

INTEREST ARBITRATION OPINION AND AWARD
MARITIME EMPLOYEES BENEFICIAL ASSOCIATION
and
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
WASHINGTON STATE FERRIES

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INTRODUCTION

The State of Washington, through its Department of Transportation, Ferries Division, Washington State Ferries (hereinafter, "the Employer" and WSF) operates an extensive system of auto and passenger ferries throughout the Puget Sound area. The WSF fleet consists of approximately 22 vessels operating on approximately eight mostly east-west routes between the Puget Sound's eastern shore and its western islands and peninsulas. The Marine Engineers Beneficial Association-District 1, (hereinafter, "MEBA" or "the Union") represents all of the engine room employees aboard the ferries.

There are three shipboard unions: MEBA, representing approximately 367 engine room employees, the Inland Boatmen's Union (IBU) representing approximately 858 deck department employees, and the Masters Mates and Pilots (MMP) representing approximately 168 licensed deck officers.

The Marine Employees Commission (hereinafter, MEC) is an organ of state government vested with effectuating the public policy contained in the Public Employment Act for Marine Employees.

Procedural Matters

The Interest Arbitrator, Anthony D. Vivenzio, was selected by the parties to resolve issues that the parties were unable to resolve through collective bargaining with respect to two bargaining agreements, one for "licensed" employees and one for "unlicensed" employees, of two-year terms commencing July 1, 2009 and ending June 30, 2011. The disputed issues submitted to the Interest Arbitrator by the parties were reviewed by the State of Washington Marine Employees' Commission and declared certified for interest arbitration on August 15,

2008. The certified issues are: 1) Wages for licensed and unlicensed bargaining unit employees; 2) Vacation accrual for licensed and unlicensed bargaining unit employees; and 3) Employer contributions to the educational program of MEBA, the Calhoon school, administered by a Taft-Hartley trust. The Employer was represented by Ronald A. Marshall, Assistant Attorney General. The Union was represented by Michael R. McCarthy, of the law firm of Reid, Pedersen, McCarthy & Ballew, LLP. The hearing in this matter was held at Seattle, Washington on August 19, 20th, and 21, 2008.

At the hearing, the testimony of witnesses was taken under oath and the parties presented substantial documentary evidence. A court reporter was present during the proceedings and the transcript was made available to the undersigned Arbitrator for his use in resolving the issues before him. These proceedings were conducted by the Arbitrator as a single arbitrator in accordance with the "alternative procedure" set forth in RCW 47.64.300. RCW 47.64.200 provides that the arbitrator "... is limited to selecting the most reasonable offer, in its judgment, of the final offers on each impasse item submitted by the parties." The parties agreed to file simultaneous post hearing briefs which were timely filed and received by the Arbitrator on September 5, 2008. The parties also agreed, at the Arbitrator's request, to waive RCW 47.64.300 (5)'s 30-day requirement regarding issuance of his decision to close of business September 26, 2008.

The Bargaining Unit

The engine room employees represented by MEBA are split into two bargaining units: "Licensed" and "Unlicensed." Licensed employees occupy four job classifications: Staff Chief Engineer, Alternate Staff Chief Engineer, Chief Engineer, and Assistant Engineer. They are required to possess a Coast Guard engineer's license. Unlicensed bargaining unit members

occupy two job classifications: Oiler and Wiper. Although Oilers and Wipers are not required to possess a Coast Guard engineer's license, most unlicensed bargaining unit members do, in fact, possess such a license. Some of the Chief Engineers are called "Vacation Relief" Chiefs, and some of the Oilers are called "Vacation Relief" Oilers. Relief Engineers and Oilers fill in for Engineers and Oilers who are on vacation. In addition, engine room employees in lower rate classifications often "bump up" to fill in for employees in higher rated classifications who are sick or otherwise absent. Thus, Assistant Engineers with Chief licenses bump up to fill in for absent Chiefs, and Oilers with Assist Engineers licenses bump up to fill in for absent Assistant Engineers.

The bargaining unit is composed of the following (approximately):

Staff Chief Engineers	22
Chief Engineers	66
Vacation Relief Chief Engineers	23
Assistant Engineers	64
Oilers	161
Relief Oilers	13
Wipers	3

The functions of these positions will be described later in this Award.

Work Hours, Shifts and Basic Payment Structure

WSF operates continuously, 24 hours a day, seven days a week. MEBA members work seven straight 12 hour shifts, week-on-week-off. For each seven-day/12 hour workweek, totaling 84 hours, an employee receives 80 hours' straight time and four hours' accrual to a compensatory (comp) time bank. Despite the fact that MEBA members are exempt from state and federal overtime laws, the Union contracts contain detailed provisions providing for overtime compensation at a double-time rate.

The Current Bargaining Cycle

Though the parties begin to work in preparation for bargaining in the latter part of the *odd-numbered year* preceding the *even-numbered year* before the biennial legislative session that will produce the budget and appropriations for the contracts to be effective in the following *odd-numbered year*, state government does not even begin the budget process until approximately mid-to-late July of the *even numbered year* preceding that biennial legislature. As a consequence, the parties here were unable to bargain economic issues until late July, before this August interest arbitration hearing. Therefore, bargaining regarding economic issues was confined to a full-day session on July 23 and a half-day session on July 24, 2008. Impasse was mutually declared on July 24. The parties had several sessions to negotiate non-economic issues between February and July, which successfully resulted in a number of tentative agreements. Given the timing of the various factors affecting their bargaining and the enormous amounts of work to be compressed into stressfully small amounts of time, the Arbitrator expresses his congratulations and gratitude to the parties and their representatives for the professional quality of their presentations, which must inevitably reflect upon the quality of their labor management relationship.

Stipulations of the Parties

As the hearing progressed, the parties entered into these stipulations:

Joint Exhibit 6 states :

The parties agree that:

- 1.) The Union will not argue that COLD (Cost of Living Differential paid to Alaska ferry employees who are residents of Alaska) should be included when considering Appendix Section B. IV Addendum of the Marine Employee Commission Salary Survey, and

- 2.) The Ferries will not argue that "non-watch" pay should be excluded when considering Appendix, section B IV addendum, and
- 3.) Neither party will recalculate comparisons of the Ferries to other employers.

Additionally, orally and upon the record, the Parties stipulated that :

The Arbitrator should treat the issue of wages for both licensed and unlicensed employees as one "item" for the purposes of selection/ resolution, as opposed to treating each subject employee's classification's wages as a separate item;

The Arbitrator should consider the State of Washington Marine Employees' Commission 2008 Salary Survey Report (hereinafter the "MEC Survey" or "the survey") "for what it is" as per statute. The Arbitrator takes this stipulation as a mutual waiver of objection to its contents; and,

The MMP was awarded an enhanced vacation schedule by Arbitrator Michael Cavanaugh in November of 2005, to match that awarded to the IBU by Arbitrator Michael Beck in September of 2005. By agreement with the Employer, the MMP returned to its former vacation schedule in return for a 5% raise. In addition to that 5% annual raise going forward, MMP received lump sum payments to every MMP member for the retroactive liability created by Arbitrator Cavanaugh's award. The total of such payments is \$1,616,657. Union Exhibit 38.

ISSUE 1 WAGES

Current Collective Bargaining Agreement, Licensed Employees, for the term July 1, 2007 to June 30, 2009

SECTION 6 – WAGES AND OVERTIME

(a) Effective July 1, 2007, each classification represented by the Union will be increased by 1.6%. This increase continues the previously granted 1.6% increase that was in effect from September 1, 2006 to June 30, 2007.

(b) Effective July 1, 2007, each classification represented by the Union will be increased by 3.2%.

(c) Effective July 1, 2007, the following job classifications will be increased as indicated below:

- Staff Chief Engineer 6%
- