

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

INTERNATIONAL ORGANIZATION OF	:	
MASTERS, MATES & PILOTS,	:	
	:	INTEREST ARBITRATOR'S
and	:	DECISION AND AWARD
	:	
WASHINGTON STATE FERRIES,	:	PERC No. 128357-1-16
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	:	
(Interest Arbitration, 2017-19 Masters CBA)	:	
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I. INTRODUCTION

The parties were unable to resolve six issues during bargaining for their 2017-19 CBA, resulting in these interest arbitration proceedings, conducted under the procedures set forth in RCW Ch. 47.64. The statute specifies the following factors as the principles that must guide an interest arbitrator's award:

In making its determination, the arbitrator or arbitration panel<sup>1</sup> shall be mindful of the legislative purpose under RCW 47.64.005<sup>2</sup> and 47.64.006<sup>3</sup> and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

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

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<sup>1</sup> In this matter, the parties chose to present the issues to a single interest arbitrator rather than to a panel.

<sup>2</sup> “The state of Washington, as a public policy, declares that sound labor relations are essential to the development of a ferry and bridge system which will best serve the interests of the people of the state.” RCW 47.64.005.

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

(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.

RCW 47.64.320(3). Effective July 1, 2013, the WSF “Masters” (or “Captains” in the language of the statute) were severed from the Mates into a separate MM&P bargaining unit. Formerly, both classes of licensed deck officers (“LDO’s”) bargained in a single combined unit. RCW 47.64.340. Consequently, only issues involving the Masters are before me in this proceeding.<sup>4</sup>

At a hearing held at WSF headquarters in Seattle on August 8-10, 2016, the parties had full opportunity to present evidence and argument, including the opportunity to cross examine each other’s witnesses.<sup>5</sup> The proceedings were transcribed by a certified court reporter, and I have carefully reviewed the transcript in the course of my analysis of the issues. Counsel chose to argue the case orally at the close of the presentation of the evidence, and having carefully considered the issues in light of the parties’ presentations, I am now prepared to render the following interest arbitration award.

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<sup>4</sup> During the hearing in this matter, the parties informed me that they had reached a tentative agreement (“TA”) with respect to the Mates’ unit, and that the Mates had voted to ratify that TA. As I will discuss in the course of this Interest Arbitration Award, the terms of the ratified Mates’ 2017-2019 CBA are an important factor in the analysis here because the Mates’ unit represents a significant internal comparator for determining fair wages and working conditions for the Masters given that the Masters supervise the Mates, work shoulder-to-shoulder with them, and were formerly part of a single unit.

<sup>5</sup> As an aside, the parties agreed that they would maintain the official record of the hearing required by the statute, relieving the Arbitrator of that responsibility.

## II. DECISION

### A. Background Considerations

#### 1. The Bargaining Unit/Issues at Impasse

The Washington State Ferry System operates vessels carrying both passengers and vehicles on scheduled runs in Puget Sound and the San Juan Islands (including an international route through the Islands to Sidney, B.C.). WSF Masters and Mates are licensed by the U.S. Coast Guard (“USCG”) and must possess “pilotage,” i.e. demonstrated knowledge of the depths, hazards, navigational aids, etc. required to navigate the vessels safely on the waters sailed by WSF vessels. Masters are in full command of the ferries, including managing the other shipboard employees. Employees supervised by the Masters include the Mates, also represented by MM&P, although (as noted) now in a separate bargaining unit; and deckhands, i.e. Able Bodied Seamen or “A/B’s” and Ordinary Seamen or “O/S’s,” who are represented by the Inland Boatmen’s Union (“IBU”).<sup>6</sup> The typical WSF deck officer career progression has been for entry level employees to begin as deckhands and then to acquire the necessary training and skills, including pilotage, enabling them to serve as a Temporary Mate and to seek formal promotion to the Mate classification. Mates eventually progress to Master by seniority.

There are three categories of Masters—Staff Masters,<sup>7</sup> Relief Masters, and ordinary Masters, each with its own wage rate. WSF proposes a wage increase of 20.0 % for Staff Masters effective July 1, 2017 in order to incentivize the most experienced Masters to continue to bid for

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<sup>6</sup> Engine room employees, represented by Marine Engineers’ Beneficial Association (“MEBA”) report to a Chief Engineer who also reports to the Master of the vessel.

<sup>7</sup> Staff Masters have additional administrative responsibilities for the vessel as a whole, e.g. advance planning with respect to necessary work when the vessel is in the yard for maintenance or repair, either at the WSF Shipyard in Eagle Harbor on Bainbridge Island, or in an outside shipyard.

those positions.<sup>8</sup> WSF also proposes increases in the base wage for all three categories of Masters of 2.0% effective July 1, 2017, and an additional 2.0% effective July 1, 2018. The Union does not necessarily oppose the substantial increase for Staff Masters, but declined to accept it during bargaining in the absence of more substantial raises in the base wage that are necessary, says the Union, to address a “compression problem,” i.e. the Masters’ base wage under the current CBA exceeds the wage rate for a Relief Mate by just \$0.13 per hour. Consequently, argues the Union, the wage structure encourages Masters to “bid down” as described in a prior footnote.<sup>9</sup> To address this compression issue, MM&P proposes that base wages for Masters be increased by 5.5% in the first year, with an additional 4.0% in the second year of the 2017-2019 CBA.<sup>10</sup> WSF contends that these proposed increases are beyond its reasonable ability to pay.

In addition to the wage issue, the Union has proposed increasing the available slots for use of comp time (to give less senior Masters greater opportunity to take time off to be with their families at the more desirable times of the year); an increase in the uniform allowance to match the allowance received by the Mates; a WSF contribution toward the cost of individual “licensure insurance” coverage carried by many Masters; penalty pay for mandatory overtime under certain conditions; and an increase in holiday pay (for holidays not worked) from 8 hours

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<sup>8</sup> The evidence establishes that some Masters, rather than taking on additional responsibilities, instead choose to “bid down” to Relief Mate, which pays virtually the same as Master under the current CBA. The Relief Mate position not only entails fewer responsibilities, but also enables a Master (more senior than most Mates) to have greater choice of “watches,” i.e. their precise assignments. That greater relative seniority may enable them to work closer to home and/or to have more desirable work hours or days off.

<sup>9</sup> As I understand it, there may also be opportunities to work overtime as a Relief Mate that would increase compensation above what a licensed deck officer might receive in a Masters position.

<sup>10</sup> WSF’s proposed base wage increases of 2%/2%, notes the Union, are inadequate if for no other reason than that they would turn the present compression problem into a wage “inversion,” i.e. if I were to award the WSF wage proposal, Relief Mates would actually receive *higher* wages than ordinary Masters.

to 12 hours. WSF contends that all of these proposals, to the extent they go beyond WSF's offer, are not necessary and/or not financially responsible.

2. The Statutory Criteria and "Ability to Pay"<sup>11</sup>

In recent biennial bargaining cycles, going back at least to 2008, one statutory criterion has tended to dominate an interest arbitrator's analysis of any bargaining issue to which a significant cost could be attached. That is, the State's dire financial projections during the recession and slow recovery (occasionally reaching projections of multi-billion dollar biennial shortfalls) often overshadowed all other considerations. That is so because under those conditions, the State usually argued—and many interest arbitrators, including this one, found the argument to be persuasive—that only limited wage and benefit increases, if any, were feasible. In fact, at times, the State asked for and received substantial give-backs in "reopened bargaining"<sup>12</sup> from the Unions representing State employees, including the MM&P.

The negotiations for the 2017-2019 biennium, however, take place in a very different context, i.e. there has been a substantial recovery in the State's financial condition from the depths of the recession. For example, the national unemployment rate continues to go down, although Washington's rate has flattened. Exh. U-8 at 3. Gas tax receipts are up significantly, although they had previously been forecast to decline because high gas prices were discouraging private automobile travel and providing an added incentive for the State's residents to turn

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<sup>11</sup> I put "ability to pay" in quotation marks because, for reasons that follow, it could rarely be said that the State lacks the "ability" to pay for reasonable increases in wages and benefits, although it might be difficult or imprudent to allocate limited State resources in that way given competing priorities. The more accurate term, in my view, would be something like "financial responsibility," but "ability to pay" is the precise statutory term.

<sup>12</sup> By "reopened bargaining," I mean that negotiations occurred during the term of existing CBA's, which resulted in changes to the terms and conditions of employment as set forth in those Agreements. For example, the marine employee unions made substantial wage and benefit concessions in those difficult times, particularly in 2011, that contributed significantly to the State's ability to maintain WSF service to the public at its historic levels.

toward public transportation and to more fuel efficient vehicles.<sup>13</sup> Significantly, WSF fare box revenue, in light of fare increases and ridership growth to just shy of 24 million passengers in 2015, has continued to recover to the point that fare receipts now cover approximately 74% of WSF operating expenses, above the historical range of 60-70%.

As a result of these and similar improvements in the economic outlook, the Major Transportation Accounts Estimated Ending Balances Forecast (which has always been the starting point for considering whether available revenue will cover transportation expenditures) now projects that all of the account balances will end the 2017-2019 biennium substantially in the black, including the WSF Operating Account. To my recollection, that is a first during my time serving as interest arbitrator for WSF and the marine unions. These positive projections no doubt result not only from the improving economy,<sup>14</sup> but also from the Legislature's recent passage of a Transportation package increasing revenue, including revenue designed to address WSF's historical need for substantial transfers of funds from other operating accounts.<sup>15</sup> For these and similar reasons, the Union argues that WSF can now afford substantial wage and benefit increases for this unit, and that is particularly the case, says the Union, with respect to the

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<sup>13</sup> The State often argued previously that these changes in transportation habits were unlikely to reverse themselves in full, even if the economy improved. That has not necessarily proved to be accurate with the lower gas prices of the last several years. On the other hand, it is true that the real value of gas tax revenues declines over time because of inflation and the fact that the tax is based on a fixed per-gallon amount which does not vary with the price of gas, nor is the gas tax indexed for inflation. *See*, Exh. S-9, Slide 12.

<sup>14</sup> I take arbitral notice of the fact that Gov. Inslee's re-election campaign is touting Washington's economy as the best in the nation. *See*, <http://www.jayinslee.com/news/articles/new-jay-inslee-tv-ad-the-day-highlights-governor-inslees-record-on-job-creation>.

<sup>15</sup> At least since the passage of the voter initiative reducing the Motor Vehicle Excise Tax to \$30.00, the WSF Operating Account has not been self-sustaining, instead needing an injection of \$60-70M per biennium (often from the Motor Vehicle Account, the Multimodal Account, and/or the Highway Safety Account) to avoid a negative ending account balance. Presently, however, the WSF Operating Account is projected to finish the 2015-2017 biennium in the black by approximately \$26M. *See*, Exh. S-9, Slide 15. The State notes, however, that this projected positive ending balance is due, at least in part, to the Legislature's decision to increase transportation revenue and to "front-load" a portion of the historically necessary infusion of funds to avoid a negative balance at the end of the biennium.

wage increases needed to address the “compression” problem between the Master and Relief Mate wage rates.

The State concedes, as it must, that there is much positive financial news during this bargaining cycle, yet notes that there continue to be offsetting financial “pressures” competing for these additional revenues, e.g. the State’s legal obligation to substantially increase spending on public education under the *McCleary* decision, which although a general fund item, could limit the availability of funds to transfer to the WSF Operating Account. Similarly, a plan to upgrade the computer systems at the Department of Licensing (DOL) is still in the works, now estimated to cost \$750M or more. Given that DOL collects a major portion of the fee and license revenue in the State, says WSF, that project is of critical importance. These and similar “pressures,” argues the State, continue to limit the “ability to pay” at this time for all of the wage and benefit increases that might otherwise be reasonable.<sup>16</sup>

In sum, despite the improving economy, “ability to pay” or “financial responsibility” issues still find their way to the center of this WSF interest arbitration, and perhaps that should not be surprising. As I observed in the Award I rendered two years ago for the Mates’ 2015-2017 CBA, “the projected cost of all of the worthwhile projects the State might wish to undertake for the public good is likely always to exceed forecasts of available revenues.” *WSF and MM&P Interest Arbitration Award (Mates’ 2015-2017 CBA)* at 8 (Cavanaugh, 2014). It is true that in allocating the State’s limited resources among the array of desirable projects, some important projected expenditures, e.g. spending on public education, may technically be “mandatory”, as

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<sup>16</sup> For example, Elizabeth Kosa, WSF’s Chief of Staff, forthrightly recognized the validity of the Union’s “compression/inversion” concerns given the WSF’s limited proposed wage increases for Masters, but she testified that although WSF wished there were enough money to solve all of the ferry system’s problems and inequities at once, WSF cannot afford to address both the Staff Master issue and Master/Relief Mate compression issues at the same time. Tr. at 231-32. On the other hand, Ms. Kosa conceded that in seeking financial authority from OFM for this bargaining cycle, WSF had not asked for funds to address the Master/Relief Mate “compression” issue. *Id.*



the State has often argued, whereas others, while certainly worthwhile, are not necessarily so. But I note that even “mandatory” expenditures do not always seem to result in actual appropriations—for example, the Legislature still has not fully funded its responsibilities, as determined by the State Supreme Court, under the *McCleary* decision. Similarly, the State’s mandatory obligation (as the result of a federal lawsuit) to replace culverts under roadways that had been found to be impeding salmon runs—the projected costs of which were a major factor in the State’s “ability to pay” arguments in the last round of bargaining—ultimately were met by procuring federal funds rather than expending State revenues. In sum, that some potentially competing budget need might fairly be labeled a “mandatory” item is not the end of the discussion as to whether the State can find sufficient revenue to pay for wage and benefit improvements that would otherwise be called for given the commands of the statute.

To the interest arbitrator, then, the bottom line is this: if projected revenues are insufficient to fund all of the worthwhile endeavors on the State’s agenda (including whatever award might result from this process), it is the *political process* that must ultimately determine whether there is a feasible combination of fare, tax, or fee increases (beyond those recently enacted) that will produce sufficient revenue to cover the cost. If not, it is the *political process* that must ultimately determine whether there are other State projects that may be deferred or forgone completely so that wage and benefit increases for State employees may be funded. “Ability to pay,” in other words, is something more like the *willingness* to pay given the relative importance of competing worthwhile projects, not all of which the State can fund at one time, as well as the political realities as perceived by public officials weighing these various potential expenditures for the public good—an unenviable task given that each possible expenditure will no doubt have its own supporting constituency.

I do not mean to suggest that the financial responsibility criterion will never be a determinative factor in an interest arbiter's award. If improvements in the wages and benefits of employees demanded by a Union are clearly beyond the State's financial resources, for example, those improvements cannot properly be awarded by the Arbitrator even if they might otherwise have been supported by an application of the other statutory criteria. I have often reached that result in recent years, and a number of my arbitral colleagues have as well.<sup>17</sup> But if a Union's demands are not so clearly beyond the State's ability, and especially now that the State's financial health is concededly on the upswing, whether the State can "afford" the wages and benefits a Union demands in an interest arbitration proceeding essentially becomes a political question to be answered in the political process. Consequently, in rendering my award in a case in which a Union's demands fall within reasonable reach of the State's ability to find sufficient resources, I must apply the statutory factors to the best of my ability, including fair and just compensation for strike-prohibited WSF employees in light of the overall purposes of the statute and leave the political "ability to pay" question to OFM, the Governor, and the Legislature.

## B. The Issues

### 1. Wages – Rule 6

Turning to the specific issues before me, I begin with the parties' respective proposals for wage increases for this unit. WSF proposes an increase in the base wage of 2.0% in Year One, and an additional 2.0% in Year Two. In addition, WSF proposes a 20.0% differential above the base wage for Staff Masters. *See*, Exh. S-1. The Union can accept the 20% Staff Master

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<sup>17</sup> In my experience, Unions have sometimes made that sort of decision easier for the Arbitrator by demanding very large wage increases and/or very expensive benefit improvements. While those proposals might well have been supportable under the statutory criteria *other than* "ability to pay," they simply could not be awarded in their entirety given the State's former financial condition. I hasten to add that I do not find that to be the case in the matter before me now, however.

differential, *see* Tr. at 3,<sup>18</sup> but notes that the “compression” between the base wage rates of Master and Relief Mate (which, as noted, would actually become an “inversion” if I were to grant the WSF proposal for a 2%/2% increase in the base wage rate) would create substantial disharmony in the unit, i.e. a small segment of the Masters unit (approximately 17 out of 73) would receive a hefty increase, while the rest would receive a lower increase in base wages than WSF has already agreed to provide to the Mates’ and MEBA shipboard units.<sup>19</sup> Consequently, the Union proposes increases in the base wage of 5.5% in year one, and 4% in year two. *See*, Exh. U-3. Wages at that level, says the Union, will restore some of the historical wage differential between Mates and Masters.

a. Staff Master Differential

I will award the WSF proposal for a 20% differential for Staff Master to which the parties stipulated at the hearing. I would have awarded it even in the absence of a stipulation because the proposal is supported by a substantial and legitimate interest, i.e. to provide an incentive for WSF’s most experienced and capable Masters to accept the added responsibilities of the Staff Master position. I am especially persuaded by the concerns expressed by Ms. Kosa, i.e. that having already agreed with MEBA on a 20% differential for Staff Chief Engineers, the lack of an equivalent differential for Staff Masters would introduce serious disruption into the Ferry System. I do not necessarily accept WSF’s argument, however, that a 20% increase in the Staff Master wage rate forecloses increases in the Master base wage rate beyond the 2%/2% offered—that is, I will take the Union’s arguments, particularly the “compression” and “inversion”

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<sup>18</sup> As noted at the hearing, it is an unusual circumstance for a Union to resist accepting a wage increase of 20% for employees, but for reasons explained in a moment, there is a reasonable explanation for the Union’s hesitancy in this situation.

<sup>19</sup> The evidence established that WSF has settled with MEBA for 3%/2%, along with a 20% differential for Staff Chief Engineer (the engine room equivalent of the Staff Master), and has also settled with the Mates’ unit at 3%/2%.

concerns, into account in the next section in which I analyze the base wage rates for the 2017-2019 CBA.

b. Base Wage Rates

Turning to base wage rates, I begin with a consideration of the wage rates awarded by interest arbiters in the last biennium, noting that the Masters unit received a single 3.0% increase from Arbiter Duffy in Year One of the 2015-2017 contract, while the other shipboard units received increases both in Year One and again on July 1, 2016, i.e. at the beginning of Year Two. *See*, Exh. U-20 at 2. The IBU received increases of 2.50%/2.50%, MEBA (both the licensed and unlicensed units) received 4/0%/2.75%, and the Mates received 3.0%/3.0%.<sup>20</sup> Set forth graphically, the comparative *total* base wage rate increases for the 2015-2017 biennium are displayed below:

IBU	5.00%
MEBA (Licensed)	6.75%
MEBA (Unlicensed)	6.75%
Mates	6.00%
Masters	3.00%

Thus, when considering the parties' current base wage proposals for the Masters unit, I must take account of the fact that the other four shipboard units, received substantially greater wage increases, i.e. an average increase of 6.125% during the biennium, or 3.125% more than this unit.<sup>21</sup> Moreover, I note that all of the interest arbitration awards granting Year Two increases in the 2015-2017 biennium for other shipboard units were accepted and funded by the political

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<sup>20</sup> The increases for the Mates' unit resulted from an interest arbitration award I rendered in September 2014.

<sup>21</sup> Even if the two MEBA units were considered as one for the purposes of averaging the increases, the average increase would be 5.92%.

process, which strongly suggests to me that had Arbiter Duffy's award been as generous to the Masters in that regard, it would have been accepted as well.<sup>22</sup>

I intend no criticism of Arbiter Duffy in making these observations. I know him to be an experienced and highly capable neutral. It is worth noting, in addition, that the State's revenue projections, upon which Arbiter Duffy relied, were far more pessimistic than what has actually occurred, i.e. lower gas prices seem to have stimulated the economy, as well as higher housing prices, and thus the State's revenues, including Transportation revenues, have substantially exceeded expectations. They continue to do so to this day. *See*, e.g. Exh.U-16 at 3. The Legislature, as noted, also passed a comprehensive Transportation Bill that has contributed to the increase in revenues. Under the circumstances, however, Arbiter Duffy can hardly be criticized for considering the State's projections to be more or less accurate at the time of his award, even though with the advantage of hindsight, we now know they were at the very least incomplete. In any event, the important point from my perspective is that the Masters have unfairly suffered a comparative diminution of their base wages of roughly 3.0% as a result of their more limited wage increases in the 2015-2017 biennium as compared to other shipboard employees who actually serve under their direction. That factor must inevitably affect my base wage award here.

In addition, I find the Union's "compression" concerns to be well-taken. In fact, WSF concedes that those concerns are valid, but contends that responding to them must wait because not all of the problems in the Masters' wage structure can be solved immediately given the State's financial limitations. It appears, in fact, that WSF is actually prepared to make the

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<sup>22</sup> It is true, of course, that Arbiter Duffy awarded increased vacation benefits to the Masters *in addition* to the 3.0% wage increase, but I had *also* granted the Mates' proposal for increased vacation and elimination of the two-tiered vacation accruals in that same biennium, even though I had awarded a base wage increase double what WSF had offered both the Mates and the Masters. *See*, 2015-2017 Mates' Interest Arbitration Award at 18. Thus, I see no reason to conclude that Arbiter Duffy's award would have been found infeasible or otherwise would have been rejected had he also awarded comparably greater wage increases to the Masters in the 2015-2017 biennium.

Master/Relief Mate “compression” issue *worse*, at least temporarily, by allowing it to become an “inversion” under the State’s 2%/2% proposal, i.e. Relief Mates would be paid higher than the Masters to whom they report. In the end, however, the prospects for substantial disharmony and disruption on the vessels were I to award 2%/2% make it impossible for me to adopt WSF’s proposal. As I suggested during the oral closing arguments, the *absolute minimum* I could consider here, while remaining at least somewhat faithful to the statutory criteria, would be to award the 3%/2% WSF has already agreed to provide three other shipboard units—MEBA (both Licensed and Unlicensed) and the Mates.

But in my view, even that approach would be inadequate under the statute. First, it would do nothing to address the compression issue between the Master and Relief Mate wage rates. That issue presents important implications for WSF’s operations. For example, there are at least three Masters who have “bid down” to Relief Mate, and they (and likely others) will continue to do so in the absence of an appropriate wage incentive to utilize their skills and experience in Master positions instead. Second, an award of 2%/2% would do nothing to rectify what we now must recognize as a mistake made in the last round of bargaining/interest arbitration. That is, we now know that WSF could have afforded a Year Two increase for the Masters—say an increase equivalent to the 3% I had awarded the Mates in the second year of the 2015-2017 biennium. Arbitrator Duffy, of course, had no way of knowing in September of 2014 that the State would in fact be able to afford that sort of increase. Nevertheless, the approval of the more generous 2015-2017 biennium wage awards for the other shipboard units seems to establish that an appropriate increase in Year Two for the Masters would *also* have been accepted and funded. Thus, as a matter of “fair and just compensation” as compared to their WSF shipmates, the Masters must be

entitled to some relief after the fact for a wage increase mistakenly denied in the statutory process that played out two years ago.

In sum, the results of bargaining and interest arbitration for the 2015-2017 biennium unfairly left the Masters unit approximately 3% behind the average wage increases received by their closest internal comparators. As a consequence, the Union has proposed base wage increases of 5.5%/4.0% which WSF costs at \$517,372 for FY 2018 and \$914,337 in FY 2019 for a total of \$1,431,709 for the biennium. *See*, Exh. S-15. When added to the 20% Staff Master differential, the total cost to WSF for the Rule 6 improvements would rise to \$2,049,207 under the Union’s wage proposal as compared to WSF proposals adding up to \$1,185,666, a difference of \$863,541:

Union Proposal:	<b><u>FY 2018</u></b>	<b><u>FY 2019</u></b>	<b><u>Staff Mstr. (2 yrs)</u></b>	<b><u>Total</u></b>
	\$517,372	\$914,337	\$617,498	\$1,431,709
WSF Proposal:	\$188,135	\$380,033	\$617,498	<b><u>\$1,185,666</u></b>
Difference:				\$ 863,541

*See*, Exh. S-15.

While that differential is sizable, conceptually it should be reduced by the amount WSF would have paid during the 2015-2017 biennium had Arbiter Duffy awarded Year Two pay increases to the Masters comparable to the Year Two increases granted the *other* shipboard units. For example, had Arbiter Duffy awarded 3% in Year Two, the increase I awarded to the Mates, it would have cost WSF approximately \$250,000 in Year Two of the 2015-2017 biennium. *See*, Duffy Award at 9. That cost also would have been built in as the base for increases in 2017-2019 which would reduce the effect of the amount at issue here to \$613,541, i.e. WSF will only be

paying that much more than it would have already been obligated to pay had Arbiter Duffy's award been commensurate with the awards to other shipboard units.

In addition, the above calculation does not take into account the fact that WSF has already agreed with other units on 3% increases in Year One of the 2017-2019 biennium which, if applied here, would further reduce the differential between the proposals by approximately \$94,000.<sup>23</sup> Conceptually, the differential will be further reduced by the amount WSF will "save" because the wage increases granted here will not be compounded on top of increases the Masters should have received in the last contract. These conceptual offsets result in a differential, by my calculation, of a little more than \$500,000 for the biennium, an amount WSF should be able to absorb with the strength of the economy and the resulting positive projections for the Transportation Accounts, including the WSF Operating Account. That is especially so when considered in light of the importance of rectifying the Master/Relief Mate compression issue. Thus, I cannot accept WSF's contention that it lacks the ability to pay for both the Staff Master differential and an increase in the Masters' base wage.

I note that several of the other statutory criteria also support the Union's Year One base wage proposal. It is consistent with comparability considerations, both internal comparability as described above, and also when the WSF Masters' base wages and benefits are compared to the statutory external comparators. The State's own Salary Survey, for example, which I am statutorily required to consider in rendering my award, establishes a compensation deficit of more than 13%, even without considering Alaska's cost of living differential, COLD.<sup>24</sup>

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<sup>23</sup> If a 2% increase for the Masters in Year One would cost \$188,135, by my rough calculation a 3% increase would cost \$282,202.

<sup>24</sup> The Union asserts that COLD should be included as a benefit received by approximately 80% of the Alaska Marine Highway System ("AMHS") Masters, while WSF counters that the Masters at issue in this proceeding do



Similarly, “retention” concepts support the Union’s Year One wage proposal because it is probable that a failure to address the compression issue will result in more Masters exercising their seniority to bid down to Relief Mate positions. That prospect is apparently not considered by WSF as a “retention” issue,<sup>25</sup> but I disagree.

Finally, the collective bargaining history between the parties is an important factor here, too, not only because of the anomalous increases received by the Masters in the last biennium under the Duffy award, but also because of the history of give-backs and small increases during the 2008 to 2013 period. Now that the State’s finances have improved substantially, a failure to bring the Masters along at the very least at the same rate as the other shipboard units would not achieve “just and fair compensation,” in the words of the statute. Thus, in Year One, I will award the Union’s proposal of a 5.5% increase in the Master base wage rate.<sup>26</sup>

Turning to Year Two, the Union seeks an additional 4.0% increase, 2.0% above the prospective increases in the other shipboard units. The goal, as I understand it, is to restore some of the historical differential between Mates and Masters in recognition of the potentially heavy responsibility Masters must shoulder. That historical differential is said to be about 5%. Tr., Vol III at 59. While I agree that a move in that direction is appropriate in light of the statutory

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not reside in Alaska and thus would be ineligible for COLD even if they were employed by AMHS. In light of the fact that the data demonstrate a wage deficit exceeding the Union’s wage proposal even without taking COLD into account, I need not resolve the parties’ dispute over whether COLD should be part of the comparability analysis.

<sup>25</sup> WSF’s narrow definition of “retention” seems to count only Masters who leave WSF’s employ for another Employer, but in my view, a depletion of the Master ranks caused by bidding down to Mate positions of lesser responsibility presents a similar operational effect.

<sup>26</sup> I note that the Union could have made a strong case for an even larger Year One increase, such as an increase of 6.0% based on 3% to make up for the lack of a 2016 increase and another 3% to match the prospective Year One increases WSF has already agreed to in negotiations with MEBA and the Mates. At the very least, the Union could have made a case for 5.75% in Year One by pointing to the average Year Two increases received by the other four shipboard units in 2016 while Masters’ compensation remained unchanged. *See*, Exh. U-20 at 2. Under the circumstances, a 5.5% Year One increase is entirely reasonable and, for reasons already set forth, consistent with the statutory criteria.

responsibilities (and potential individual liability) of a WSF Master, I am concerned that re-establishing that differential in a single jump would be difficult for WSF in light of the large increase in Master base wages in Year One on top of a very large increase for the Staff Masters. Instead of 4.0% in Year Two, I will award 2.5%, which in addition to the 5.5% awarded for Year One will help to restore the wage differential between Master and Relief Mate to roughly 3%.<sup>27</sup>

### **AWARD**

I award the Union's proposal to increase the Master base wage rate by 5.5% effective July 1, 2017. I do not award either party's proposal with respect to a base wage increase to be effective July 1, 2018. Instead, I award an additional increase in the Master base wage rate of 2.5% effective July 1, 2018.

#### **2. Rule 9 – Overtime (Callback Pay)**

The Union proposes a change in Rule 9 that would award Masters held over at the end of shift callback pay on an hour-for-hour straight time basis, with a minimum of two hours. The rule would not apply to "emergent" situations, such as a Master's last-minute failure to appear because of car trouble or illness, for example, but would apply when it is known in advance that no Master has been assigned to a run. There is no dispute that this proposal would simply codify what is concededly present practice, i.e. WSF's efforts to "exhaust every possible avenue to fill master jobs in a timely manner so that vessels do not find themselves in danger of not sailing." Exh. U-2 at 3. As such, WSF opposes the rule change as unnecessary, pointing out that the Union could only find one instance in recent memory in which a Master had been held over

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<sup>27</sup> Mates will receive 3%/2% in 2017-19 for a total of 5%. Under my award, Masters will receive 5.5%/2.5% for a total of 8.0%. Because the Relief Mate wage currently is almost precisely the same as the Master wage (a difference of \$0.13 in favor of the Masters), by the end of the biennium, the differential should increase to slightly more than 3%. Additional increases might be necessary in 2019-2021, but those increases should await bargaining (and interest arbitration, if necessary) taking account of the economy and other relevant statutory factors at that time.

under circumstances in which the proposed rule change would have been applicable. In addition, the Union's parallel proposal in the Mates' negotiations was not made part of the parties' TA.

After carefully considering the matter, I do not find sufficient evidence in the record to establish that the proposed rule change is necessary. A single instance of WSF's inability to fill a Master position simply does not represent a significant problem that needs to be addressed at this time. In addition, the fact that the parties to the Mates' negotiations did not include this proposal in their TA, which has now been ratified by a vote of the members of the Mates unit, militates against awarding the proposal here, at least in the absence of evidence as to why the Mates and Masters should be treated differently. I do not find that sort of evidence in the record before me.

### **AWARD**

I do not award the Union's Rule 9.1(F) proposal.

#### 3. Rule 9.12(C)(1) – Compensatory Time Use

The Union has proposed adding an additional comp time slot, increasing the number from six to seven per day in order to give junior Masters greater ability to spend time with their families during the most popular parts of the calendar, e.g. summers, holidays, and major sporting events such as the Super Bowl. In the recent TA with the Mates, WSF agreed to increase their comp time slots by one (to seven), effective in Year Two of the Agreement. The Union seeks a similar increase for the Masters as a matter of internal comparability. WSF counters that the currently available comp time slots for the Masters often go unused, even in the summer.<sup>28</sup> Blocks of time are available in the summer months, too, although perhaps not the

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<sup>28</sup> For example, in 2016, according to WSF records, there were no months in which all six available comp time slots were filled each day of the month, even during the summer, e.g. May (only 5 days filled), June (2 days), July (4 days), August (10 days), and September (4 days). During the course of the entire year, there were only 30 days in which all comp time slots were filled on the Masters' calendar, as compared to 72 days on the Mates' calendar. Thus, says WSF, the Union's proposal is effectively "a solution without a real problem." Tr., Vol. III at 89-90.

“prime” weeks, so no increase is necessary according to WSF. *See, Tr.*, Vol. III at 90. In addition, the State notes that added comp time slots for Masters might well have to be backfilled by Mates, and there has been a shortage of Mates in recent years.<sup>29</sup> Consequently, granting the proposal, says WSF, could stress ferry operations.

Although internal comparability offers some support for the Union’s proposal, I am convinced by the State’s evidence that the difference between the number of completely filled days on the Mates’ comp time calendar, as compared to the Masters’ calendar, as well as the potential impact on operations from increasing Masters comp time slots, currently justifies a difference between comp time availability in the two units. Consequently, I will not award the Union’s Rule 9.1(F)(1) proposal.

**AWARD:**

I do not award the Union’s Rule 9.1(F)(1) proposal.

4. Rule 11.2(A)(1) – Holiday Rules

The Union proposes to increase pay for holidays not worked from 8 hours to 12 hours, which is the holiday pay rate awarded to the MEBA units by Arbiter Jane Wilkinson in the last round of bargaining. Exh. S-14. WSF notes, however, that engine room employees work 12-hour shifts, and that fact appears to have been instrumental in Arbiter Wilkinson’s reasoning. *See, Id.* at 24-25. As something of a fallback position, the Union observes that the recent Mates’ TA includes an increase in holiday pay from 8 to 10 hours.

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<sup>29</sup> I recall, for example, that in the Mates 2015-2017 CBA interest arbitration, which I heard, the Union had argued that increases in Mates’ benefits, particularly vacation, were needed to incentivize IBU deckhands to promote to Mate. *See, Mates 2015-2017 Interest Arbitration Award* at 14-15 (Cavanaugh, 2014). WSF concedes that problem existed, at least in prior years. *See, Tr.*, Vol. III at 88.

