. Holder testified that he was allowed to propose a maximum limit of three percent (3%) and this was offered at the beginning of negotiations without starting low

and ending with three percent (3%). (Holder at 204:21-25). However, he was uncertain where the three percent (3%) would come from. (Holder at 206:11-12). The three percent (3%) wage increase was offered to all maritime unions (Holder at 210:25) including the IBU which represents approximately 800 employees. (Holder at 211:3).

While the State has presented evidence of financial problems and budget difficulties it has affirmed that it can afford a three percent (3%) pay increase to the MMPS. Using the same evidence, the State asserted that it could not afford to pay a five (5%) pay increase for the 2015-2017 contract. While the State did maintain that it was uncertain how it intended to fund the three percent (3%) wage increase your Arbitrator must respectfully ask why the State believes it has the ability to pay a three percent (3%) increase but not a five percent (5%) increase given the evidence that was presented? This critical distinction was not provided to your Arbitrator in any testimony or other evidence.

The MMPS is an extremely small bargaining unit that consists of only six (6) supervisory employees. (Williams at 126:9, State Exhibit 9). As noted above, the WSFD has approximately 1,800 employees. (State Exhibit 28). The Union's wage and benefit proposal for the 2015 – 2017 biennium totals $99,817.00. (State Exhibit 17). This is a very small amount of money when compared to the 2013 – 2015 Biennium Transportation Budget which was approximately $9.3 billion dollars. (State Exhibit 5). The difference between the Union's proposals and the State's proposals totals $66,636.00. (State Exhibit 17). Your Arbitrator believes it is worth repeating again, with the utmost respect, that your Arbitrator does not understand how the State can afford a three percent (3%) wage increase but not a five percent (5%) wage increase. Given the

record of this interest arbitration, your Arbitrator is not persuaded that the State has met its burden of proof and concludes that the State has the ability to pay the MMPS both a three percent (3%) wage increase with proposed benefits as well as a five percent (5%) wage increase with proposed benefits totaling $99,817.00. (State Exhibit 17).

Despite your Arbitrator's conclusion regarding the State's ability to pay it is significant to note this is only one of many factors that your Arbitrator must be mindful of in considering an arbitration award. To the extent possible, your Arbitrator, given the record before him, has been mindful of all factors set forth in in RCW 47.64.320 (3).

XI. ISSUES, ANALYSIS AND AWARD REGARDING WAGE PROPOSALS[13]

The Union's wage proposals are set forth in Union Exhibit 2. The State's Wage Proposal is contained in State Exhibit 4.

XI.A. UNION'S WAGE PROPOSAL

The Union's wage proposals as set forth in Union Exhibit 2 are as follows:

Rule 11:01 Effective July 15, 2015 the basic wage rate for all Watch Center Supervisor classifications is thirty-nine dollars and thirty-eight cents ($39.38). Ef fective July 1, 2016, the basic wage rate for all Watch Center Supervisor classifications is forty-one dollars and thirty-five cents ($41.35).

Rule 11.02 Shift premium will be as follows:
Effective July 1, 2015, the basic shift premium will be One dollar ($1.00) per hour.

Effective July 1, 2015, all Watch Center Supervisors working in the relief position will receive a premium of an additional three percent (3%).

XI.B. THE STATE'S WAGE PROPOSAL

[13] The CBA between the parties has a Rule 11.1, 11.2 and Rule 17.2. There is no reference to a Rule 11.01, 11.02, and 17.02 in the CBA. However, the Union and the Public Employees Relations Commission have apparently referred to Rule 11.1 as Rule 11.01, Rule 11.2 as Rule 11.02 and Rule 17.2 as Rule 17.02. The parties did not explain to your Arbitrator why different numbers, while having the same numerical value, have been used by the parties when referring the CBA. Please note that your Arbitrator shall use the rule numbers as referenced by the Public Employees Relations Commission for purposes of consistency throughout this opinion and award.

The State's wage proposals as set forth in State Exhibit 4 provide as follows:

The rate of pay for the 2015-2017 biennium shall be increased by three percent (3%).

11.1 Effective July 1, 2013, the basic wage rate for all Watch Center Supervisor classifications is thirty-two dollars and twenty-nine cents ($32.29) per hour.

Effective July 1, 2014, the basic wage rate for all Watch Center Supervisor Classifications is thirty-seven dollars and fifty cents (37.50) per hour.

11.2 Shift premiums will be as follows:

Effective July 1, 2008, the basic shift premium will be increased to sixty-five ($0.65) cents per hour.

XI.C. BARGAINING HISTORY ON WAGE PROPOSALS

As noted above in Section IX, an Interest Arbitration award for the 2009 – 2011 contract between the parties was issued by Arbitrator Beck on September 26, 2008. (State Exhibit 21).

In regard to Rule 11 the Union proposed a wage increase effective July 1, 2009 at 10.7% and a wage increase of 10.7% effective July 1, 2010. (State Exhibit 21).

The State had argued that it did not have the financial ability to pay for the Union's proposed pay increases. (State Exhibit 21).

Arbitrator Beck believed that the Union's offer of a 10.7% wage increase effective July 1, 2009 and a wage increase of 10.7% effective July 1, 2010 was the most reasonable offer and awarded same. (State Exhibit 21). Arbitrator Beck, in awarding the wage increase, stated as follows at page 2 of State Exhibit 21:

> The Watch Supervisor job classification dates back to 1995. At that time the Watch Supervisors were paid pursuant to the general government employee schedule. In 2001 WSF's application to the Personnel Resources Board (Board) for a 10% increase was not implemented by the WSF for financial reasons relating to the impact of 695.

The hourly wage for the MMPS was therefore increased from $27.81 to $30.79 per hour effective July 1, 2009. Since another 10.7 % was awarded, effective July 1, 2010, the hourly rate of $30.79 was increased to $34.08. (Agency Exhibit 21).

Arbitrator Beck noted that even with 10.7% wage increases the MMPS would still be behind a comparable of almost 17%. (State Exhibit 21-5). The award was not implemented due to the State's difficulties in the first year of the recession. (State Exhibit 24-4).

On September 23, 2010 Arbitrator Williams, on the issue of wages, awarded the MMPS an hourly base wage increase of 10% from $27.81 to $30.59 per hour effective July 1, 2011 and another 10% from $30.59 to $33.65 per hour effective July 1, 2012. (State Exhibit 22). It is significant to note that Arbitrator Williams would have awarded more than 10% but for the fact that he believed that the evidence constrained him from doing so. As noted at page 28 of his arbitration opinion:

> Ultimately this Arbitrator concludes that the Union's request is not so much about what should be considered a regular wage increase, associated with the cost of living, comparability of market conditions, but rather a matter of correcting an improper classification. While State witnesses attempted to justify the current classification of watch supervisors, the Arbitrator was simply not convinced and finds that their current wages are not properly situated and thus a reclassification increase is justified. More is sanctioned by the evidence but economic constraints led to the Arbitrator's award of 10% each year.

Arbitrator Williams' pay award was not implemented because the State declared that the award was not feasible. (State Exhibit 24-5). During this period, other interest arbitration awards also were not implemented on grounds of feasibility. (State Exhibit 24-5). The Governor did not consider the arbitration awards in her budget for consideration by the Legislature. (Holder at 213:14). All State employees were furloughed which

resulted in a three percent (3%) temporary salary reduction. (Holder at 214:21, 23). However, the watch supervisors were not given days off in exchange for the salary reduction. (Holder at 216:4). The rational for this decision was that the majority of ferry employees had a higher level of leave accrual. (Holder at 216:6-8).

On September 21, 2012 Arbitrator Nelson issued an arbitration opinion and award regarding the State and the MMPS. (State Exhibit 24). Using Arbitrator Beck's Opinion and Award (State Exhibit 21) and Arbitrator Williams' Opinion and Award (State Exhibit 22) as support, she awarded the MMPS a 16.125% increase.

Effective July 1, 2013, the basic wage rate for all watch Supervisor classifications was $32.29 per hour. Effective July 1, 2014, the basic wage rate for all Watch Supervisor Classifications was $37.50 per hour. As noted above in Section IX this wage rate award was evidently submitted as part of the governor's budget and approved by the Legislature as wage increases are found in the current CBA of the parties. (Union Exhibit 1). The bargaining history indicates that this was the first wage increase that the MMPS received in approximately seven (7) years.

XI.D. THE ABILITY OF THE STATE TO RETAIN FERRY EMPLOYEES

As noted above by Captain Pete Williams, the MMPS is a dedicated group of employees. While Mr. Braymer is the senior Watch Center Supervisor with 17 years experience as a Watch Center Supervisor (Vol. 2, Braymer at 5:2), Ms. Waterman is the most senior employee at the WSFD with approximately 22 years of service, the last seven (7) to eight (8) years as a Watch Center Supervisor. (Vol. 2, Waterman at 35:19, 24-25). However, in 2012 the MMPS lost two (2) supervisors to other positions within the WSFD. (Vol. 2, Braymer at 22:25-23:2). Prior to this time all of the supervisors retired or

had medical issues except one supervisor who quit because he had to commute to work from where he lived in Canada to the WSFD and could not continue to work under the commuter conditions. (Vol. 2, Braymer at 23:4-6).

These two (2) supervisors who transferred to positions in the WSFD were evidently external candidates.[14] As Arbitrator Nelson noted at pages five (5) and six (6) of her opinion and award:

> In the past year, two Watch Supervisors took other positions with the Ferry System. After posting the resulting vacancies twice, one was filled by an internal ticket taker for approximately two months before filling this vacancy; the other was filled by an external candidate. Thus, both vacancies were filled by employees who are new to the Ferry system. Both began working as Watch Supervisors after June 20, 2012 and are still training.

Your Arbitrator is concerned that two (2) of six (6) MMPS employees, or 33% of the MMPS bargaining unit has been employed, as of the date of this Opinion and Award, for a little over two (2) years with the WSFD.

XI.E. THE SALARY SURVEY AND COMPARABLES

Ms. Kamaron Durocher was the Human Resource employee who conducted the 2014 marine employee's compensation survey. (Durocher at 141:25, Union Exhibit 3). She also did the 2010 and 2012 surveys while she was employed with the Hays group. (Durocher at 141:3-4). She concluded that the only survey match for 2014 was King County. (State Exhibit 10, Durocher at 144:19-21). Ms. Durocher believed that Foss Maritime (State Exhibit 11) and the Port of Tacoma (State Exhibit 12) were comparables with the MMPS in 2010 and 2012 when she worked for the Hays Group. (Durocher at

[14] Arbitrator Nelson indicates that both of these employees began working after June, 20, 2012. However, State's Exhibit 9 indicates that one employee began working on May 14, 2012 and the other on August 1, 2012.

148:2). However, for the 2014 period she excluded them as comparables in part because she believed their job duties were different upon review and there was less than an 80% job description match. (Durocher at 148:6, 150:20-22, 144:23-145:8, 145:12-146:1). However, both Foss Maritime and the Port of Tacoma believed that they had positions comparable to the MMPS. (Durocher at 156:12, 25).

In 2012 Ms. Durocher believed the positions were comparables because she did not "look beneath the surface." (Durocher at 157:22, 158:1). The MMPS was 58.9% behind these two comparables in regard to weighed average pay and benefits and 65.4% on the base rate of pay alone. (Durocher at 158:6-7, 11).[15] However, the MMPS is 23% behind the King County comparable. (Fenrich at 162:11-13 16-18, 20, Durocher at 162:19, 21, Vol. 2, Braymer at 17:25).

