

In the Matter of the Interest Arbitration

between International Brotherhood of Teamsters, Local 117  
("Union" or "Teamsters"),

and

Findings,  
Discussion and  
Award.

The State of Washington Department of Corrections  
("DOC" or "Agency").

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Case Numbers: PERC case No. 26673-I-14-0659. Arbitrator's O93.

Representing the Union: Spencer Nathan Thal, General Counsel, and Daniel A. Swedlow, Associate General Counsel, Teamsters Local Union 117, 14675 Interurban Avenue S., Suite 307, Tukwila, WA 98168

Representing the Agency: Otto G. Klein, III, Summit Law Group, and Ohad M. Lowy, Assistant Attorney General, 315 Fifth Avenue S., Suite 1000, Seattle, WA 98104.

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

Hearing held: In the Union's offices in Tukwila, Washington, on August 18-22, 25, 26, and 28, 2014.

Witnesses for the Union: Anil Karia, Carla Pusateri, Tracey Thompson, Suzanne Best, Ph.D, Michelle Alejo, Alica St. John, Eric Smith, Will Aitchison, Paul Alexander Marvy, Ian Williams, Shaun Vaneaton, Kiesha Channel, Mark Endresen, Sandra Conner, Michelle Woodrow, and Shannon Reeder.

Witnesses for the Agency: Scott Frakes, Richard Pannkuk, Elliot Susseles, Angela Roberts, Ann Mitchell, Karen Durant, Melinda Aslakson, David Bonauto, MD, and Eric Hernandez.

Date of this award: September 26, 2014.

This is an interest arbitration, conducted not under the authority of a statute but under the terms of a Memorandum of Understanding between the Union and the State of Washington through the Office of Financial Management (OFM). The MOU provides for interest arbitration in the absence of the parties' agreement on a successor collective bargaining agreement covering the 2015-2017 biennium. The parties agree that the preliminary requirements of the MOU have been properly completed and that each party had proper notice of the other party's proposals to be made in this proceeding. The hearing was orderly. Each party had the opportunity to present evidence, to call and to cross examine witnesses, and to argue the case. The MOU expressly adopts "the October 1<sup>st</sup> deadline and financial feasibility provisions of RCW 41.80.010(3)," and the parties closed their cases orally in consideration of that deadline.

### *The Department and the Bargaining Unit*

Other than minimum custody facilities, Washington's correctional institutions are marked by double fences, twelve feet high and twenty feet apart, topped by razor wire. Most also have guard towers, staffed by armed COs who are authorized to use deadly force. Minimum custody facilities still have the razor wire, but it sits atop a single fence ten to twelve feet high. The towers and the wire are all that the public ever sees of the activities of DOC or of the employees in this bargaining unit. Inside the wire, the paramount responsibility of DOC employees in general and of COs in particular to keep the offenders secure and unarmed, and prisoner counts, searches and movement control are features of every institution's daily routine.

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

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

There are twelve correctional institutions, with a total offender capacity of just over 16,500. In general, the prisoner population is fairly violent and highly likely to reoffend. The oldest facility is Washington State Penitentiary at Walla Walla, with parts that opened in 1886; and the newest, a part of Coyote Ridge, opened in 2009. The twelve institutions range in capacity from a low of 305 at Mission Creek Corrections Center for Women to a high of 2,468 at Coyote Ridge. The levels of custody begin with minimum, in which offenders have

a fair amount of open movement inside and some work in the community. There is no community involvement at the next level, IMU, but offenders have keys to their own rooms. At the next level, medium custody, prisoners must be let in and out of their rooms; in close custody all movement is controlled; and in maximum custody the offenders are taken from their rooms only in full restraints, usually accompanied by two COs. Three of the twelve facilities have all levels of custody and several have a single level, usually minimum. Every facility is quite like a small, enclosed city, with many different classifications of support employees; and most of the facilities also have additional support employees officed outside the fence. The size of the bargaining unit staff at each facility reflects the offender population, the degree of custody, and the age and design of the facility. Bargaining unit staff ranges from a high of over a thousand each at Monroe Correctional Complex and Coyote Ridge down to 98 at Olympic Corrections Center and at Mission Creek Corrections Center for Women.

Washington's offender population rose gradually but fairly steadily from just over 10,000 in 1993 to a high of over 18,500 in 2009, driven by a continual series of changes in criminal statutes and sentencing guidelines and alternatives. From 2009 to 2013, that overall population declined slightly by just about one thousand.<sup>1</sup> DOC's total staff also topped out in 2009 at 9,250 and has decreased ever since by just over a thousand, to 8,174.

This Teamsters bargaining unit is "wall to wall" with respect to "employees working in correctional institutions, the correctional industries program, the sex offender treatment program, and regional business service center..." (Appendix A of the current CBA). It includes about 5,700 employees, roughly 70% of the DOC workforce. A separate bargaining unit of Community Corrections Officers and Community Corrections support personnel is represented by the Washington Federation of State Employees (WFSE) and accounts for not quite 13%.<sup>2</sup> This unit and the WFSE Community Corrections unit are the only two of the 22 general government bargaining units with access to interest arbitration (both via MOUs).

Although the most populous single classification in this bargaining unit is Corrections Officer (CO)—almost 3,500 of them, including Sergeants—there are over 100 other classifications, from to Cooks to Locksmiths to Office Assistants to Psychiatrists. After COs

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<sup>1</sup>Washington's Community Corrections caseload has been much more varied over this period. From just over 42,300 in 1993 it rose to over 65,500 in 2003 and then fell precipitously to under 26,500 in 2006 and continued down to not quite 15,400 in 2013 (after a slight rise to almost 29,000 in 2008).

<sup>2</sup>Community Corrections Officers' work somewhat resembles that of Parole Officers, including home visits. Home visits are not free of hazards and some Counselors are armed. CCO requires a B.A./B.S. while CO does not. The Teamsters bargaining unit does not include any Community Corrections Officers, but the WFSE unit does include about 45 COs who supervise work crews of offenders brought back into custody for violating their release conditions.

and CO3s—Sergeants—the next largest classifications are Registered Nurse (a total of over 250) and Office Assistant (a total of around 230).<sup>3</sup>

A substantial part of CO work is fairly similar from facility to facility and throughout all levels of custody. At maximum security facilities the interaction with the offenders is entirely directive and immediate, while at minimum custody facilities—for offenders within four years of release—interaction is somewhat less structured and COs also supervise offender work crews outside the fence. Maximum security is more labor intensive since prisoners are allowed to do very little for themselves and are allowed out of their rooms only in full restraints and accompanied by two COs. COs assigned to towers or to prisoner transport are armed and authorized to use deadly force.

All new employees who work inside the fence attend a six week DOC Academy; and new COs receive substantial additional training in firearms, personal safety, and dealing with offenders. Special tactics team training is extra. Mandatory annual training, from sixteen to more than forty hours, is required for everyone who works inside the wire. In recent years, annual training has increased its focus on dealing with mentally ill offenders, who are about 15% of the population. This bargaining unit also includes about 90 employees who work at DOC Headquarters or at other facilities not closely connected to a correctional institution.

*Effects of Corrections Work.* Modern corrections work is expected to accomplish far more than the warehousing that was its total function as recently as the 1980s. There is no dispute that working with inmates is a high stress activity. Stress levels vary somewhat over the course of the day, but the term “relaxed” is never really appropriate for staff inside the fence. Working in a correctional institution requires special powers of observation and a balance between constant attention to security and good interpersonal skills. Some offenders threaten Corrections Officers and their family members (who are now commonly locateable through internet search). One CO witness recounted having a prisoner tell him his daughters’ names, the CO’s residence address, and the prisoner’s release date. Some offenders are endlessly creative in turning everyday items into deadly weapons. Some offenders spit on Corrections Officers or throw feces or urine on them. 80% of the DOC employees in one study had been exposed to inmates’ bodily fluids. Some offenders carry infectious diseases—including Hepatitis B and C, Tuberculosis, and HIV/Aids—and intentionally set out to infect Corrections Officers. Some offenders try to coat Corrections Officers’ faces with a concoction of feces, urine and ground glass, the glass being intended to infect the officer when he or she tries to wipe the feces and urine off. Corrections work is not for everyone.

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<sup>3</sup>CO 1 is a training classification for new hires with no prior experience; and the CO 1 numbers are included in the general CO population for purposes of this discussion. CO3s are referred to separately as Sergeants.

Crowding both contributes to stress on inmates and contributes to stress on staff because of the increased stress on inmates. DOC's women's facilities are now at or over design capacity and men's facilities are just under capacity for a total (March 31, 2014) of 101.4% of operational capacity. WCC (design capacity 1,268), and Stafford Creek (1,926) have had prisoners on mattresses on the floor in the fairly recent past, and Coyote Ridge (2,468) has had mattresses ready but never had to use them.

DOC's own data show a one-third increase in incidents of inmate violence from December 2011 through October, 2013. Although the general trend since then is downward, there have been an average of nine violent incidents a month against staff. There have been three hostage incidents in the last four years. In terms of on-the-job injuries, DOC is not the most dangerous agency by a long way: DSHS, which operates the State's involuntary commitment institutions, has a compensable L&I violence claim rate of 137, nearly five times as great as DOC's 29.<sup>4</sup> On the other hand, the overall Washington State rate outside DOC and DSHS is 17.8, not much more than half of DOC's. COs, Sergeants and healthcare employees take the brunt of inmate violence, although there was a recent attack on a cook.

There is no dispute in this record that COs have substantially higher rates of diabetes, stroke, and cardiovascular disease than the general public. Their hypertension rates approach twice the background rate.

COs and Nurses, and to some extent DOC employees in general, are paid to be the public's interface with a world of traumatic events (in the technical psychiatric sense) of "experiencing, witnessing or learning of actual or threatened death, serious injury, or sexual violence or experiencing repeated or extreme exposure to aversive details of traumatic events" (DSM-V.) It seems to me that those characteristics fairly well describe how the prison population got there: Such repeated exposure is inherent in front-line DOC work. Inmate populations exhibit gang affiliations, and gangs sometimes have "kill orders" out on one another. It is DOC's function to keep inmates from doing harm to one another, but the effort required is constant. It is DOC's function to keep inmates from doing harm to staff or to the facility, but the effort required is constant and the continuing threat is the greatest source of stress. Finally, there is no dispute in this record that this is isolating work: "How was your day?" is not an easy question for a Correctional Officer to deal with, or, to a somewhat lesser extent, for a DOC employee in general. DOC employees are exposed to, as one witness put it, "things a human being is not supposed to do." The resulting communications problems help to drive up the social costs that DOC employees pay to keep offenders away from the rest of the population while trying to foster some possibility of

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<sup>4</sup>The Union offered anecdotal evidence that the *perceived* hazard level is worse at DOC. Objectively, the L&I data is overwhelmingly to the contrary. But, as one witness mentioned, inmates are eternally manipulative in ways that DSHS clients in general are not, and the resulting sense of malignant intent may be unique to the DOC inmate population.

rehabilitation. DOC makes staff counselors available to help employees deal with job stress; and DOC also provides an independent Employee Assistance Program (EAP).

### *The Parties' Proposals*

DOC proposes, first, a single, 3% increase at the beginning of the 2015-2017 biennium with no other general increase.

Second, some of the classifications in this bargaining unit exhibit recruitment and retention problems,<sup>5</sup> and Appendix F of the current CBA provides “Assignment Pay” of one range—i.e., 2.5%—for Classification Counselors 1, 2, or 3 at Coyote Ridge, Monroe, or WSP and two ranges—5%—for COs or Sergeants at those three facilities and for LPN 2s and Psychologist 4s at Monroe. DOC proposes to continue that language and to add a new Section 32.25 in Article 32, Compensation, creating additional class-specific increases:

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

The proposed Appendix G sets out a two range—5%—increase for Sex Offender Treatment Specialist, from Range 51 to 53; a four range increase for the Correctional Records classes (Correctional Records Tech. 1 from 40 to 44, Correctional Records Tech. 2 from 44 to 48 and Correctional Records Supv. from 48 to 52), a two range increase for Corrections Mental Health Counselor classes (CMHC 2 from 47 to 49 and CMHC3 from 49 to 51), and substantial increases for Electronics Technician classes, collapsing Electronics Technician—now at 45—into ET 4 and moving ET4 from 49 to 50 (resulting in a net 15% increase for Elect. Tech.). Finally, DOC proposes an increase in the assignment pay for some Psychologist 4 employees. The proposed increases would apply to about 190 employees.

*The Union* proposes several general rate increases and several class specific pay adjustments. Turning first to the across-the-board proposals, the Union proposes, first, to bring its entire rate schedule up to 10% above the SGSS in recognition of the special demands and personal costs of corrections work and, second, to add a 4% cost of living increase effective July 1, 2015, and another 3% increase effective July 1, 2016. Third, Teamsters would close “the gap. “The gap” would be defined as the difference between

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<sup>5</sup>The Assignment Pay Appendix explains these particular location differentials by “Reference #29:” “Upon review and approval from [OFM], up to four ranges payable to employees in any position located where the cost of living impacts the agency’s ability to recruit and/or retain employees which would severely impair the effective operation of the agency...” The record before makes no reference to differential cost of living as the required basis for the recruitment and retention problem which, the parties agree, was the historic basis of these location premiums.

DOC compensation rates and the Washington State General Survey rates, or the Corrections-specific survey rates, “supplemented by the Union’s data from Washington Counties.” The gap is to be closed in three bites, 25% from the beginning of the first year of the new contract, 50% from the beginning of the second year, and the remaining 25% on the final day, June 31, 2017. Fourth and finally, the Union proposes to eliminate the predecessor agreement’s “geo” premiums.

Turning to class-specific proposals, (1) the Union would increase to at least five ranges the rate difference between supervisors and “any immediately subordinate classification in series or career progression.” It would also (2) increase from \$25 to \$125 the daily on-call premium for overtime exempt employees and (3) make LPNs eligible for the same weekend assignment pay that RNs now receive.

### *The MOU*

In the 2012 negotiations for the current, 2013-2015 CBA, the State agreed to a “me-too” provision in the master contract with WFSE (covering over 30,000 employees) and Teamsters filed an Unfair Labor Practice Complaint (ULP) alleging that the State “refused to engage in any negotiations with the Union over core compensation” (ULP at 3). The Union also continued pressing for legislation providing interest arbitration for DOC. A new administration took office while the ULP was awaiting hearing, and the Union’s leadership held discussions with the new administration in an attempt to resolve the ULP and, perhaps, to gain support for the legislative agenda. The administration did not agree to support a statutory change, but it did agree to conduct the next round of negotiations—the one giving rise to this case—with something very like interest arbitration at the end of the bargaining process. The resulting April 2013 MOU is the source of my jurisdiction in this case.

The negotiations that followed the execution of the MOU were no more successful than their predecessors. The Union presented OFM’s final offer to the membership, and that offer was supported by 46 votes, compared with 3,054 votes against, in an election which drew responses from an unusually large majority of the entire bargaining unit. This interest arbitration, pursuant to the terms of the MOU, is the consequence of that rejection.<sup>6</sup>

Section 2 of the MOU addresses the scope and factors for completing “a comprehensive collective bargaining agreement for the 2015-2017 biennium.” I begin with a discussion of the factors which Subsection 2(e) of the MOU says I “shall take into consideration.”

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<sup>6</sup>Section 1 of the MOU addresses “Bargaining regarding changes to a mandatory subject” “during the term of the 2013-2015 collective bargaining agreement.” Section 2 created a special “impasse procedure for the negotiations of the 2015-2017 collective bargaining agreement,” including the selection and compensation of an interest arbitrator.

*Factor i:*<sup>7</sup> “The financial ability of the Department of Corrections to pay for the compensation and benefit provisions of a collective bargaining agreement.” “Financial ability...to pay” has a long pedigree as a factor in public sector interest arbitration. Overall, there are roughly three senses of “inability to pay:” “We can’t afford the new car” in the rock bottom sense that no one would sell us the new car for the total amount of cash and credit we currently command; “We can’t afford the new car” in the sense that if we did, we would not be able to pay for fundamental necessities such as rent, utilities, food, etc.; and “We can’t afford the new car” in the sense that, even though we could pay for hand to mouth necessities, nothing would be left over for contingencies or retirement. As usual, the employer’s arguments here mainly focus on “ability to pay” in the last two senses; but the unusual legal climate of the moment arguably supports an inability to pay argument in the first, most extreme sense.

Washington employment numbers are particularly significant for the General Fund since sales and use taxes account for over 50% of GF income. It took Washington over five years—69 months— to get back the 206,000 jobs lost at the bottom 2010 of the 2008 recession, far the longest “recovery” period of any downturn since World War II. Those 206,000 jobs represented about 2.6% of the total non-farm payroll of the state. And the eventual date of the “recovery” is statistically closer to the *next* downturn than to the past, 2008, drop. Moreover, “Recovery” here means simply return to the former employment numbers, not including even modest growth over that 69 month period. Job growth during the recession was -3.9% in 2010, 0.6% in 2011, 1.5% in 2012 and, finally, a less anemic 2.1% in 2013. OFM’s employment growth forecast for 2014 (as of the November 2013 CAFR) was 1.9%, along with a 2.9% real growth rate for personal income. General Fund revenues are predicted to grow by about 7.6% for the 2013-2015 biennium, somewhat slowing down the 8.7% bounce during the 2011-2013 biennium.

Beginning with 2013-2015, the biennial budget must balance. That was accomplished last time by a series of one-time funding measures including the transfer of \$387million from capital budgets to cover operating expenses, the capture of \$351million in Medicaid expansion under the new Affordable Care Act, raising \$272 million by extending the hospital safety net assessment, and saving \$321million by not funding the I-732 teacher COLA. Thus the projected \$2.6 billion additional revenue for the biennium—which represents well over

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<sup>7</sup>Subsection 2(d) specifies that “The arbitrator may consider only matters that are subject to bargaining under RCW 41.80.020(1), and may not consider those subjects under RCW 41.80.020(2) and (3) and RCW 41.80.040.” Those references free the Agency from any obligation to bargain over health care or retirement benefits, over the State General Salary Schedule, or over certain matters pertaining to vacancies and promotions; and the cited statutes prohibit the Agency from bargaining over the management rights set out in RCW 41.80.040. Subsections 2(f) and (g) make the decision here “subject to the October 1<sup>st</sup> deadline and financial feasibility provisions of RCW 41.80.010(3)” and frees the legislature from any obligation to implement the funding of this award.

8% income growth —will still leave the General Fund \$.9 billion in the hole *not counting* McCleary compliance (addressed briefly just below).<sup>8</sup> This shortfall is made much more difficult to manage by the fact that about two thirds of GF expenditures are mandated, so that all the expenditure reductions must come from the remaining one third, and that remaining third includes DOC’s approximately \$1.6 billion biennial operating costs.