I agree that as a matter of internal comparability, holiday pay for Masters should be increased to 10 hours. WSF laments the “whipsawing” that tends to occur when one shipboard unit has achieved a wage or benefit increase (whether in bargaining or in interest arbitration), and then each other shipboard unit seeks the same increase. *See*, e.g. Tr., Vol III at 97-98. But it seems to me that whipsawing flows directly from the comparability criterion, which lies at the center of the statute interest arbitrators are called upon to apply. And it is difficult for me to think of a stronger internal comparability argument than one in which, as here, Mates and Masters work shoulder-to-shoulder, were formerly part of a single bargaining unit, and substantial interchange exists between the two units, i.e. Mates filling in for Masters and Masters bidding down to Relief Mate positions.

In addition, with respect to the specific issue here, some Master watches are in fact 10 hours, rather than 8 hours,<sup>30</sup> and any given Master may well be assigned a number of 10-hour watches during the course of the year, yet receive only 8 hours of holiday pay for holidays not worked. *See*, Tr., Vol. III at 100. Consequently, the Masters’ situation is not entirely unlike the context that led Arbitrator Wilkinson to award 12 hours of holiday pay to MEBA. Under the circumstances, the statutory criteria of bargaining history, internal comparability, and fair compensation and benefits support an increase in Rule 11.2(A)(1) compensation for holidays not worked from 8 hours to 10 hours for the Masters.

**AWARD:**

I award an increase in pay under Rule 11.2(A)(1) for holidays not worked from 8 hours to 10 hours.

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<sup>30</sup> In fact, about 30% of the Master watches are 10 hours. *See*, Tr., Vol. III at 99-100.

5. Rule 17.2(A) – Uniform Allowance

The Union seeks an increase in the uniform allowance from \$800.00 per year to \$1000.00 per year. Each deck officer receives an “allowance,” i.e. not reimbursement, for the “purchase, maintenance, and cleaning of uniforms.” In support of the requested increase, the Union points to the fact that Mates already receive the higher amount.<sup>31</sup> WSF opposes the increase on the ground that there is no showing in the record that Masters are actually required to spend more than the current allowance on their uniforms.

Once again, I find that the statutory factor of internal comparability supports the Union’s proposal. The uniforms worn by Mates and Masters are precisely the same, except for the number of “stripes.” *See*, Tr. at 192. If \$1,000.00 per year is appropriate for the Mates, in my view it is appropriate for the Masters, as well, at least in the absence of a showing as to why the two groups should be treated differently. No such showing is present in this record. Consequently, I will award the Union’s proposal on Rule 17.2(A).

**AWARD:**

I award the Union’s proposal to increase the uniform allowance from \$800.00 to \$1,000.00 per year in Rule 17.2(A).

6. Rule 17.8 – License Insurance

The Union proposes a new CBA provision under which WSF would reimburse a portion (\$220.00) of a deck officer’s annual cost of an insurance policy providing for “loss of license indemnity for service aboard Washington State Ferry vessels.” The main purpose of the insurance, according to the Union, is to pay for professional representation in U.S. Coast Guard actions against a Master’s license, e.g. in case of a docking accident or other collision. The

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<sup>31</sup> The record is unclear about the history of the uniform allowance under the Mates CBA and why the amount of the allowance differs from the Masters Agreement. *See*, Tr., Vol III at 101.

Alaska Marine Highway apparently contributes to the cost of license insurance for its Masters, and the Union argues that it is in the best interest of both the deck officer and WSF to have competent representation in USCG proceedings. WSF opposes the additional benefit, apparently because the insurance usually includes protection against the Master's employer as well, and WSF does not think it appropriate to reimburse employees for procuring protection against itself. Tr. at 194.

While the idea strikes me as one worth exploring between the parties, I will not award the Union's license insurance proposal at this time. The Mates dropped the equivalent proposal in agreeing to a TA at the end of this round of bargaining, and thus internal comparability suggests that the proposal should not be part of this Agreement in the absence of stronger *external* comparability evidence than exists in this record.

**AWARD:**

I do not award the Union's proposal on License Insurance reimbursement in a proposed new Rule 17.8.

## **INTEREST ARBITRATION AWARD**

Having carefully considered the evidence and argument in its entirety, I hereby render the following interest arbitration Award in PERC No. 128357-1-16:

1. With respect to those unresolved bargaining issues between the parties which have been certified for interest arbitration, my Award is as set forth in the body of the Decision above; and
2. The Interest Arbitrator will retain jurisdiction to determine any certified issues not fully disposed of in this Award, and/or to resolve any disputes over the specific contract language necessary to implement this Award; and
3. The parties shall bear the fees and expenses of the Interest Arbitrator in equal proportion.

Dated this 12<sup>th</sup> day of September, 2016.



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Michael E. Cavanaugh, J.D.  
Interest Arbitrator