It is significant to note that the search for comparables would include job salary surveys which would indicate if the MMPS was being paid more than a comparable. However, no such comparable was presented. This suggests to your Arbitrator that the MMPS, as the many witnesses both State and Union have testified, are integral, necessary, essential, and critical.

While your Arbitrator has considered the bargaining history (RCW 47.64.320 (b)) which ultimately resulted in a 16.125% basic wage increase for the MMPS which is in the current CBA, the WSFD's ability to pay (RCW 47.64.320 (a)), the State's ability to retain ferry employees (RCW 47.64.320 (i)), the salary survey (RCW 47.64.320 (e)), and comparables (RCW 47.64.320 (f)), all of these factors appear to fall in favor of the MMPS. Although Arbitrator Nelson's opinion and award was recently implemented, the

[15] However, as per the testimony of Captain Tim Saffle the MMPS, after Arbitrator Nelson's award of 16.125 % increase or 32.5% biennium, was implemented the MMPS is down a little over 30%. (Saffle at Vol. 2, 46:19-22).

fact remains that the MMPS is still 23% behind its King County comparable. Arguendo that the MMPS are given a five percent (5%) wage increase, they shall still be behind their King County comparable by 18%. This 18% is assuming the King County comparable does not receive a wage increase. All of the above indicate awarding the Union proposal of a five percent (5%) basic wage increase.

The Union has also proposed that the basic shift premium pay set in Rule 11.02 be increased from sixty-five cents ($0.65) per hour to One dollar ($1.00) per hour. (Union Exhibit 2).

In the Opinion and Award issued by Arbitrator Beck (State Exhibit 21) the Union had proposed an increase in the basic shift premium pay from sixty-five cents ($0.65) to seventy-five cents ($0.75) per hour effective July 1, 2009 and an increase from seventy-five cents ($0.75) to One Dollar ($1.00), effective July 1, 2010. Arbitrator Beck, at page 6 of his Opinion and Award stated as follows:

> With respect to the shift differential, Braymer testified that the Department of Personnel in April of 2008 recommended that shift differentials be raised to $1.00 effective July 1, 2009 and $1.50 effective July 1, 2010. Here, the Union proposed amounts below that recommendation.

Arbitrator Beck found that the Union's offer was the most reasonable and awarded an increase in the basic shift premium from sixty-five cents ($0.65) to seventy-five cents ($0.75) effective July 1, 2009 and an increase from seventy-five cents ($0.75) to One Dollar ($1.00) effective July 1, 2010. The rational for Arbitrator Beck's award was clearly the Department of Personnel's Recommendation. However, as noted above, Arbitrator Becks's opinion and award was never implemented due to financial constraints. (State Exhibit 22-28).

The Union proposal was again addressed in the Arbitration Opinion and Award of Arbitrator Williams. (State Exhibit 22). The Union had proposed a basic shift premium increase from sixty-five cents ($0.65) per hour to One Dollar and fifty cents ($1.50) per hour. The State had proposed no change. Arbitrator Williams issued no award for the Union's proposal and stated at page 28 of his Arbitration Opinion and Award as follows:

> As to the Union's request to increase the shift differential premium, the Arbitrator found the State's death by 1000 cuts argument persuasive and did not award the increase.

The Union proposal to increase the basic shift premium was revisited in the Opinion and Award of Arbitrator Nelson. (State Exhibit 23). The Union had proposed that the basic shift premium be increased to an amount approved by the Director of the Department of Personnel. Arbitrator Nelson denied the proposal stating:

> The change in the shift change language received little attention in the arbitration hearing. The State asserted on closing that the Department of Personnel no longer exists, and that the functions formerly performed by that Department were transferred to the Office of Financial Management. It further asserted that, when the Department of Personnel existed, it set shift premiums only for non represented employees, and that shift premiums for represented employees were always set at bargaining. On this record, there is no basis to award the Union's change in this language.

