

BEFORE THE ARBITRATOR

Re the Interest Arbitration Between:)
)
WASHINGTON STATE FERRIES,)
)
the State,)
)
and)
)
PUGET SOUND METAL TRADES COUNCIL)
)
the Union.)
)
)
_____)

ARBITRATION AWARD
(2017-2019 Contract)
PERC Case 128346-I-16

Appearances

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Date of Award
September 30, 2016

I. PROCEEDINGS

This matter arises out of negotiations for the 2017-2019 Collective Bargaining Agreement between the State of Washington (the State) and Puget Sound Metal Trades Council and its affiliated organizations¹ (the Union or PSMTC) which applies to all employees working at the Eagle Harbor Maintenance Facility responsible for the maintenance, repair and conversion work necessary to keep the Washington State Ferries (WSF) vessels and terminals operational. The negotiations came to impasse and issues concerning Article 6, Hours of Work and Overtime and Appendix A, Straight Time Hourly Wage Rates were certified for interest arbitration by the Public Employment Relations Commission (PERC) in accordance with RCW 47.64.300(1). The issues were submitted to and are properly before the undersigned neutral arbitrator. An evidentiary hearing was held on August 11 and 12, 2016, in Seattle, Washington. The hearing was recorded and a transcript prepared by a Certified Court Reporter, Katie A. Eskew, of Byers and Anderson, Inc.

At the hearing, the witnesses testified under oath and each party had the opportunity to examine and cross-examine the witnesses, to submit documentary evidence and to argue their cases. The parties elected to make oral closing statements at the end of the hearing in lieu of submitting closing briefs. By agreement of the parties, the arbitrator was given until September 30, 2016, to submit her Opinion and Award.

II. STATEMENT OF THE ISSUES

The issues which were certified for interest arbitration and which continue to be issues are:

- Article 6, Section 1: Hours of Work and Overtime

¹ PSMTC is comprised of the International Brotherhood of Electrical Workers Local 46, International Association of Machinists and Aerospace Workers Local 79, Sheet Metal Workers International Association Local 66, International Brotherhood of Teamsters Locals 117 and 174, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers Local 104, and United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry Local 32.

- Article 6, Section 2: 4-10 Schedule Overtime
- Article 6, Section 3: Weekend Overtime/Working on Scheduled Days Off
- New Article (Proposed Article 6, Section 14): Minimum Shift for Scheduled Overtime
- Appendix A: Straight Time Hourly Wage Rates²

State Exs. 1 and 2.

III RELEVANT STATUTORY AUTHORITY

RCW 47.64.005 – Declaration of Policy

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

RCW 47.64.006 – Public Policy

The legislature declares that it is the public policy of the state of Washington to: (1) Provide continuous operation of the Washington state ferry system at reasonable cost to users; (2) efficiently provide levels of ferry service consistent with trends and forecasts of ferry usage; (3) promote harmonious and cooperative relationships between the ferry system and the 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 of the United States, including Alaska, and in British Columbia in directly comparable but not necessarily identical positions.

RCW 47.64.300 – Interest arbitration –Procedures

...

(2) The parties may agree to submit the dispute to a single arbitrator, whose authority and duties shall be same as those of an arbitration panel. ... The full costs of arbitration under this section shall be shared equally by the parties to the dispute.

...

² In PERC's Certification To Interest Arbitration letter it listed "Article 6, Section 12: Early Callout" as a certified issue. The Article 6, Section 12 issue was withdrawn and the parties stipulated that Article 6, Section 7 is no longer an issue for consideration in this interest arbitration. Transcript p. 247, lines 13-20 (Tr. 247:13-20), and Tr. 248: 3-10; Tr. 118: 10-14..

(5) ... Within thirty days following the conclusion of the hearing, or sooner as the October 1st deadline set forth in RCW 47.64.170(6)(c) and (7) necessitates the neutral chair shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on each of the other members of the arbitration panel, and on each of the parties to the dispute.

RCW 47.64.320 – Parties not bound by arbitration—Arbitration factors

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

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

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

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

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

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

(d) Stipulations of the parties;

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

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

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

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

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

(j) The overall compensation presently received by the ferry employees, including direct wage compensation, vacations, holidays and other paid excused 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.

In resolving the issues in this dispute, whether or not fully articulated herein, this arbitrator has been mindful of the above-listed criteria and has given careful consideration to all of the evidence and arguments presented by the parties that relate to these criteria.

IV. BACKGROUND

The State of Washington operates the Washington State Ferry System (WSFS), one of the biggest ferry systems in the United States and in the world. It is a part of the state highway system, serving eight counties and British Columbia, Canada.³ The Puget Sound Metal Trades Council (PSMTC) represents the Eagle Harbor Maintenance Facilities bargaining unit that is responsible for the maintenance, repair and conversion work necessary to keep the ferry vessels and terminal operational. Although the majority of the work is performed at Eagle Harbor, the employees may be dispatched at any time to any location throughout the system where there is a problem. There are 81 members of PSMTC at Eagle Harbor plus a 24-member unit of the Pacific NW Regional Council of Carpenters.⁴ Under the PSMTC contract, the Journeyman wage rate for all crafts is the same.

Washington State Ferries (WSF) has a number of different classes and varieties of vessels. There are five Jumbo Class vessels, Jumbo Mark Is built in the 1970s and the much larger Jumbo Mark IIs, holding 202 cars, built in the late 1990s; four Super Class vessels, holding 144 cars, built in the 1960s; six Issaquah Class vessels, holding 130 cars, built in the 1980s; and the Olympic Class vessels, the newest class, with two vessels in use and two coming into service in the next few months. There are also three 84-car Evergreen Class vessels, built in 1959, with one tied up at Eagle Harbor on the sale block, and the other two not going to be far behind. In addition, there are three KDT or Kwa-di Tabil Class vessels

³ State Exhibit 29..

⁴ State Exhibit 28; Tr. 23-24.

which were pulled out of service in November 2007, and the Hiyu, a 34-car vessel, with some pneumatic systems that operate the different components from the pilothouse.⁵ Because of the great variety of vessels in use, their complexity, and the critical need to keep them operational, it is important for the employees at Eagle Harbor to be highly skilled.⁶

V. PARTIES' FINAL OFFERS ON WAGES

A. States final offer

The State proposed a straight time hourly wage rate increase of three percent (3%) for Journeyman in each classification represented by the Union effective July 1, 2017. The wage rates shall be as follows and will remain in effect through June 30, 2018

<u>Position</u>	<u>Effective 07-01-2017</u>
Journeyman (all crafts)	\$29.72
Leadperson (5% over Journeyman)	\$31.21
Foreperson (10% over Journeyman)	\$32.69
Health & Safety Supervisor (10% over Journeyman)	\$32.69
Planner (7% over Journeyman)	\$31.80
Vessel General Foreperson (12% over Journeyman)	\$33.29
Terminal General Foreperson (12% over Journeyman)	\$33.29
Helper - starting rate: 65% of Journeyman rate	\$19.32

The State proposed a straight time hourly wage rate increase of one percent (1%) for each classification represented by the Union effective July 1, 2018. The wage rates shall be as follows and will remain in effect through June 30, 2019.

<u>Position</u>	<u>Effective 07-01-2018</u>
Journeyman (all crafts)	\$30.02
Leadperson (5% over Journeyman)	\$31.52
Foreperson (10% over Journeyman)	\$33.02

⁵ Tr. 40-41.

⁶ Tr. 36-38, 41.

Health & Safety Supervisor (10% over Journeyman)	\$33.02
Planner (7% over Journeyman)	\$32.12
Vessel General Foreperson (12% over Journeyman)	\$33.62
Terminal General Foreperson (12% over Journeyman)	\$33.62
Helper – starting rate: 65% of Journeyman rate	\$19.51

B. Union's Final Offer

The Union proposed a straight time hourly wage rate increase of six percent (6%) for each classification represented by the Union effective July 1, 2017. The wage rates shall be as follows and will remain in effect through June 30, 2018

<u>Position</u>	<u>Effective 07/01/2017</u>
Journeyman (all crafts)	\$30.58
Leadperson (5% over Journeyman)	\$32.11
Foreperson (10% over Journeyman)	\$33.54
Health & Safety Supervisor (10% over Journeyman)	\$33.64
Planner (7% over Journeyman)	\$32.72
Vessel General Foreperson (12% over Journeyman)	\$34.25
Terminal General Foreperson (12% over Journeyman)	\$34.25
Helper – starting rate 65% of Journeyman rate	\$19.88

The Union proposed a straight time hourly wage rate increase of 6% effective July 1, 2018. The wage rates shall be as follows and will remain in effect through June 30, 2019.³⁴

<u>Position</u>	<u>Effective 07/01/2018</u>
Journeyman (all crafts)	\$32.41
Leadperson (5% over Journeyman)	\$34.04
Foreperson (10% over Journeyman)	\$35.65
Health & Safety Supervisor (10% over Journeyman)	\$35.65
Planner (7% over Journeyman)	\$34.68
Vessel General Foreperson (12% over Journeyman)	\$36.30

Terminal General Foreperson (12% over Journeyman)	\$36.30
Helper – starting rate 65% of Journeyman rate	\$21.07

VI. DISCUSSION OF STATUTORY FACTORS: RCW 47.64. 320 (3)(a)-(k).

A. The financial ability of the department to pay for the compensation and fringe benefit provisions of the collective bargaining agreement.

The financial feasibility of the parties' positions is the driving factor in this arbitration. Therefore, the evidence concerning the State's ability to pay was carefully examined in great detail. What came across in examining this evidence is that the economy of the State of Washington is improving and revenues are increasing.

There are three budgets passed by the Washington Legislature: 1) an Operating budget (General Fund budget), largely supported by sales, business and property taxes, 2) a Capital budget, primarily funded through general obligation bonds and cash revenues from dedicated accounts, and 3) a Transportation Budget, supported in large part (75%) by state and federal money and bonds backed by the gas tax.

It is the Transportation Budget that builds roads and provides for the operations of the Washington State Department of Transportation, the Washington State Patrol, the Department of Licenses and other entities. The 2015-2017 Biennium Budget for Transportation was \$7.2 billion plus \$1.5 billion for payment of debt services. Sixty-five percent (65%) of the Transportation budget was for the Washington State Department of Transportation (WSDOT) in the amount of \$6.01 billion. Within this \$6.01 billion is the Washington State Ferries (WSF) total budget of \$890.3 million consisting of a Ferry Operating budget of \$484.3 million and a Ferry Capital budget of \$406.0 million. By law the WSFS is not allowed to take money budgeted for capital projects to fund operations and vice versa. The various ferry labor contracts come out of the Ferry Operating budget.⁷

⁷ State Exhibit 11.

The Washington State Economic and Revenue Forecast for the General Fund-State (GF-S) is positive and showing increasing revenue forecasts for the 2017-19 biennium and the 2019-21 biennium and reserves. These forecasts are based on increased real estate activity, projected income growth and inflation and employment growth.⁸

The Transportation Revenue Forecast Council's forecasts show that revenues have been increasing over the last few years. The June 2016 Transportation forecast of revenues for the 2015-2017 biennium was \$5.812 billion which represented a 24% increase over the 2013-2015 biennium of \$4.69 billion in revenue. For the 10-year forecast horizon, revenues were projected to be \$32.104 billion, which is up by \$655.7 million (2.1%) from February due primarily to higher fuel tax revenues, toll revenue, vehicle sales tax and licenses, permits and fee revenue.⁹ The June 2015 transportation forecast of revenues was \$4.669 billion for the current biennium, which represents an increase of 7.8% over the prior 2011-2013 biennium of \$4.33 billion.¹⁰

Relating this information to the ferries, Erik Hansen, Budget Assistant with the Office of Financial Management (OFM), indicated that after a number of years of negative projections, now there is a positive projected ending fund balance for the ferries.¹¹ Yet, he also cautioned that there are always pressures on a budget; more needs and wants than there is revenue. WSF has to work within the parameters of the budget given them by the legislature. In general, there is usually not a lot of money left in the WSF's budget; the ending fund balance has not been large in the past. Now they are projecting a larger-than-normal ending fund balance for the ferries. Yet, the legislature has the power to transfer money from one account to another. They could turn a positive ending-fund balance into a

⁸ Union Exhibit 5, pp. 1, 59-60, Tr. 95-101.

⁹ Union Exhibit 21, p. 3.

¹⁰ Union Exhibit 22, p. 3. *See also* Union Exhibit 23, p. 3.

¹¹ State Exhibit 11, p. 15; Tr. 60, 106-107.

negative ending-fund balance. They could also transfer money to cover budgetary shortfalls, and have done so in the past.¹²

Budgets are resources and expenditures. According to Mr. Hansen, the ferry beginning fund balance for this year is \$35.6 million, a higher than normal amount. Other resources are: ferry fares \$360.7 million; fuel taxes \$51.7 million; backfill \$30 million;¹³ licenses, permits, fees \$17.1 million; non-fare-box \$7.9 million,¹⁴ and Federal Revenue \$5.9 million.¹⁵ The 2015-2017 WSF Operating Budget is \$484.3 million, with labor taking up 65.5% of the budget, i.e. \$317.2 million. Fuel takes up 16.2% of the budget but there is a proviso around fuel. Ferries cannot use money appropriated for fuel to pay for anything else.

The legislature passed a revenue package consisting of a 16-year plan that would raise \$16.2 billion in revenue over the next sixteen years.¹⁶ The legislature also laid out a spending plan to spend this money. In this plan, \$300 million of the revenue was assumed to backfill the ferry operating account to maintain the current level of service. The \$30 million backfill discussed above, was contemplated in this revenue package.¹⁷ In addition to the \$300 million, the legislature added \$302 million over the 16-year period for ferry vessel and terminal construction and preservation and \$200 million for contingency.

The record reflects the following positive ending balances for the Puget Sound Ferry Operations Account at the end of this biennium and the next four biennia (Dollars in Thousands)

2015-17	2017-19	2019-21	2021-23	2023-25
\$23,827	\$25,740	\$43,887	\$61,529	\$81,760

¹² Tr. 61-62.

¹³ This is the legislature adding money to cover a projected shortfall at the time. Tr. 67. Mr. Hansen testified that over the last five biennia, the State has transferred \$70 to \$80 million from the Motor Vehicle Account into the Puget Sound Ferry Operating Account and this year they only had to transfer \$30 million. Tr. 121-122.

¹⁴ This is concession stands and advertising on the ferries. Tr. 67.

¹⁵ This amount is for non-routine maintenance on the ferries. Tr. 67

¹⁶ Tr. 70-75; State Exhibit 11.

¹⁷ Tr. 73.

State Exhibit 11, p. 15.¹⁸ This assumes spending is as expected and that backfill is coming into the ferry system. Tr. 78.

A chart of the Major Transportation Accounts Estimated Ending Fund Balances based on the 2012 Legislative Financial Plan shows they anticipated that in the 2015-2017 biennium the Motor Vehicle Account would be \$132.9 million in the red, when in fact the now projected ending fund balance is \$110.8 million in the black. They also anticipated that in the 2015-2017 biennium the Multimodal account would be \$36.3 million in the red, when in fact it ended up at \$54.2 million in the black. Additionally, they anticipated that in the 2015-2017 biennium the Puget Sound Ferry Operations Account would be \$115.7 million in the red when now it is being projected to be \$23.8 million in the black.¹⁹ Mr. Hansen testified that the positive changes in the ending fund balances were in large part the result of fuel cost savings. Tr. 118.

The budget of the State is fluid and that is why there has to be supplemental sessions. Tr. 135. These sessions are to address concerns that arise during the course of the biennium. If there is more revenue than projected the legislature may or may not decide to use that revenue to address such concerns.

The budget information was difficult to sort through and assess, particularly as to what is likely to occur in the future. There are certainly pressures on the budget including a court case concerning culverts, *United States of America, Suquamish Indian Tribe et. al v. State of Washington*, No. 13-35474 (9th Cir. June 27, 2016).²⁰

Yet, it is clear that there is money for a reasonable wage increase.

B. Past collective bargaining contracts between the parties including the bargaining that led up to the contracts.

For the 2015-2017 biennium, Arbitrator Susan Spencer awarded members of this bargaining unit wage increases of 3% effective July 1, 2015, and 4%

¹⁸ Mr. Hansen testified that he used data from Union Exhibit 21 to prepare this chart. Tr. 107.

¹⁹ Union Exhibit 25, p. 3; Tr. 116-118. Compare State Exhibit 11, p. 15.

²⁰ State Exhibit 14.

effective July 1, 2016. Prior to this, Arbitrator Jane Wilkinson awarded members of this bargaining unit a wage increase of 1.5% in each year of the 2013-2015 biennium. These increases were effective July 1, 2013 and July 1, 2014. Before this award, bargaining unit members had not received an increase in their wage rate for five years, i.e. from July 1, 2008, to July 1, 2013. In the 2011-2013 collective bargaining agreement, the Union agreed to a 3% wage reduction effective July 1, 2011 until June 29, 2013. In 2008, for the 2009-2011 biennium, Arbitrator Marvin Schurke awarded members of this bargaining unit a 6% wage increase effective July 1, 2009, and a 6% wage increase effective July 1, 2010.²¹ However, the Office of Financial Management determined that this increase was not fiscally feasible and, ultimately, the Union agreed to accept a wage freeze for the duration of that contract.²²

C. The constitutional and statutory authority of the employer.

There was no evidence, argument or citations presented on constitutional authority, other than remarks in connection with finances. Erik Hansen pointed out a constitutional prohibition against one legislature binding the actions of another. Tr. 74. Mr. Hansen also stated that Washington has a balanced budget law. By its Constitution the ending fund balances in the major DOT accounts cannot be in the negative at the end of the biennium. Tr. 123.

The State submitted what it considered to be the applicable statutes.²³

D. Stipulations of the parties

The parties stipulated to the following facts:²⁴

1. The fiscal year is July 1st to June 30th.
2. The bargaining concluded at impasse with the articles that are before the arbitrator. Tr. 243, 244.

²¹ At the time, the statute required the arbitrator to select one of the parties' final offers. Arbitrator Schurke may or may not have awarded a different amount if he had been at liberty to do so.

²² All the labor contracts for the 2009-2011 biennium were determined to be financially unfeasible. Tr.88.

²³ State Exhibit 3.

²⁴ Tr. 244, 247, 248,

3. The proposals before the arbitrator are Article 6, sections 1, 2, 3, 14, and Appendix A. Article 6, section 7 is no longer an issue for consideration in this interest arbitration.²⁵
4. The parties are in agreement on the increases, or lack thereof, in the percentages over the Journeyman rate for Leadperson, Foreperson, Health & Safety Supervisor, Planner, Vessel General Foreperson, Terminal General Foreperson and the Helper starting rate. There is no issue with regard to these matters.

E. The results of the salary survey as required in RCW 47.64.170(8)

The data and conclusions contained in the 2016 Marine Employees' Compensation Survey (MEC) are key to determining the relative relationship of the compensation of the PSMTC workers to workers in comparable positions. The methodology used in the compilation of the survey was explained by Kamaron Durocher, a Class and Compensation Advisor for OFM who prepared the survey. In discussing the process used in this survey, Ms. Durocher pointed out some changes that were made in response to stakeholder feedback and stated that the "snapshot" they wished to have the survey effective was January 1, 2016, as salaries are always a moving target. Thus, the survey does not take into account a wage increase received by PSMTC workers on July 1, 2016, under the current collective bargaining agreement. There was also a methodology change. In 2014 and the years before that, a weighted-average methodology was used and this year a simple average was used.²⁶ There were also changes in the participants which will likely have an impact on the PSMTC bargaining unit.

1. Comparators (Survey participants)

In analyzing the State's ability to pay, by statute the Arbitrator is directed to look at: "Comparison of wages, hours, employee benefits, and conditions of employment of the involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable, but not necessarily

²⁵ Tr. 244, 247, 248.

²⁶ Tr. 188. Ms. Durocher explained that this was done because they did not have enough data. They did not have the employee counts for Lake Union Drydock so they could not do a weighted average. Tr. 188.

identical work, giving consideration to factors peculiar to the area and the classifications involved.” RCW 47.64.320(3)(f). The 2016 Salary Survey, which presumably provides the data for comparison, includes data from the following sources:

Lake Union Dry Dock (Seattle)
 Port of Seattle
 Puget Sound Naval Shipyard (Kitsap County)
 Vancouver Shipyards Co. Ltd (Vancouver, B.C.)²⁷

Although survey data is contingent upon who is willing to respond, four comparators does not seem responsive to the statutory requirement to compare “public and private sector employees along the west coast of the United States, including Alaska....” It appears the State invited nine (9) entities to participate in the shipyard survey out of a possible 24, and only obtained data from four.²⁸ Hopefully, this situation will improve in the future.

2. Time frame covered

The “snapshot in time used for providing wage and benefit data in the survey is January 1, 2016. It is noteworthy that the bargaining unit received a 4% wage increase on July 1, 2016. Similarly, the comparables may also have received increases not reflected. For example, Arbitrator Susan Spencer in her decision noted that the Vancouver Shipyards Co. Ltd workers received a wage increase in March 2014. It is highly likely that they also received one in March 2016. Meaningful wage comparison surveys depend on the quantity and quality of the comparators and when the data is obtained.

3. Market Comparison Using Survey Data and a simple average.

Benchmark Title	# of EEs	Average (Actual) Base Pay Rate	Average Hourly Benefit*	Average Actual Base Pay & Benefits

²⁷ State Exhibit 10, p. 6; Tr. 193.

²⁸ State Exhibit 9, p.8; Tr. 190-191.

Shipyard Boilermaker/Welder	1	\$29.46	--	--
Shipyard Electrician	1	\$32.77	\$7.34	\$40.11
Shipyard Machinist	1	\$31.89	\$8.62	\$40.51
Shipyard Pipefitter	1	\$33.70	\$7.55	\$41.25
Shipyard Sheet Metal Worker	1	\$31.80	\$8.53	\$40.33
Shipyard Truck Driver	1	\$31.18	--	--
Shipyard Warehouse Worker	1	\$26.78	--	--
TOTAL		\$217.58	\$32.04	\$162.20
Simple Average		\$ 31.08	\$ 8.01	\$ 40.54
WSFS		\$ 27.74	\$8.41	\$36.15
% Above or Below Market		-12.1%	4.8%	-12.2%

*Average data not shown where less than two participants report data.

This table is taken off the Salary Market Data chart on page 56 of the 2016 MEC Survey.²⁹ The “bottom line” is the Metal Trades total percentage above or below the Market. To calculate the bottom line, the survey used a simple average that gave equal weight (i.e. “1”) to the seven benchmark jobs that make up the Journeyman level of the bargaining unit (WSFS in the survey) regardless of the actual skill mix of the population of the group (i.e., No consideration was given to the actual # of “EEs” in the respective benchmark classifications.). The Average (Actual) Base Pay difference between the WSFS rate and the comparators rate using this calculation method is minus 12.1% without benefits included, and minus 12.2% with benefits included. The “with benefits” figure is somewhat skewed, however, as three of the comparators are not included due to a lack of data.³⁰

There are a number of problems with the OFM MEC Survey data in addition to the small number of participants. The data used to calculate the Average (Actual) Base Pay Rate is not consistent.³¹ For example, the data from only three participants was used for the classification “Shipyard Boilermaker/Welder” and only one for the “Shipyard Truck Driver” classification,

²⁹ State Exhibit 9: OFM Marine Employees Compensation Survey, page 56.

³⁰ Tr. 188.

³¹ See State Exhibit 10, pp. 9-11.

and there is some confusion as to the wage rate that is included in the survey.³² Additionally, there are inconsistencies in the benefits column. It only represents health insurance, dental and vision and does not include pension. Therefore, if the comparator provides a benefits figure that includes pension it is not used in the survey.³³ Nevertheless, the Survey shows that the composite wages of members of PSMTC employed by the Washington State Ferry System at Eagle Harbor are behind the market by 12 percent and this must be given serious consideration.

Total package comparisons

In support of its position that its members are entitled to wage increases of 6% and 6% over the 2017-2019 biennium, the Union presented the testimony of Greg Heidel, Business Representative with the Machinist Union, and a Chart showing “total package” figures (i.e., wage rate, health & welfare, and pension) for nine marine comparator companies and the supporting collective bargaining agreements.³⁴ Mr. Heidel testified that shipyards are different than businesses in that everyone has their own health and welfare and everyone has a different pension. He said that his wage as a machinist in the yard would be different than an electrician, but what the employer is interested in is the “total package.” Therefore, he prepared the chart showing the cost of the “total package.” Mr. Heidel testified that the Chart is correct as of February 2016, but there are few updates that need to be added as there have been some wage increases. Foss should be \$42.06 as there was a \$1.50 increase. Lake Union just had an increase of \$1.60 so that “total package” should be \$42.15. Pacific Fisherman also had an increase of \$1.50 so they are at \$42.06. Pacific Ship Repair went up \$0.97 so their total package should be \$39.71. With these changes, the Chart (Union Exhibit 7) is accurate as of the date of the hearing in August 2016.³⁵

³² Tr. 209-213.

³³ Tr.216-218., 218. There were also difficulties with the benefit figures provided by the Canadian shipyard as to what that employer covers as “supplemental benefits.” due to the health benefits provided by the Canadian government. Tr. 219.

³⁴ Union Exhibits 7 and 9-18.

³⁵ Tr. Vol. 2, pp. 51-54.

In order to use the Union’s chart to see how WSF employees compare with the other shipyard and marine industry employees on the chart, I calculated the “total package” figure for WSF Journeymen using the following formula (Journeyman hourly wage + Health and Welfare + pension = total package) and the data from the MEC Survey at pp. 56 and 62. I also used the hourly Journeyman wage of \$28.85 which included the raise on July 1, 2016, since it seemed more appropriate in view of the fact the Chart was current as of August 2016. Using this formula, the total package figure for WSF is \$39.03 (28.85 + 8.41 + 1.77). I then compared the WSF “total package figure” with the average and median total compensation figures for the comparators and found that the Union bargaining unit employees’ total compensation package is approximately 3.86% below Market.

Company	Total Comp
Foss Shipyard	\$42.06
Lake Union Shipyard	\$42.15
Vigor Shipyard	\$40.56
Pacific Fisherman	\$42.06
Puglia Engineering	\$36.36
Fairhaven Shipyard	\$37.39
Vigor Marine	\$40.56
Federal Marine	\$42.52
Pacific Ship Repair	\$39.71
Average	\$40.60
Median	\$40.56
WA State Ferry	\$39.03
vs Average	-3.86%

vs Median	-3.77%
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If the \$27.74 wage rate is used the WFS total package figure would be \$37.85 (27.74 + 8.41 + 1.70). Comparing the \$37.85 WSF total package figure with the average total package figure for the comparators, I find that the bargaining unit's total package compensation is approximately 9.32% below Market.

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

The comparator evidence presented is for the most part discussed above. The interesting thing about this group of employees is their work and working conditions which are challenging and unique. Their work is a combination of work at the Eagle Harbor facility and out in the field. They cover the entire field shown on the back of State Exhibit 29. At times a crew of two or three people is sent out all the way to Friday Harbor on San Juan Island. If a vessel needs repair and the Eagle Harbor employees are needed to take of it, then a crew is sent to do it. On average, Eagle Harbor gets several emergency call-outs a week.

Electricians, machinists, sheet metal workers, plumbing and pipefitting workers, and boilermakers work at Eagle Harbor. If boiler work has to be done, the pipe shop does this with the assistance of sheet metal workers and electricians taking off various components to get down to the boiler. Actual work on the boiler is primarily the weld shop. The weld shop does structural modifications, cutting and ship fitting, burning, cutting, fitting and welding.

Work at the terminals is varied. There is a lot of preventative maintenance and extensive work was done installing all the wireless internet systems on the

ships and the terminals. The bargaining unit assists in remodels, assists the IT shop and the lock shop in their card readers and lock boxes. They also do a lot of the camera maintenance and repair for the security system that the State Patrol monitors. They work on the bridge system that is used to get on and off the ferry. Like the vessels, there is everything from stone-age technology to modern computer driven systems in the terminals.

With regard to working conditions, the bargaining unit works in a wide variety of locations on land and over water and in all kinds of weather and working conditions to keep the ferry system operating. Furthermore, it is a 24/7 operation and members of the bargaining unit can be called out at any time to fix or repair a part or component of a vessel to keep it operational. When a ferry goes down, they call on PSMTC members to come immediately and get the thing repaired as the vessel may be sitting out on the water with passengers on it.³⁶

G. Changes in any of the foregoing circumstances during the pendency of the proceeding.

There is no evidence presented that seems to apply that has not been discussed already.

H. The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature

These matters are discussed above in connection with the State's ability to pay.

I. The ability of the State to retain ferry employees.

There is evidence of some vacant positions, but the evidence is insufficient to establish that workers are leaving Eagle Harbor in significant numbers because of low wages or poor working conditions. On the contrary, though some people leave for higher wages or other opportunities, in the past it was a destination workplace for the trades. The wage rates and benefits at Eagle Harbor used to be

³⁶ Tr. Vol. 2, p. 70

better than other shipyards and there is continuous work. It was a good experience. There was a variety of work and a lot of it.³⁷ Although the wages may not be as good now, the stability still exists at WSF and there is still an interesting variety of work.

Although there is not a lot of evidence of problems with retention, there is evidence of difficulties in hiring qualified people with the experience and expertise necessary to do a lot of the work at Eagle Harbor, particularly troubleshooting. It takes a year to two years to get a journeyman electrician up to speed to do everything that needs to be done on the ferry system.³⁸

VII ARTICLE 6

Sections 1 and 2.

In Section 1, the Union is seeking pay at a “double (2) time rate” for work beyond a consecutive shift of 12 hours, excluding lunch period, of overtime work at one-half (1½) the employee’s straight time rate. The double time pay rate continues until the employee is provided with a minimum rest period of eight (8) hours. The Union is seeking this pay as an acknowledgment of the hazard of continuous work and to provide for the safety of the workers.

In Section 2, the Union seeks pay at the double time rate for employees with 4/10 work schedules³⁹ who work in excess of twelve hours in any one day. The cost of this benefit is negligible and, once again, it is within the control of management.

By these provisions, the Union is seeking the return of the double time they gave up in 2010 at the time of the recession and to make their overtime pay consistent with the rest of the industry. It was clear from the testimony of the Union officials that the loss of the double time overtime was a thorn in their side.

³⁷ Tr. 273-274.

³⁸ Tr. Vol 2, pp 35-36.

³⁹ A 4/10 work schedule

In support of its position, the Union submitted a chart showing the shipyards in the area that have double time overtime and the testimony of David Jacobsen.⁴⁰

It also appears to be a safety issue. Orville Johnson, an Electrician at Eagle Harbor, testified that he had two thirty-hour shifts in one week,⁴¹ He explained, very credibly, that when you are working this many hours without a significant break, you are not cognitively proficient. Having to pay double time for work in excess of twelve hours would be a good incentive for managers to keep the lengthy overtime at a minimum to the extent they are able to do so.

The Eagle Harbor General Manager, Ranny (RJ) Kelly testified that there were no operational issues with adding double time to the overtime provisions.⁴² Furthermore, the biennium cost of these provisions is determined to be \$93,724, a reasonable amount considering the comfort it would give employees and the fact that it is controllable by management. There is no evidence showing that providing the double overtime benefit would have a significant impact on the budget.

Overtime work is not mandatory in the WSFS. Employees can turn it down if they so desire. Eagle Harbor may even experience some benefit in the double time by making it easier to get people to work the necessary overtime.

I found the employees that testified at the hearing to be impressive in their work ethic and interest in keeping the ferry system running smoothly. They gave up the benefit when things were tough and WSFS was under extreme budget pressures trying to keep the ferry system operational. Now that things are picking up and the revenue forecasts are looking good well into the future, there does not seem to be a reason for the State to deny the Union's request to get back the double overtime.

Section 3

⁴⁰ Union Exhibit 27; Tr. 88-

⁴¹ Tr. Vol. 2, p. 11-12.

⁴² Tr. 32.; State Exhibit 23.

In this section, the Union is seeking pay at one and one-half times the applicable rate for the first 8 hours an employee works on Saturday and double the applicable rate after that. It is also seeking double time pay for any time worked on a Sunday. The cost is negligible, there are no operational issues, and it is within the control of management.⁴³ Under these circumstances, I see no good reason to deny the Union's request.

Section 14

This is a new section the Union is seeking to have added to Article 6 and is as follows:

Scheduled overtime work shall be defined as overtime with at least sixteen (16) hours of advanced notice to the employee before the overtime will begin. If less than 16 hours notice employee will receive a payment of three (3) hours pay at the basic salary per occurrence in addition to all other compensation due for hours worked. A minimum shift for scheduled overtime shall be four (4) hours unless the scheduled overtime is immediately before or after a regularly scheduled daily shift. When employees report for management or their designees approved scheduled overtime and are told not to start work the employee shall receive four (4) hours of applicable overtime pay.

The Eagle Harbor General Manager, Ranny (RJ) Kelly described the process of handling overtime which usually results from distress calls. The calls come in to a vessel general foreman and a terminal general foreman and they are the people tasked with coordinating with customers, the port engineers or the terminal engineers, of what work needs to be done. They then look for who might be available to do the job and ask them if they would be available. Mr. Kelly emphasized that it is a voluntary thing and the employee can refuse to take the job. He also stated that most of the overtime is a mixture of short-time notice and longer term notice.

There was not a lot of evidence presented on this provision. What I understand is the employees want sixteen hours notice of overtime work so that

⁴³ Tr. 32; State Exhibit 23.

they can plan for things and not have it be so disruptive to the family. A reasonable request. Yet, this is not possible for a lot of the distress calls that come in and someone has to go and troubleshoot a problem right away. As there is a cost factor to this proposal and it did not appear to be as important as the double overtime, I am denying the request to add section 14 to Article 6.

CONCLUSION APPENDIX A

It is undisputed that this group of employees are valued by their employer and play an important and vital part in keeping the ferries operating and the terminals in good shape. It is also undisputed and well established by the evidence that most of them are well qualified, experienced, and experts in their field. Furthermore, it takes an expert to do a lot of the work they do; which often entails troubleshooting a problem, figuring out how to fix it, and then completing the task. The evidence also establishes, and the parties agree, that the bargaining unit is a group of hardworking, dedicated and deserving employees worthy of an increase in pay. That said, I must determine an appropriate amount.

As discussed above, the economy is improving, the revenue forecasts and ending balances are looking good for the next few years and the wages of the bargaining unit have been below market for a number of years. Thus, I find that reasonable wage rate increase at this time is 3% in the first year of the biennium and 3% in the second year. Furthermore, in looking at the costs of the State's proposal and the Union's proposal, and considering the rising economy and positive revenue forecasts, I am confident such a wage rate increase is feasible.

AWARD

The Arbitrator's wage award is as follows:

FY 2017 Wage Award: Effective July 1, 2017, the bargaining unit will receive a 3% wage increase.

FY 2018 Wage Award: Effective July 1, 2018, the bargaining unit will receive a 3 % wage increase.

The Arbitrator is approving and awarding the changes to the language in Article 6, Section 1, Section 2, and Section 3 of the collective bargaining agreement proposed by the Union.

The Arbitrator is denying the Union's proposal to add a new Section 14 to Article 6 of the collective bargaining agreement.

Date: September 30, 2016

Carol J. Teather
Arbitrator