State revenues for the 2015-2017 biennium are projected to grow by about \$2.6 billion. But projected additional mandated costs come to about \$3.5 billion. Those costs include low income healthcare, basic K-12 education, mental health and long-term care, pension costs, debt service, employee healthcare, higher ed, employee salaries, and the K-12 teacher COLA mandated—unless legislatively suspended—by Initiative 732.<sup>9</sup> That leaves the State about \$900 million short for the biennium. And then there is *McCleary*.

Corrections is predominately a GF expense. So, too, is K-12 education. And no discussion of the State’s ability to afford GF expenses can avoid the 800 pound fiscal gorilla that is *McCleary v. State of Washington*, 173 Wn.2d 477, 269 P.3d 227 (2012). The Washington State Constitution begins its Article IX, Education, with the pronouncement that “It is the paramount duty of the state to make ample provision for the education of all children residing within its borders...” The Plaintiffs in *McCleary* set out to enforce that “paramount duty.” The resulting 2012 State Supreme Court opinion recounts an extensive prior history of relations between that Court and the legislature over this provision of the Constitution. The Court repeated its prior definition of “paramount” as “supreme, preeminent or dominant” (Slip opinion at 47 quoting its own 1975 *Seattle School Dist. v. State*, 90 Wn.2d 485, 511). The Court pondered the issue of remedy and, essentially, told the legislature to fix the currently unconstitutional funding system, to “develop a basic education program geared toward delivering the constitutionally required education [and to] fully fund that program through regular and dependable tax sources” (Slip opinion at 77). Three legislative sessions slipped away without a fix, and in June, 2014, the Court issued a Show Cause Order in a contempt proceeding. (Oral argument on that Show Cause order was held on September 3, after the close of the hearing in this case.) The Show Cause Order set out a series of illustrative if somewhat nuclear possible remedial consequences. The Court has not yet addressed the contempt issue following arguments on the Show Cause Order.

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<sup>8</sup>The overall problem rests at least substantially on the revenue side. In 1990 GF revenue was around 7% of total personal income in the State. That income rate would have produced an additional \$15bn. for the current biennium. From another perspective, in 1995 Washington was eleventh nationally in state and local tax collections; by 2011 it was 35<sup>th</sup>. Meanwhile, Federal support for DOC has fallen slowly but fairly steadily from a high of almost \$11mil. in the 2001-2003 biennium to just over \$3mil. for 2013-2015 (with the exception of \$180.4mil. in one-time federal stimulus funds in 2009-2011).

<sup>9</sup>The prior legislature *did* have to suspend the I-732 COLA in order to make the prior biennial budget balance.

OFM estimates the cost of *McCleary* compliance for the 2015-2017 biennium at somewhere between \$1.2bn to \$2bn. Much of that *is not* one-time cost.

In addition to *McCleary*, the State lost two potentially costly (though less monumental) State Supreme Court decisions during the course of the hearing in this case. In *In re the Detention of DW*, \_\_\_ Wn.3d \_\_\_ (August 7, 2014) the Court held that the Involuntary Treatment Act's (RCW 71.05.360) right to "adequate care and individualized treatment" was not satisfied by strapping a patient to a emergency room bed. OFM estimates the financial "bandaid" for staffing and facilities increases in FY2015 to be about \$30 million, with biennial costs yet to be calculated. And in *Moore v. Healthcare Authority*, \_\_\_ Wn.3d \_\_\_ (August 21, 2014), the Court held that the trial court's finding that the State's wrongful withholding of health insurance for part-time employees would not be properly remedied by payment of out-of-pocket medical costs actually incurred. The case was returned to the trial court for final determination of a remedy, but the Supreme Court already accepted a "wages withheld" approach, and OFM has not yet attempted even a guestimate of the total costs.

The State's preliminary budgeting for the 2015-2017 biennium reflects the possible effects of *McCleary* on an already substantially reduced workforce. Although the prison population has decreased by only about 5% from its 2009 high point, the total DOC workforce declined by over 11.6% and the prisons budget fell by 30% (42% for DOC Agency-wide) since 2008. The reductions have been accomplished primarily by sentencing changes, facility closures (most famously, McNeil Island), offender transfers, staff and administrative reductions and by a particularly sharp reduction in the community corrections budget. But some of the savings also comes from reduced employee pension costs and employer health insurance contributions. The resulting DOC budget for FY2015 comes to about \$850 million which would be \$1.7 billion for the biennium. About 76% of the Agency's costs are in salaries and benefits, including health insurance.

The current effort to budget for 2015-2017—the period at issue here—is shadowed by the legal complications set out above; and OFM has asked DOC, like all other State agencies, to prepare a minus15% budget (which will be submitted about the time this award is issued).<sup>10</sup> That 15% will have to come from operations levels which have already been reduced again and again throughout the recent past; and it is unclear how a 15% savings can be accomplished without legislative action to reduce the offender population.

*Recent pay rate history.* The State's fortunes have had serious consequences for its workforce in general and for this bargaining unit in particular. That part of the history goes back at least to 2002 when, after 48 months of rate stagnation, all State employees got a 3.2%

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<sup>10</sup>Technically, the request is to reduce the "Near General Fund" income by 15%. The difference between GF and the collection of accounts that compose the "Near General Fund" is not significant here.

rate increase and many classes that had fallen behind by more than 25% at the top were brought up to put the top within 25% of the comparators' mid range. In 2006, all bargaining units (and unrepresented employees) except this one got a 1.6% increase, and this unit got an additional 1.3% for a total of 2.9%. That 1.3% was viewed as the "Corrections Differential," and it has been undisturbed ever since. In 2007, all bargaining units got a 3.2% increase (delayed two months for non-rep employees) and the lagging classes were again brought up within 25% of the comparators' middle rates. The final increase came in 2008, at 2%, for all State employees. But, quoting the most recent, November, 2013, CAFR, "[o]ver a four year period, nearly every quarterly state revenue forecast brought more bad news. In all, Washington's revenue projections for 2009-2011 and 2011-2013 fell by \$10 billion—a nearly 16 percent decline compared to original forecasts." During the seven year period from July, 2008, through the end of the current contract on June 30, 2015, there was a 3% decrease—mostly accompanied by unpaid time off—for 2011 and 2012 and the addition of a new longevity step "M" for employees who had been at the top of the step series for six years or more. During that same seven year period, according to the PEBB, employee medical costs increased by an average of 10.5% per year, from \$78.63 average in 2008 to the current \$165.01. Employer funding rates grew by about 25% from 2008 to 2011 but then fell back by 2014 to an overall average growth rate since 2008 of under 10.6%, barely ahead of the employee average increase rate.

In earlier negotiations for the 2015-2017 biennium, which is at issue here, the WFSE Community Corrections unit bargained under a MOU similar to the one that controls these proceedings but which limited interest arbitration to "job classifications that are unique to the [DOC]" while sending "non-agency unique job classifications" to the WFSE master table.<sup>11</sup> The classes unique to DOC in the WFSE unit are Corr. Records Tech. 1&2. Corr. Specialist 4, Corr. Mental Health Counselor 3, CO, Sergeant, and Corr. Hearings Officer 3&4. DOC agreed to bring all those classes up by 1.3%, which had been the Teamsters Corrections Differential; and all other rate issues went to the WFSE general table.

The hearing closed while those general table negotiations were still going on, and I agreed to take notice of developments in State negotiations before the issuance of this award.<sup>12</sup> On September 18 the State reached a 2015-2017 agreement with WFSE for the 30,000 employee General Government bargaining unit. That agreement includes the State's proposed 3% increase on July 1, 2015 but also includes a 1.8% increase on July 1, 2016 and 2.5% targeted increase, previously unfunded in the WFSE 2009-2011 CBA, for about 2,800 employees in classes that had fallen 25% behind according to the Statewide comparability study (comparing Washington's tops and the comparators' medians).

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<sup>11</sup>The Teamsters MOU preceded the WFSE MOU by about six months and has no such limitation.

<sup>12</sup>Neither party objected to that proposal. The potential items noticed would also have included adverse court decisions or economic news.

*Factor ii: “The constitutional and statutory authority of the employer.”* Neither party appeals to this listed factor in the case at hand.

*Factor iii: “Stipulations of the parties.”* There are no relevant general stipulations other than the procedural agreements mentioned at the beginning of this discussion.

*Factor iv: “Comparison of the hours and conditions of employment [sic] of personnel involved in the proceedings with the hours and conditions of employment of like personnel of like state government employers of similar size in the western United States.”*<sup>13</sup> *Factor vi: “The overall compensation presently received by Department of Correction employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefit and all other direct or indirect monetary benefits received.”* As usual, the surveys in the record here make some attempt to address “overall compensation,” so it makes sense to address these two factor together.<sup>14</sup>

OFM contracted with Segal Waters Consulting for a 2014 Compensation Survey of DOC rates and benefits. Segal Waters began with ten western states, and OFM picked five of those for the final survey: Arizona, Colorado, Nevada, Oregon, and Utah. Only Oregon has a broadly represented corrections workforce. The survey “snapshot” date is January 1, 2014. The Union agrees that these five states are “reasonable” and does not dispute the snapshot date.<sup>15</sup> The Union asked the Tedesco Group to reexamine the same comparators and the same benchmark classifications. The record before me therefore includes two studies, allegedly of the same base material, and those studies come to substantially different conclusions. Unfortunately, the record does not include primary source data or any equivalent of a clear audit trail.

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<sup>13</sup>Absolutely everybody associated with this case treats this language as a clerical error: “Wages” is omitted, and a comparison of “hours and conditions of employment” without wages would not be helpful.

<sup>14</sup>Neither study attempts to combine *all* wages and benefits into a theoretical “net hourly/monthly wage” (a very difficult task with so many open range comparators); but both of the competing studies in the record reflect hours worked and location pay (and cost of labor or cost of living) and then list separately the various benefits which are not reflected in those adjusted numbers. The only additional cost/benefit the parties point to particularly is medical coverage. 2013 medical insurance cost averages were about \$875 per month to DOC and \$137 to each employee.

<sup>15</sup>Both of the traditional primary approaches to population comparability—“±50%” or “half to twice”—sweep in only Arizona, Colorado and Oregon, which is an unsatisfactorily small group. Utah and Nevada are the next closest to Washington in population and five is close to minimal size for a set of comparables.

I admit to a predisposition toward assuming the nationally-known consultancy numbers would be the more disinterested and neutral, but that inclination stumbles over several features of the Segal Waters analysis.

The first oddity is Segal Waters' choice of benchmarks. (The Tedesco Group study did not include an evaluation of the Segal Waters selection of benchmark classifications.) Segal Waters picked sixteen classifications to examine as benchmarks, accounting for about 71% of the bargaining unit. Benchmarks in class/comp work allow one to compare one diverse group of data to another diverse group of data. Comparison by means of benchmarks invites a conclusion about the relative standing of the subject matter as a whole and not just about the benchmark classes themselves. That is why we call them "benchmarks." The choice of benchmarks is not an exact science, but neither is it a shot in the dark. Many interest arbitration disputes focus on disputes over benchmarks, so the common arguments are familiar. One common goal is to *specifically* cover the largest part of the subject matter (for a unit of twenty drivers and five mechanics it would be odd to use mechanics as the benchmark); and a second important goal is to at least roughly represent the *entire* group; but finally, benchmark choice is absolutely subject to the *availability* of matching classifications. A "benchmark" that does not facilitate comparison is a conceptual oddity.

Against those common goals, the Segal Waters benchmarks are strange. The benchmarks do include CO2, which accounts for over 54% of the bargaining unit. The benchmarks do not include the next two largest classes, Sergeant (CO3) and Office Assistant 3—about 11% combined—which do not seem to be difficult class matches to make. On the other hand, fully a quarter of the sixteen benchmark classes have eight or fewer employees each; and none of the sixteen benchmark classes is nearly as large as the 66 employees in maintenance classifications or to the 83 in warehouse classifications; nor do any of the benchmark classes even roughly represent those sorts of work. Strangest of all, perhaps, the choice of benchmarks include Psychiatrist 4 (6 employees) and Psychology Associate (51) each with, at most, *a single match* among the comparable employers.<sup>16</sup> I have never before seen a "benchmark" without more than one match among the comparables. The "Summary" part of the report notes that three classes—those two and LPN2—produced "insufficient market data," but the usual result of such a failure is to reject those classes as benchmarks in the first place.

Next, Segal Waters adjusted its final compensation numbers by Cost of Labor. There are two possible perspectives for compensation surveys, which are, roughly, cost to the employer and benefit to the employees. The most obvious factors that count in a cost-oriented survey but not in a benefits survey are payroll taxes and unemployment insurance

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<sup>16</sup>The single match for Psychiatrist 4 is alleged to be "Medical Doctor" in Utah. Based on the titles alone, on the capsule class specs in the Study, and on the Class Definition—"...directs psychiatric treatment program of unit or section"—I must beg to doubt even that comparability.

and workers compensation costs.<sup>17</sup> One must assume that Segal Waters was given a copy of the MOU, and Subsection vi requires consideration of “The overall *compensation* presently *received* by Department of Correction employees, including ... all ... direct or indirect monetary *benefits received*.” (emphasis not in the original). That unambiguously calls for a benefits survey. An adjustment in terms of Cost of Labor is facially inappropriate when the object of a survey is “compensation received.”

Next, Segal Waters quietly passed over Oregon’s payments of PERS Pickup and certification premiums. The two Oregon corrections contracts are in the record. Segal Waters (on p. 102) shows no PERS pickup for Oregon corrections employees, but in fact the employer picks up the 6% employee pension contribution under both of contracts.<sup>18</sup> (Union Ex. 49 at p. 10 and Ex. 50 at p. 11.) Neither of the Segal Waters nor the Tedesco Group takes a defensible approach to certification premiums. Oregon pays COs (and Corporals and Sergeants) 3% for an Intermediate DPSST certification and 6% for an Advanced certification. (*Id.* at pp. 15 and 20.)<sup>19</sup> Segal Waters ignores those premiums and the Tedesco Group apparently treats all employees at the maximum as DPSST Advanced.

Next, Segal Waters adjusted for location pay—which some Washington DOC employees receive—but originally did not adjust the Arizona numbers for a similar differential. The magnitude of the omission is modest but not insignificant. A total of about 239 Arizona corrections employees get location pay, so the same approach Segal Waters takes to location pay here—essentially spreading the differential percentage over the whole unit—would lift the effected Arizona numbers by about 0.8%.

Finally, Segal Waters generates a “Summary of Direct Compensation Findings” (p. 17) that quite crosses the line between objective presentation of a difficult subject matter and simple spin. The “Summary” is set out in a pie chart that shows 63% as “10 benchmark

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<sup>17</sup>Washington’s recent unemployment insurance reform, for instance, (mentioned in the November, 2013 CAFR summary) will affect the state’s overall cost of labor, potentially making it a more attractive place for a new plant or office, but will have no effect on worker benefits as usually measured. In some states, case law establishes that unemployment coverage is not a wage benefit.

<sup>18</sup> The employer “pickup” of an employee’s retirement contribution is a common benefit based on taxation arithmetic: If an employee is required to pay X% of compensation toward his or her pension, then that X% is taxable income to the employee if it passes through his or her hands but not if it is “picked up” directly by the employer. Some argument is possible about whether or not the pickup counts as compensation received; but pick-up bargaining history usually shows that it should be.

<sup>19</sup>Certification premiums are common enough in police and corrections compensation schemes that it is reasonable to expect a neutral survey to look for them and to ask the employer for the percentage of the class receiving the premiums.

titles are below market...,” 12% as “2 benchmark job title is [sic] at the market...,” 6% as “1 benchmark job title is above market...,” and 19% as “3 benchmark job titles have insufficient market data...” The chart is majestically misleading: The three classes making up the 19% “insufficient data” actually account for less than 3% of the sample and were never proper benchmarks in the first place; the two classes “at market” account for 1.25% of the sample; and the single class making up the 6% “Above Market” accounts for only 0.18%, which leaves—if we do not count the “insufficient data” part of the benchmarks—fully 95.6% of the surveyed portion of the bargaining unit under market according to the Segal Waters numbers: Pretty close to everybody.

In short, the record includes two analyses of the same comparables. Neither can be taken as definitive. And they come to substantially different conclusions. Even on the Segal Waters analysis virtually the entire bargaining unit is substantially behind the comparables.

*Factor v: “The ability of the Department of Corrections to retain employees.”* The overall turnover percentages for this bargaining unit were 4.6% in calendar 2012, 4.7% in calendar 2013, and 2.6% through the first half of 2014.<sup>20</sup> The WFSE Community Corrections unit had slightly lower rates: 3.8%, 3.8% and 2.2%. In the Teamsters unit, almost a third of the CO staff (936 of 3089) have less than six years seniority. Among the nursing staff, almost 60% (199 of 336) have less than six years seniority and the 2013 turnover rate was a disturbing 11% (up from 7% in 2012).

In DOC’s own judgment, it *has* had a recruitment and retention problem in custody and health services classifications in the recent past. DOC’s 2009-2015 Strategic Plan concluded:

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

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

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<sup>20</sup>Although this language focuses exclusively on retention, to the exclusion of recruitment, the parties agree that both parts of the usual “recruitment and retention” consideration are appropriate here. On the other hand, the Union offered evidence of DOC’s scores on State-wide agency surveys showing that DOC was not very popular with its employees, that it had not accomplished its diversity goals, that there is still a rather long hiring process, that evaluations are not commonly completed on time, and that its overtime costs are high; and it is difficult to see how that material, except the overtime data, is relevant to recruitment and retention.

expensive contracted healthcare workers to provide essential services to offenders.

Turnover apparently declined after that summary, along with vacancies (in part due to an increase in the On-Call pool). DOC still has the highest number of overtime hours per eligible employee of all agencies of over 1,500 employees;<sup>21</sup> but DOC as a whole currently has the lowest turnover rate among those agencies.<sup>22</sup> (On the other hand, the statistical basis of that turnover ranking does not include voluntary transfers out of DOC and into another state agency.)

DOC hired 324 COs in calendar 2013 and had hired 399 more in about the first eight months of 2014. DOC shows a total CO complement of 3,089. Comparing the recent hiring numbers to the total complement, and ignoring the possibilities of immediate washouts or withdrawals, it seems that over 23% of the CO workforce has less than two years experience. The record suggests that the first year CO retention rate may be disturbingly low; but COs did not lead the Agency in turnovers, having a rate of 3.7% for both 2012 and 2013. The State's overall average turnover rate is just over 10%, and DOC's is around 8%. In short, although some of the data is disturbing with respect to turnover among newly hired COs, the record as a whole does not show substantial problems of recruitment or retention.

*Factor vii: "Changes in any of the factors listed in this subsection during the pendency of the proceedings."* Every compensation survey is a snapshot, and the snapshot date here is January 1, 2014. But as of that date, all five comparable states had determined subsequent rate increases for 2014 and two had determined rates for 2015. The average of the 2014 increases is 2.05%. All the survey shows for 2015 are increases of 3% in Colorado and 2% in Oregon, leaving Arizona, Nevada and Utah increases as yet undetermined.<sup>23</sup>

*Factor viii: "Such other factors which are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under*

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<sup>21</sup>On average, 30% of the eligible employees work an average of about 90 minutes overtime per week.

<sup>22</sup>The Union points out that DOC has not done very well in accomplishing a number of self-chosen goals, including general employee satisfaction (as indicated by statewide surveys), diversity, hiring process time, and completion of performance evaluations. It is not obvious how any of those failures touch on recruitment and retention or are normally taken into consideration in interest arbitration.

<sup>23</sup>Oregon's correctional institutions are split between two unions. The Union introduced the AFSCME 2011-2013 CBA (with no increases shown after its term) and the OACE 2013-2015 contract, which shows a 2% increase on December 1, 2014.

RCW 41.80.020(1).” The parties offer three “other factors” here: comparability with Washington *county* corrections pay rates, internal comparability, and changes in the CPI.

*County Comparability.* The Union proposes to compare DOC pay and benefits to the pay and benefits of local government employers of COs. The counties used for the Union’s survey are Clark, King, Pierce, Snohomish, Thurston, Walla Walla, and Yakima. The snapshot date was June 30, 2014.

DOC objects on two grounds: DOC argues that counties are inherently not proper comparables for State Corrections personnel, particularly under this MOU, and in any event, DOC argues, the counties surveyed are inappropriate comparables for this bargaining unit.

The answer to the first question lies in the language of Factor viii: Are such data normally or traditionally taken into consideration? In the 2010 Strategic Plan, DOC noted that it continued “to be challenged with recruiting for hard to fill jobs in competing labor markets; especially in healthcare markets.” Indeed, the very facts of the retention-driven location pay in the existing CBA—which DOC proposes to continue—and the additional retention driven increases it proposes to add show that local labor markets matter. RCW 41.06.157 requires the State’s Comprehensive classification plan to (1)(f) “Consider rates in other public employment and private employment in the state,” and authorizes “salary surveys of positions in other public and private employment to establish market rates.” I take that to be a statutory directive for the State to “take a look at the market,” and, of course, a look at the market is a common part of bargaining compensation.<sup>24</sup>

DOC also argues that Factor iv was the parties’ exclusive agreement about determining comparability, that the deal was to compare exclusively with western states of similar size. But nothing on the face of the language supports the conclusion that western states of similar size were understood to be the *only* basis of comparison.<sup>25</sup> The more common practice in interest arbitration is to compare cities to cities, counties to counties, and states to states, but that practice may rest more on the practical problems of comparing across jurisdictional types than on any abstract principle. RCW 41.06.157’s broader sweep actually captures the more common, labor market approach to establishing rates of pay.

Even if counties are proper comparables in principle, are *these* counties proper

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<sup>24</sup>DOC also notes that many of the classifications in this unit appear to have no matches in county corrections, but that does not mean that it is inherently improper to consider counties with respect to classes that do have a match.

<sup>25</sup>Western states of similar size, on its face, lacks many essential features of a real “labor market.” It is, instead, a rational standard for resolving a dispute about compensation. Indeed, without Factor iv it is not clear that western states of similar size would be a relevant comparator at all.

comparables? The Union chose the counties, and the record does not include the basis for that choice. DOC points out that the proposed counties do not overlap DOC facilities or the residences of bargaining unit members. Not a single bargaining unit employee lives in King or Yakima Counties, which the Union includes in its comparables, and quite a few live in Mason County (the Washington Corrections Center is in Shelton) and Franklin County (Coyote Ridge is in Connell), which the Union omits. Moreover, the counties proposed by the Union are mostly in the Puget Sound area—King, Snohomish, Pierce, and Thurston Counties—where pay rates tend to be the highest in the State. Finally, nothing in the record proposes to justify a focus on these counties based on an exchange of personnel between DOC and the proposed county comparators: Nothing suggests that DOC seeks employees in these counties, hires from these counties or loses employees to them. In short, although a weighted comparison with *Washington counties in general* would be useful and might be supported as approaching a real labor market analysis, I must agree with DOC that the Union’s proposed comparison with mostly Puget Sound counties would not be helpful.

*Internal comparability.* Both parties offer internal comparability arguments, proposing to compare the employees at issue not with employees doing similar things for *other* employers but with employees in this or in other bargaining units doing similar things for DOC or for the State. The Union’s internal comparability argument is aimed at elimination of the current location pay for bargaining unit members at some of the correctional facilities, and that argument is addressed below. The State’s internal comparability argument is far more sweeping.

That argument rests in part on the composition of the bargaining unit. Although COs and Sergeants make up almost 3,500 of these 5,700 employees, that leaves over two thousand employees who are spread through the vast state government catalog of 1,580 classifications. Even COs and Sergeants are not unique to this bargaining unit but can also be found in the DOC’s WFSE Community Corrections bargaining unit. Only ten of the 112 classifications in this bargaining unit are unique to it (Classification Counselors 1-3, Sex Offender Treatment Specialist and Supervisor, Mental Health Counselor 2, three Correctional Industries classifications, and Cook AC); and three more classifications are at least unique to DOC although they also appear in the WFSE Community Corrections bargaining unit (CO2, Sgt., and Corrections Mental Health Counselor 3). The remaining ninety-nine classes are found throughout the State workforce in a multitude of other agencies. The most widely distributed classes are the Admin. Asst. 3s—575 in this unit but also in 45 other agencies—the Fiscal Analyst 3 & 4—513 in this unit but also found in 37 other agencies—and the Office Asst. 3s—1,167 in this unit but also found in other 36 agencies.

Based on that feature of the bargaining unit, the State puts particular emphasis on the potential equity problem if employees in this unit were paid more than their co-workers in the same class but in different units.

From the State’s point of view, after the limiting, or “barrier” factors of ability to pay and recruitment, the most important considerations in determining compensation are mitigation of risk, consistency across the Range and Class structure, and fairness, which mostly means both external and internal comparability. In the context of its attempt to maintain a coherent Range and Class structure, the State points to the potential financial “splatter” of any increase to this bargaining unit. I agree that internal comparability is a factor traditionally considered in collective bargaining and in interest arbitration. But while it is largely *the* factor driving creation and maintenance of Washington’s overall Range and Class structure, in the dispute before me it is only *a* factor.

On the most fundamental level, this consistency argument is misplaced in two respects. First, the best forum for the consistency argument would have been the legislative debate over bringing real collective bargaining to the State workforce. Wherever classes overlap multiple bargaining units the State’s duty to bargain creates the possibility of different *bargained* rates for exactly the same work.<sup>26</sup> That possibility is more concrete when some of the bargaining units in question have access to interest arbitration where internal comparability becomes only one factor to be considered.

The second better forum for the cross-unit *inconsistency* argument might be PERC. The “splatter” argument raised by the State here is *exactly* what employers commonly argue in bargaining unit designation contests: ‘employees doing the same work and sitting side by side would be getting different rates,’ ‘internal comparability would be difficult or impossible to maintain,’ ‘it would be a salary-administrative nightmare,’ ‘it mixes security-focused employees with other classes,’ etc. With all due respect to the State and its very real administrative concerns, I am presented with the bargaining unit as it is, and placing any great reliance on the consistency argument seems inconsistent with the basic facts of collective bargaining and PERC’s designation that this is an appropriate unit. Different bargaining units sometimes end up with different pay rates: In the end, “that’s what it’s all about.”

*Changes in the cost of living.* The record includes CPI data in several index forms. Since the last rate increase for these employees, in 2008, all indexes roughly agree that prices have increased by about 11%, or, from the employees’ perspective, their real rates of pay have decreased by that percentage. Moreover, money is worth relatively more in every one of the five comparable states than it is in Washington. In fairly concrete terms, \$100 nationally (Illinois turns out to be the state in the middle of the value curve) is worth \$96.90 in

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<sup>26</sup>The ULP which gave rise to the MOU I am operating under was never addressed by PERC—or by a reviewing court—but that ULP was capable of presenting the questions, first, of whether the State’s statutory duty to bargain allows it to *insist* on cross-unit consistency and allows it to refuse to seriously entertain any proposals that would damage that consistency, and second, of whether the very persistency of such cross-unit consistency over time would be evidence of a refusal to bargain in good faith.

Washington—i.e., Washington’s slightly higher cost of living devalues the \$100—but is worth \$101.34 on average in the five comparable states.

### *COMPENSATION RATES IN GENERAL*

At the end of the process, I am left with a familiar pattern of data: comparability and changes in the CPI, if considered in isolation, would require a substantial rate increase; and the State’s very limited ability to pay and the tame recruitment and retention data, considered in isolation, would deny one. It becomes a question of magnitude.

Apart from the existence of two surveys reaching substantially different conclusions about the same base data, there is an unresolved fundamental dispute over the comparison process. DOC proposes to compare its own top rates with the median rates of the comparators. The Union objects, pointing out that the whole point of comparison is to compare like to like. DOC does not contest that basic principle; but DOC points out that Washington traditionally compares its tops to comparator medians in the statutorily required broad compensation surveys. Washington does so because its step schedules, like many step schedules, are so short that its employees top out very quickly and most of the workforce is at the top step. (That is the very reason that the Legislature added a longevity step in 2013 for employees who had been at the top of the step schedule for six or more years.)

If most of the Washington employees are at their maximums, what do we know about the distribution of the comparators? Range systems are much less likely than step systems to exhibit crowding at the top, and for the three comparators with open ranges the record actually shows concentration near the bottoms of the ranges. We have seniority-based rate lists for Colorado, Arizona and Utah, and pay rates track seniority reasonably closely in those lists. For Colorado, there are about 18 pages of CO2 rates, and the first rates above the median appear on page 11, which means that over 60% of Colorado COs are below the midpoint in their range. For Utah, the 31 pages of CO rates first show a rate above the median on page 21 and then again on 28 and above, so most of the unit is below the median. And a similar exhibit for Arizona—which begins with steps and then has an open range—shows virtually no CO above the range median.

On the other hand, the record includes CBAs but no seniority rate list for Oregon. Oregon’s top steps come in eight years or less, almost as quickly as in Washington without the longevity step and more quickly than in Washington with it, so comparison of Washington’s top with Oregon’s median would not be appropriate. There is no data at all for Nevada except Segal Waters’ observation that it, like Washington and Oregon, has a step system rather than open ranges. In short, on this record, it is not unreasonable to compare Washington tops and comparator medians, but neither is that approach compelling. Table #1, just below, sets out the data for mid to mid and top to top comparisons and Table #2 (on p. 22) shows a comparison of Washington tops and comparator medians:

Benchmark & population:	Segal Waters						Tedesco Group					
	Comp. Mid	WA Mid.	Mid. %dif	Comp. Top	WA Top	Top %dif	Comp. Mid.	WA Mid.	Mid. %dif	Comp. Top	WA Top	Top %dif
Chaplain (14)	56,205	49,290	88%	67,536	56,544	84%	55,318	48,618	88%	66,087	55,200	84%
Class. Couns. 2 (164)	60,020	45,155	75%	69,087	51,779	75%	59,773	44,058	74%	68,592	50,004	73%
Cook AC (176)	45,119	36,804	82%	52,959	42,036	79%	45,358	36,306	80%	53,294	41,046	77%
CO 2 (3,098)	48,918	41,590	85%	58,221	47,607	82%	49,092	39,990	81%	58,308	45,288	78%
Corr. Ind. Sup. 2 (55)	52,129	48,120	92%	62,233	55,200	89%	51,977	47,340	91%	61,927	53,820	87%
Corr. Mental Health Counselor 2 (25)	57,292	44,664	78%	66,433	51,216	77%	57,120	44,058	77%	66,318	50,004	75%
Corr. Records Tech 1 (65)	42,501	37,740	89%	50,478	43,116	85%	42,501	37,200	88%	50,478	42,036	83%
Dental Hygienist 2 (7)	48,154	60,060	125	56,107	68,904	123	48,154	50,238	123%	56,107	67,260	120%
Imaging Tech. 1 (5)	44,839	43,614	97%	52,591	50,004	95%	44,839	43,008	98%	52,591	48,792	93%
PA / ARNP Lead (42)	85,615	81,714	95%	98,866	101,496	103%	85,615	80,478	94%	98,866	99,024	100%
RN 2 (22)	70,499	63,804	91%	82,673	79,260	96%	68,904	62,856	91%	80,586	77,364	96%
Sex Offender Treatment Spec. (28)	58,469	49,290	84%	68,997	56,544	82%	55,200	46,618	88%	65,274	55,200	85%

Table #1: Mid to Mid and Top to Top

Putting the two competing surveys in the record side by side, Table 1, above, is what the record shows with respect to comparability mid to mid and top to top. The Segal Waters numbers are the final version in that survey, adjusted for location pay where applicable and for workweek and cost of labor. The Tedesco Group numbers show adjustments for workweek and for cost of labor but not for location pay. The table does not include four benchmarks: Electronic Tech. is not included because the entire class family is being moved up range (pursuant to DOC's proposal discussed below), and LPN2, Psychiatrist 4 and Psychology Associate are not included because the last two classes had only a single match among the comparables and LPN2 had only two, which makes those numbers uninformative ("insufficient market data" in Segal Waters' words). Table #2 on the following page shows the two respective comparisons of Washington's tops and the comparator medians.

Class and size	Segal Waters			Tedesco Group		
	Comp Mid.	WA Max	% diff.	Comp Mid.	WA Max	% diff.
Chaplain (14)	56,205	56,544	101%	55,318	55,200	100%
Class Couns. 2 (164)	60,020	51,779	86%	59,773	50,004	84%
Cook AC (176)	45,119	42,036	93%	45,358	41,040	90%
CO 2 (3,098)	48,918	47,607	97%	49,092	45,288	92%
Corr. Ind Sup. 2 (55)	52,129	55,200	106%	51,977	53,820	104%
Corr Mental Health Counselor 2 (25)	57,292	51,216	89%	57,120	50,004	88%
Corr Records Tech 1 (65)	42,501	43,116	101%	42,501	42,036	99%
Dental Hygienist 2 (7)	48,154	68,904	143%	48,154	67,260	140%
Imaging Tech. (5)	44,839	50,004	112%	44,839	48,792	109%
PA/ARPN Lead (42)	85,615	101,496	119%	85,615	99,024	116%
RN 2 (22)	70,499	79,260	112%	68,904	77,364	112%
Sex Offender Treatment Spec. (28)	58,469	56,544	97%	55,200	55,200	100%

Table #2: Washington Tops to Comparator Medians

On January 1, 2014, According to Segal Waters, taking an average of these benchmarks *weighted by class sizes*, the bargaining unit as a whole was 18% behind at the top, 15.3% behind at the median, and 3.1% behind comparing Washington tops and comparator medians. According to the Tedesco Group numbers, on that same basis, the unit as a whole was 21.5% behind at the top, 18.7% behind at midpoint, and 7.6% behind comparing Washington tops and comparator medians. Whatever the lag was in January, it will increase by another 2.05% through 2014 and by an undetermined additional percentage in 2015.

Because hard evidence in the record shows that the three comparators with pay ranges are weighted toward the lower halves of those ranges, I agree with DOC that comparison of tops is inappropriate. That somewhat reduces the spectrum of comparator data, but it leaves a low of 5.15+% (Segal Waters top to mid, with the 2014 increases) to a high of 20.75+% (Tedesco Group mid to mid, with those increases). The “+” is very important here because we do not know the increases that any of the comparators will show for the 2015-2016 year which begins the contract at issue. What we do know is that the nation as a whole, probably including the comparator states, is coming out of the same economic slump as Washington. We also know that CPI increases have cost the employees in this bargaining unit about 11% in purchasing power since the last rate increase in 2008 and that their health insurance costs have increased by an average of over 10% per year.

Washington's financial plight is extremely serious. *McCleary* presents the legally awkward situation of a State Supreme Court contemplating holding its legislative branch in contempt following a series of cases and legislative actions dating back more than thirty years, to *Seattle School Dist. No. 1* in 1987. But the current Show Cause Order does not contemplate any particular funding formula. It simply references the original directive to submit to the Court "a complete *plan* for fully *implementing its program* of basic education..." (Slip Op. at 3, emphasis not in the original.) In its current posture, *McCleary* remains an 800 pound fiscal gorilla, but any estimate of its 2015-2017 costs seems quite speculative. That still leaves the legislature with a projected biennial budget shortage of \$900 million.

But the shortages of each pay period's income for these employees are also not speculative compared with the pay rates in western states of similar populations. Washington's financial situation makes it inappropriate for me to try to correct the uncertain *higher* estimates of the rate lag here, but the record as a whole does not allow me to ignore at least the lower estimates. Correctional institution staffing must be efficient and *uninterrupted*, and a deficiency such as this is not consistent with that very pressing interest of the public or with the terms of the MOU.

Taking the comparability data all together, these employees are almost 10% behind their comparables, which is just about the same 10%+ they have lost in purchasing power. I therefore award to these employees 5% over the WFSE General Government settlement: A July 1, 2015 increase of 5.5% (WFSE's 3% plus 2.5%) and a July 2, 2016 increase of 4.3% (WFSE's 1.8% plus 2.5%). The total cost of those increases would be about \$53.5 million, which is \$32.5 million over DOC's 3% proposal, but the next part of the discussion and award will reduce those costs by one to two million.

Effective July 1, 2015, each range shall be increased by 5.5% and effective July 1, 2016, each range shall be increased by 4.3%.

*The Union's "Geo Pay" Proposal.* The Union proposes to eliminate location incentives, painting the "geo pay" language as the most divisive in the contract, raising the ire both of employees inside the targeted classes but outside the targeted institutions and of employees inside the targeted institutions but outside the targeted classes. But the Union does not dispute that genuine recruitment and retention problems led to the location incentives; and the same response that applies to the State's consistency argument must apply here: It is part of the nature of a bargaining unit. The Union chose to represent a geographically broad unit, and that choice means that some residence areas are more expensive and more popular and some are less. Two of the factors set out in the MOA are sometimes referred to as "barrier factors:" the employer absolutely must be *able to pay* for the work, and the employer absolutely must be *able to staff* it. Location pay is the traditional and accepted means of dealing with local recruitment and retention problems.

I will nonetheless tentatively eliminate location incentives—and their costs— because the across-the-board increases awarded here will overtake the incentives. Unfortunately, I cannot tell whether the underlying staffing problems will be eliminated by that general increase or whether there will still be *internal* staffing problems: Without a location differential, will employees bid out of the targeted institutions as soon as possible, leaving an unacceptably junior workforce? For that reason, and because recruitment and retention really is a barrier factor, I will give DOC the discretion to reintroduce the previously existing location incentives and to introduce those it now proposes. The language of the award is set out below on page 25 after the discussion of DOC’s proposed statewide Range increases.

*DOC’s Proposed Selective Range Increases.* DOC proposes to change the pay range for Sex Offender Treatment Specialist, for several levels of Electronics Technician, for Correctional Records Technicians, and Corrections Mental Health Counselors. DOC would include all these classes in a new APPENDIX G: “Pursuant to Article 32.25, the following job classifications are being assigned to new job ranges as detailed below.” Here is the language of the proposed new Section 32.25:

**Recruitment and Retention – Compression/Inversion–Increased Duties and Responsibilities– Inequities**

Effective July 1, 2015, targeted job classifications will be assigned to a higher salary range due to documented recruitment and retention difficulties, compression or inversion, increased duties and responsibilities, or inequities. Appendix G identifies the targeted job classifications and the salary range for which it [sic] will be assigned.<sup>27</sup>

The reasons for these range changes divide them into two groups. For the Electronics Technician, ET4, ET Supervisor, Correctional Records Tech. 1&2, and Correctional Records Supervisor, the record justifies a garden-variety, non-problematic range increase because of “higher level duties” or “higher level responsibility and decision making,” or, in the case of ET Supervisor, “Compression” due to the proposed range increases for the supervised ETs. Those are the very core reasons that classes sometimes move up range. The Union offered no contest to DOC’s claim of increased duties and responsibilities or to the appropriateness of the proposed new ranges, and I will award DOC’s proposal with respect to those classes. The parties may agree between themselves to put this part of the award into the CBA, but this sort of range increase based on increased duties and responsibilities is an ordinary part of schedule maintenance which, in my opinion, clutters up a CBA with administrative detail, and I therefore award it separately:

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<sup>27</sup>DOC’s written proposals also include a new Subsection D in the sections on Pay Range Assignments: “Employees who are paid above the maximum for their range on the effective date of the increases described in Subsection B above will not receive the specified increase to their current pay unless the new range encompasses their current rate of pay.” “Subsection B” refers to DOC’s July 1, 2015 3% proposal. The record does not address or clarify that proposal, and I will not award it.

AWARD WITH RESPECT TO REALLOCATION OF CLASSES

The following class allocations are changed as indicated:

Class Code	Classification	Old Range	New Range
592W	Electronics Technician	45E	Class eliminated and employees transferred to Electronics Tech. 4.
592M	Electronics Technician 4	49G	50G
592N	Electronics Technician Supervisor	51	53G
112E	Correctional Records Technician 1	40	44
112F	Correctional Records Technician 2	44	48
112G	Correctional Records Supervisor	48	52
348C	Corrections and Custody Officer 3	47	48*

\* See the discussion below on pp. 28-29.

For the other three classes—Sex Offender Treatment Specialist and Corrections MH Counselor 2&3—DOC’s justifications are different. These proposed two-range increases (5%) address class-wide problems of recruitment and retention rather than changes in duties and responsibilities. These proposals are not *location* incentives: the range changes in question would be general. The Union does not contest DOC’s claim that these classes have experienced broad recruitment and retention problems. The proposed two-range increases are within the across-the-board increases awarded in this case, and therefore *might* be avoided by those general increases. But DOC’s proposals are for two ranges on top of DOC’s proposed 3%, and that would reach a pay level above the general increase awarded here. That means that I cannot tell whether the general rate increases awarded here will address these recruitment and retention problems, and I therefore include these classes in the list for which DOC may, at its discretion, reallocate ranges upward on the basis of recruitment and retention problems. The Assignment Pay Appendix shall be amended as follows (replacing the prior language of Group C):

APPENDIX \_\_\_\_  
ASSIGNMENT PAY

Assignment pay (AP) is granted in recognition of assigned duties which exceed ordinary conditions. The “premium” is stated in ranges or a specific dollar amount. If stated in ranges, the number of ranges would be added to the base range of the class. The “reference number” indicates the specific conditions for which AP is paid.

Group A indicates those classes which have been granted AP; Group B indicates those assigned duties granted AP which are not class specific; Group C ~~applies only to Ref #29~~ **lists classes and assignments for which the Department of Corrections may at its discretion apply the stated premiums based on problems of recruitment and retention.**

\* \* \* \* \*  
GROUP C

**The Department of Corrections may, at its discretion, apply premiums, not to exceed the indicated limit, in order to address problems of recruitment and retention. A premium shown to be applicable to an entire class must be applied to that class uniformly. “At its discretion” means that the only permissible grievance of such a decision is limited to whether or not the decision in question was arbitrary and capricious or violated the express terms of this provision. Once applied, a premium may not be reduced for the life of this Agreement.**

Class	Class Codes	Premium Limit	Location(s)
Classification Counselor 1, 2, or 3	354E, 354G or 354I	1 Range	Coyote Ridge (CRCC), Monroe Correctional Complex (MCC) or Washington State Penitentiary (WSP)
Corrections and Custody Officer 1, 2, or 3	384A, 384B or 384C	2 Ranges	CRCC, MCC, or WSP
Licensed Practical Nurse 2	286B	2 Ranges	MCC
Sex Offender Treatment Specialist	354K	2 Ranges	Statewide
Corrections Mental Health Counselor 2 or 3	354O or 354P	4 Ranges	Statewide

The overall initial cost of the general rate increases awarded here are therefore reduced by the prior cost of the location differentials, which DOC takes to have been about \$9.5 million and by the a part of the projected costs of DOC’s own range increases set out just above. The record does not segregate the cost of those recruitment and retention driven premiums from the range changes driven by changes in duties and responsibilities, but the two together were almost \$2 million and the classes just above are far more populous than those raised up range based on increased duties and responsibilities. That reduces the general rate increase costs (over the State’s proposed 3%) to about \$22 million.

*Supervisory Spread.* The Union proposes a five range separation between supervisory employees and the top range of employees they supervise in the same class series. The separation currently ranges from two (Classif. Counselor 3, Cor. Mental Health Counselor 3, and Fiscal Analyst 4) to nine (Office Support Supervisor 2). In most instances, the separation is currently four ranges. The picture is complicated by the uneven amount of

supervisory responsibilities assigned to a “supervisory” class: All 405 Sergeants supervise, but only two of the fifty Maintenance Mechanic 4s do. That variation suggests that there may be a similar variation in the percentage of duty time spent on supervision within a “supervisory” class even for those who have some supervisory responsibilities within the same series. Here are the supervisory classes at issue with their ranges, the incidence of supervision, the classes supervised and *their* range, and the changes in all that resulting from DOC’s range increases.

Classification	Range <sup>A</sup>	New Range	How many supervise others in the same series. <sup>B</sup>	Highest class supervised in same series. <sup>C</sup>	Range Super-vised <sup>D</sup>	Differ-ence <sup>E</sup>	New Range Super-vised	New Differ-ence
*Admin. Assistant 3	39		6 of 24	AA 2	35	4		
*Classification Counselor 3	49		46 of 119	CC 2	47	2		
*Correctional Industries Supervisor 2	50		20 of 55	CIS Asst.	44	6		
*CIS 4	54		8 of 10	CIS 2	50	4		
*Correctional Records Supv.	48	52	All 10	CR Tech. 2	44	4	48	4
*CO 3 <sup>28</sup>	47		All 405	CO 2	43	4		
*Cor. Mental Health Cnslr. 3	49	51	6 of 11	CMHC 2	47	2	49	2
*Electronics Supervisor	56		All 2	Elec. Tech.	45	11	50	6
*Electronics Tech. Supv.	51	53	All 3	Elec. Tech 4	49	2	50	3
*Equipment Tech. Supv.	54		1 of 2	Eqpt. Tech Lead	49	5		
*Fiscal Analyst 4	52		All 13	FA3	50	2		
*Forms & Records Analyst 3	46		All 3	FRA 2	41	5		
*Locksmith Supervisor	49		1 of 3	Locksmith Lead	45	4		
*Maintenance Mechanic 4	53		2 of 50	Maint Mech. 3	49	4		
Office Support Supv. 1	36		All 1	Office Asst. 3	31	5		
Office Support Supv. 2	40		All 3	Office Asst. 3	31	9		
Psychiatric Social Worker 4	55		All 1	PSW 3	50	4		

<sup>28</sup>DOC’s targeted increases driven by recruitment and retention would increase these ranges to 51 for CMHC3 and 49 for CMHC2; but the range difference would remain the same.

Classification	Range <sup>A</sup>	New Range	How many supervise others in the same series. <sup>B</sup>	Highest class supervised in same series. <sup>C</sup>	Range Super-vised <sup>D</sup>	Differ-ence <sup>E</sup>	New Range Super-vised	New Differ-ence
*Psychologist 4 <sup>29</sup>	57		15 of 18	Psych Assoc.	54	3		
*RN 3	58		27 of 33	RN 2	54	4		
*Secretary Supervisor	40		All 9	Secretary Senior <sup>F</sup>	33	4		
*Sex Offender Treat. Supv.	55		All 6	Sex Offendr Spec.	51	4	53	2
*Stationary Engineer 3	52		All 4	SE 2	48	4		
*Warehouse Operator. 3	36		2 of 7	WO 2	32	4		
*Warehouse Operator 4	40		All 13	WO 3	36	4		
*WW Treatment Plant Op.2	52		1 of 4	WTPO 1	48	4		
Const. & Maint. Project Supv.	56		12 of 38 at all	Maint. Mech. 4	53	3		
Food Service Mgr. 1	41		All 1 at all	Cook	39	2		
Food Serv. Mgr. 2	44		2 of 5 at all	Cook	39	5		

A. Range. B. Number in class who supervise employees in same class series. C. Highest class supervised in same series (based on similarity of titles only). D. Range of that class. E. Difference in ranges. F. Some Secretary Supervisors apparently supervise Forms & Records Analyst 2s, whose range is one above Sec. Supervisor.

Table #3: Existing Supervisory Spread

The three greyed classes at the bottom apparently do not supervise employees in the same series. The Union also proposes to include Wastewater Treatment Plant Operator 3, but the record does not show supervisory responsibilities for employees in that class. (Union Ex. 3.)

Many different considerations drive range allocation decisions, and supervisory spread or compaction is one of them. But no range allocation system that I have ever heard of includes a hard and fast rule about the separation between a supervisory range and the highest range supervised in the same class series. Such a rule would be particularly inappropriate when, as in this unit, there is substantial variation in the degree of actual supervisory duties and in the demand that such duties make on the supervisory employee's time. The record does not include any comparator support for this proposal or any principled support; and I decline to award the Union's general proposal.

<sup>29</sup>DOC's targeted increases driven by recruitment and retention would increase most Psychologist 4s by 10% (the equivalent of four ranges).

The record *does* offer support for the specific proposal to increase the supervisory spread between CO2 and CO3/Sergeant. While the difference between CO and Sergeant is 10%, the difference between Sergeant and Lieutenant is 49% (with another 20% between Lieutenant and Captain). As far as this record shows, the regional average spread between CO and Sergeant is between 15% and 20% and the difference between Sergeant and Lieutenant is 20%-25%.<sup>30</sup> Sergeants have less opportunity for overtime than COs, and a single overtime shift in a two-week pay period brings CO earnings up to Sergeant earnings. That record more than justifies the Union's proposal to lift CO3s up one range, and I award that change by the addition of the final line to the Award with Respect to Reallocation of Classes set out above on p. 24.

*LPN Weekend Premium.* Each facility generally requires a minimum of one RN round the clock; but almost any additional nurse staffing minimums may be satisfied by an LPN as long as there is an RN to oversee the work. RNs get a \$3/hour weekend premium, but an LPN covering a vacant RN position does not get the weekend differential. The Union proposes to change that omission by making this change to Section 32.16 (which DOC costs at about \$232,000):

For the classes of ~~registered~~ nurse and related job classes requiring licensure as a ~~registered~~ nurse, supplemental shift premium will be paid in the amounts and under the conditions described below..."

Nursing work inside a correctional institution is not like nursing work elsewhere. Correctional institution nurses have to take care never to leave even gauze—even *used* gauze—within the reach of a patient, not to mention medications or instruments of any sort. Nowhere else do nurses have to be so careful not to divulge *any* personal information to their patients. Nursing turnover is substantial. The rate for LPN2s was 18.2% in 2012 and dropped to 10.5 in 2013; but for LPN4s it was 13.2% and 8.2% respectively. DOC points out that an LPN filling an RN position under orders of an RN still cannot do all the tasks that an RN license covers, but that really does not support the difference in scheduling premiums between the two classes of nurses, particularly in light of the LPN turnover numbers, and I award the Union's proposed change.

*On-Call Premiums.* Overtime exempt employees such as Physician's Assistants and Psychologists are assigned to a regular, non-optional On Call schedule. The current premium for On Call is \$25 / day for OT exempt employees under all State contracts. That contract provision has been uniform and undisturbed in Washington CBAs since 2007-2008. The provision has an even longer history, going back in WAC form, for Nurses only, to as early as 1988, at which time \$25 was the industry standard. Contractors covering the same

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<sup>30</sup>That conclusion comes from a survey conducted by a Union witness. Segal Waters did not treat Sergeant as a benchmark.

function are paid \$125 to \$150 per day, and the Union proposes that same rate for bargaining unit employees.<sup>31</sup> For PAs, for example, the schedule is supposed to be one week in four, but vacancies can and do increase the frequency of On Call duties for the remaining employees. When On Call, an employee must be available by phone and must be able to deal with whatever sort of critical incident falls within his or her expertise. That usually means no drinking and no trips out of mobile phone range. There is great variation in the frequency of actual calls, varying from several a night to none for days. In general, *in corpus* response is not required of on-call employees, and if they do report in person they are eligible for hour-for-hour “exchange time” but only “with prior approval...for working in excess of forty-five (45) hours in a workweek.” (§16.5.D) In some situations, there may be licensing issues in a medical professional’s failure to respond in person. (At Airway Heights and at WSP, on-call nurses are expected to report physically on fairly rare occasions.)

DOC offers this list of overtime exempt classes which might be subject to the increased on-call premium: Chaplain, Chief Engineer, Fiscal Analyst 4, Lab Tech. 2, Library and Archival Professional 1&2, Office Support Supervisor 2, Pharmacist 2, Physician Asst. / Adv. RN Pract. Lead, Psychiatric Social Worker 3&4, Psychiatrist 4, Psychologist 3&4, and Psychology Associate. DOC estimates the biennial cost exposure of this proposal for all OT exempt classes at about \$1.4 mil., which makes it too expensive in light of the costs of the general rate increases here. Moreover, it is not clear what frequency of calls and what limitations may attach to On-Call status for Chaplains, Chief Engineers, Fiscal Analyst 4s, Lab Technicians, Library & Archival Professionals, or Pharmacists 2s. On the other hand, where the record is robust, I agree with the Union that \$25 for eight hours is inadequate for the degree of freedom in the use of personal time that nursing and psychiatric employees lose in On-Call status, and I will award an increase to \$50 for Psychiatric Social Worker 3 & 4, Psychiatrist 4, Psychologist 3 & 4, Psychology Associates, and for PAs.

Section 32.17.F is amended as follows:

**Overtime-exempt employees classified as Physician Asst. / Adv. RN Pract. Lead, Psychiatric Social Worker 3 or 4, Psychiatrist 4, Psychologist 3 or 4, or Psychology Associate will be compensated one hundred dollars (\$50.00) for each day or portion thereof spent in standby status. All other** overtime-exempt employees will be compensated twenty-five dollars (\$25.00) for each day or portion thereof spent in standby status. A day is defined as a twenty-four (24) hour period beginning on the first hour an employee is assigned to standby status.

Finally, corrections work is poorly understood and substantially undervalued by the public as a whole. Because the comparison here is with corrections employees in other states, a certain “corrections differential” is built into those numbers and into this award.

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<sup>31</sup>One of DOC’s cost-containment campaigns over recent years has been the reduction of contract staff, with which the Union now compares on-call rates; and that drive has been quite successful.

AWARD

1. Effective July 1, 2015, each range shall be increased by 5.5% and effective July 1, 2016, each range shall be increased by 4.3%.

2. AWARD WITH RESPECT TO REALLOCATION OF CLASSES

The following class allocations are changed as indicated:

Class Code	Classification	Old Range	New Range
592W	Electronics Technician	45E	Class eliminated and employees transferred to Electronics Tech. 4.
592M	Electronics Technician 4	49G	50G
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112F	Correctional Records Technician 2	44	48
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348C	Corrections and Custody Officer 3	47	48

3. The Appendix on Assignment Pay is amended as follows:

APPENDIX \_\_\_\_  
ASSIGNMENT PAY

Assignment pay (AP) is granted in recognition of assigned duties which exceed ordinary conditions. The “premium” is stated in ranges or a specific dollar amount. If stated in ranges, the number of ranges would be added to the base range of the class. The “reference number” indicates the specific conditions for which AP is paid.

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\* \* \* \* \*  
GROUP C

The Department of Corrections may, at its discretion apply premiums, not to exceed the indicated limit, in order to address problems of recruitment and retention. A premium shown

to be applicable to an entire class must be applied to that class uniformly. “At its discretion” means that the only permissible grievance of such a decision is limited to whether or not the decision in question was arbitrary and capricious or violated the express terms of this provision. Once applied, a premium may not be reduced for the life of this Agreement.

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Licensed Practical Nurse 2	286B	2 Ranges	MCC
Sex Offender Treatment Specialist	354K	2 Ranges	Statewide
Corrections Mental Health Counselor 2 or 3	354O or 354P	4 Ranges	Statewide

4. Section 32.16 is amended as follows:

For the classes of ~~registered~~ nurse and related job classes requiring licensure as a ~~registered~~ nurse, supplemental shift premium will be paid in the amounts and under the conditions described below...”

5. Section 32.17.F is amended as follows:

Overtime-exempt employees classified as Physician Asst. / Adv. RN Pract. Lead, Psychiatric Social Worker 3 or 4, Psychiatrist 4, Psychologist 3 or 4, or Psychology Associate will be compensated one hundred dollars (\$50.00) for each day or portion thereof spent in standby status. All other overtime-exempt employees will be compensated twenty-five dollars (\$25.00) for each day or portion thereof spent in standby status. A day is defined as a twenty-four (24) hour period beginning on the first hour an employee is assigned to standby status.

Respectfully submitted,



Arbitrator