The State's position was that this was not a proposal that they needed to agree to and that the status quo was the best position for the State to take. (Holder at 6-12). Watch Supervisors are paid premium pay from 1800 until 0600 on a daily basis. (Williams at 137:15-16). However, if a shift starts before 6 a.m or goes past 6 p.m., the Watch Supervisor is paid shift differential. (Williams at 137:16-18).

Mr. Braymer testified that the basic shift premium has been sixty-five cents ($0.65) since he first started working as a MMPS and each request for an increase has

been denied. (Vol. 2, Braymer at 18:4-6). Therefore, there has been no increase in the basic shift premium since Mr. Braymer first began working for the MMPS approximately 17 years ago. Mr. Braymer believes it is time for an increase. (Braymer at Vol. 2, 18:25-19:1). In addition, the basic shift premium is typically paid during times periods when management personnel are not in the building. (Vol. 2, Braymer at 18:11). The MMPS are the de facto managers during this time, usually between 6:00 a.m. to 6:00 p.m. (Vol. 2, Braymer at 18:17-21). This is particularly the case on weekends when nobody is in the building. (Vol. 2, Braymer at 18:23-25). As noted above, Arbitrator Beck awarded an increase up to One Dollar ($1.00) in his Arbitration Opinion and Award, however, the award was not implemented due to the State's financial situation. While Arbitrator Williams declined to increase the basic shift premium pay due to a "death by 1,000 cuts" argument, your Arbitrator is not privy to the contents and merits of this argument. (State Exhibit 22-28). Arbitrator Nelson considered the lack of argument for an increase in the basic shift premium and believed that "on this record" the Union proposal should be denied. (State Exhibit 24-7).

The bargaining history, especially the fact that Arbitrator Beck awarded the Union's proposal to increase basic shift premium pay to One Dollar ($1.00) in 2008 and the testimony of Mr. Braymer to the effect that basic shift premium pay has not been increased for approximately 17 years while MMPS have been de facto managers for most of the time this pay was given indicates that the Union proposal should be awarded.

The Union also proposed three percent (3%) premium pay for the one Watch Center Supervisor acting as Relief Watch Supervisor. The burden of proof (or

persuasion) is on the Union. As noted in Elkouri and Elkouri, *How Arbitration Works*, 7th Edition (2012) in regard to evidence and the burden of proof at page 8-102:

> In general, the party asserting the claim has the burden of proving it. Nevertheless, the burden of proof may depend on the nature of the issue, the specific contract provision, or a usage established by the parties. In many cases, the arbitrator simply gets the facts and the issue without any express indication that she or she is thinking in terms of burden of proof. (Footnotes and citations omitted by your Arbitrator).

The Union witnesses testified that this pay should be awarded because of the different variety of shift hours the Relief Watch Supervisor must perform. The relief watch center supervisor must be proficient with the different aspects of each watch. (Vol. 2, Braymer at 19:4-5, Vol. 2, Waterman at 36:11-17). The work is "unscheduled in nature." (Vol. 2, Braymer at 19:6-8). The relief watch center supervisor saves the State overtime pay. (Vol. 2, Waterman at 25:19-23).

Marie Waterman is the relief watch center supervisor. (Williams at 130:14). She serves as a relief watch center supervisor and when there is no position for her to cover she performs "badly needed" administrative duties which consists of substantial recordkeeping. (Williams at 131:8-12). Although she gets two (2) days off per week she adjusts her schedule to meet the needs of her co-workers. (Williams at 132:1-2). Due to scheduling difficulties no more than one supervisor can be on vacation at the same time except for very unusual situations. (Williams at 132:19-20, 138:18-139:3, 7).

In regard to the three percent (3%) premium wage increase for the relief watch center supervisor it was the position of the State that this was not a proposal that they needed to agree to and that the status quo was the best position. (Holder at 210:15-17).

This appears to be the first time that the Union has asked for three percent (3%) premium pay for the relief watch person in an interest arbitration hearing. A review of the

transcripts has been left your Arbitrator with too many unanswered questions. For example, is the watch center relief supervisor a rotating position? Did Ms. Waterman, based upon seniority, select the relief position? Does Ms. Waterman, given her seniority, prefer the relief position rather than a different position? Does she prefer administrative work, rather than communications work? Does the MMPS, prior to accepting employment with the WSFD, understand that one of their job functions will be to serve as a relief supervisor?

As a general proposition if an employee accepts the hours, wages and other conditions of their employment for a given wage knowing there shall be no premium pay for the position, absent a substantial change in working conditions or circumstances, the employee should not be entitled to premium pay.

The burden of proof (or persuasion) is on the Union to show that the relief watch center supervisor is entitled to three percent (3%) premium pay. Your Arbitrator is not persuaded that the Union has met this burden of proof on the record of this interest arbitration hearing.

XI.F. AWARD REGARDING WAGE PROPOSALS FOR THE 2015-2017 COLLECTIVE BARGAINING AGREEMENT

Your Arbitrator believes that the Union's proposal in regard to Rule 11.01 is the most persuasive and will award the Union its proposal as proposed. Rule 11.01 shall read as follows:

11.01 Effective July 1, 2015, the basic wage rate for all Watch Center Supervisor classifications is thirty-nine dollars and thirty-eight cents ($39.38) per hour.

Effective July 1, 2016, the basic wage rate for all Watch Center Supervisor classifications is forty-one dollars and thirty-five cents ($41.35).

The State's proposal in regard to Rule 11.01 is not awarded.

The State's proposal for introductory language above Rule 11.01 provides as follows: "The rate of pay for the 2015-2017 biennium shall be increased by three percent (3%)." The State's introductory language is not awarded.

Your Arbitrator believes that the Union's proposal in regard to Rule 11.02 is the most persuasive and will award the Union its proposal as proposed. Rule 11.02 shall read as follows:

11.02 Shift premium will be as follows:

Effective July 1, 2015, the basic shift premium will be One dollar ($1.00) per hour.

The State's proposal in regard to Rule 11.02 is not awarded.

The Union's proposal for an additional three percent (3%) premium pay for the Watch Center Supervisor who is working in the relief position is not awarded.

XII. ISSUES, ANALYSIS AND AWARD ON VACATION LEAVE PROPOSAL

The Union's proposal is to change Rule 17.02 so that the MMPS will have the same rate of vacation accrual as that of other unions that have collective bargaining agreements with the WSFD. The State made no proposal in regard to this rule and argued that the Union proposal should not be awarded.

XII.A. UNION'S PROPOSAL REGARDING VACATION ACCRUAL

The Union's vacation leave accrual proposal as set forth in Union Exhibit 2 provides as follows:

17.02 Vacation leave will be credited on the following basis: (1) the employees must be active at work for one hundred (120) hours during the month; (2) any paid leave will count toward the one hundred twenty (120) hours eligibility requirement; (3) any leave without pay will not be counted toward the one hundred twenty (120) hours eligibility requirement; (4) holidays for which the employee might otherwise be eligible will count towards eligibility; (5) a work day is based upon an employee's scheduled work day.

Years of Service	Vacation Hours
0-1	96
2	104
3	120
4	136
5	160
15	168
16	176
17	186
18	192

XII.B. INCORPORATION BY REFERENCE

Your Arbitrator incorporates herein by reference Section XI.D (the ability to retain ferry employees) and Section XI.E (salary survey and comparables) which are necessary for a thorough and full analysis of the Union's vacation proposal regarding Section 17.02.

XII.C. BARGAINING HISTORY FOR VACATION PROPOSALS

The bargaining history indicates that the issue of increased vacation accrual was first considered by Arbitrator Beck in his Opinion and Award dated September 26, 2008. (State Exhibit 21). As noted above, Arbitrator Beck awarded the Union substantial Rule 11.01 wage increases as well as substantial Rule 11.02 basic wage shift premium pay increases. In part because of these awards, Arbitrator Beck declined to award the Union proposal regarding Rule 17.02 and stated at pages 6 and 7 of his Opinion and Award as follows:

> The Union proposes an enhanced vacation accrual benefit which would provide Watch Supervisors a vacation accrual benefit equal to that enjoyed by Terminal Agents represented by FASPAA and slightly behind the vacation accrual benefit received by employees represented by the OPEIU. (See Union Exhibit No. 2 and Employer Exhibit No. 9.
>
> The Employer proposes no increase in vacation accrual.

> In support of its position, the Union contends that it should have a vacation benefit that is comparable to the benefit received by employees represented by FASPAA and OPEIU. In this regard, the Union contends that the work Watch Supervisors perform is similar to work performed by administrative employees represented by the OPEIU and that the work Watch Supervisors perform is of equal complexity to that performed by Terminal Agents represented by FASPAA.
>
> It is a generally held principle of interest arbitration that the job of the interest arbitrator, with respect to collective bargaining, is to resolve disputes in a manner that comes as close as possible to how those disputes would have been resolved if the parties had been able to successfully bargain a complete collective bargaining agreement. In my view, it is unlikely that the Union would have been able to achieve in collective bargaining a wage increase proposal without conceding on one or more of the economic matters also in dispute between the parties.
>
> Based upon the foregoing, I find that the Employer's offer of no change to vacation accrual is the most reasonable offer and shall be awarded.

The issue of vacation accrual under Rule 17.02 was considered again by Arbitrator Williams in his Opinion and Award, dated September 23, 2010. (State Exhibit 22). Arbitrator Williams, in awarding the Union's proposal, stated at pages 33 and 34 of his Opinion and Award as follows:

> The Arbitrator is granting the Union's Request to increase the rate at which bargaining unit members must accrue vacation while keeping the same cap on vacation hours in place. The Arbitrator granted the Union's request for two reasons.
>
> First, Union Exhibits demonstrate that this bargaining unit is behind the internal comparables with respect to vacation accrual rate. Four other bargaining units accrue 160 hours or 20 days of vacation at five years of employment; Metal Trades (Ex. U-6), MEBA (Ex. U-7), FASPAA (Ex. U-8) and IBU (Ex. U-9). The Arbitrator is adopting the Union's proposal to bring this bargaining unit on parity with others in terms of vacation accrual.
>
> Second, the Arbitrator finds the testimony and arguments presented by the Union with respect to the cost of this proposal to be persuasive. Save for extensive illness or similar emergent event this may create the need for overtime, it appears that adopting the Union's proposal will not result in additional expenditures for the State. Considering the very small size of

> this bargaining unit and the number of members who are currently accumulating vacation at the maximum accrual rate, the need for additional relief as a result of adopting the Union's proposed language appears to be quite small. The Arbitrator is convinced that the additional need for relief can adequately be provided by existing employees at the straight time barring extensive illness or similar emergent event. Thus, the adoption of the Union's proposal is unlikely to become a cost item to the State.

The issue of vacation accrual under Rule 17.02 was considered a third time by Arbitrator Nelson in her Opinion and Award, dated September 21, 2012. (State Exhibit 24). Arbitrator Nelson rejected the Union proposal and stated at page 12 of her Opinion and Award as follows:

> The Union has sought to bring this bargaining unit to the same accrual rate at 5 years' service as other bargaining units in the Ferry system for the last three rounds of bargaining. The State's proposals in 2011 and 2012 offered the opportunity to achieve that end in bargaining, but with a lower cap. The Union agreed to that trade-off for new employees, but not for existing employees. It may be that there was room in middle for a trade-off that would provide faster accrual rates for newer employees, including the one employee who would be affected by this proposal, while retaining the higher cap for the three very senior employees. The simple fact is, however, that this was not the agreement reached in the MOU. Had the parties been able to negotiate a complete Agreement for 2013-2015, it is unlikely that the State would have agreed to the proposal that it rejected in three rounds of bargaining.

The MMPS request to increase vacation leave accrual similar to the vacation accrual that the Masters, Mates, and Pilots currently have. This concerns Captain Williams since there are only six (6) watch center supervisors and overtime costs will increase. (Williams at 127:13-25). Although the State would like to increase its watch supervisor pool this has not been possible due to budget constraints. (Williams at 128:1-3). There would be no added costs if only one supervisor wanted vacation. (Williams at 135:9). However, from a management perspective the State opposes the change in

vacation accrual because if more than one supervisor is on leave, i.e., one is on vacation and one is sick, overtime costs are increased. (Williams at 127:13-22).

In the fall of 2010 the vacation accrual was found to be financially infeasible through arbitration awards. (Holder at 207:14-16, 208:3-5). Since there was no agreement the parties agreed to meet with one another again in late February or early March of 2011 and renegotiated several items, one of which was a split tier vacation accrual leave agreement. (Holder at 207:14-20). Employees who were hired on or before June 30, 2011 were grandfathered in at their current rate of accumulation. (Holder at 207:19-22). However, those employees who were hired after June 30, 2011 began to accrue vacation leave at a "lower rate which is consistent with general government employees for Washington State receive." The split accrual agreement was not part of any arbitration award. (Holder at 208:8). While not part of an agreement with the MMPS, in exchange for the split tier accrual system with other ferry unions, whose overtime rate was double time, these unions agreed to time and a half. (Holder at 208:18-19). They also agreed to a 3-hour callback to be called back in for overtime which is also consistent with general government. (Holder at 208:22). However, the masters and mates presently get four (4) hours of callback along with TA so they are essentially at double time again. (Holder at 214:10-11).

The State's bargaining with the MMPS on this issue has been "abbreviated bargaining." (Holder at 209:7-9). The discussions have been less formal than with other bargaining tables. (Holder at 208:13-14). The State has had very few issues on a regular basis with the MMPS in administering the CBAs. (Holder at 209:9-11). The MMPS are

"professionals" and do an "outstanding job." (Holder at 209:12). Mr. Holder appreciates the lack of "consternation." (Holder at 209:22-25).

The Union has argued that the Inlandboatman's Union (Union Exhibit 5), the MM&P Masters, the MM&P Mates, the MEBA (Union Exhibit 6), and the FASPAA (Union Exhibit 7) all have higher vacation leave accrual than the MMPS. The MMPS strongly argued that it is entitled to a higher vacation accrual schedule similar to the same vacation accrual that is received by the other Unions that work with the WSFD. (Vol 2., Braymer at 20:2-4, 8-9, 11).

It is generally agreed that one of the primary duties and responsibilities of an interest arbitrator is to consider the evidence, the proposals of the parties, the law governing the interest arbitration and to determine to the best of the arbitrator's ability, what the parties would have agreed upon had they been able to successfully negotiate an agreement through the collective bargaining process. Your Arbitrator believes that if the Union had successfully bargained its proposed wage increases in regard to Rule 11.01 and 11.02 the State would not have conceded the vacation accrual that the Union proposes to Rule 17.02.

XII.D. AWARD REGARDING VACATION PROPOSAL FOR THE 2015-2017 COLLECTIVE BARGAINING AGREEMENT

Your Arbitrator believes that the State's argument under the totality of circumstances of this interest arbitration and the principles as they relate to interest arbitrations makes the State's position the most persuasive and awards no change to Rule 17.02.

XIII. CONCLUSION

With respect to the issues certified for interest arbitration by the Public Employees Relations Commission your Arbitrator renders an award on each issue and proposal as set forth above. Your Arbitrator shall reserve jurisdiction for thirty days in the unlikely event there are disagreements between the parties as to how your Arbitrator's Opinion and Award shall be incorporated into their 2015-2017 collective bargaining agreement.

_Respectfully submitted this 16th day of September, 2014.

MICHAEL ANTHONY MARR
Interest Arbitrator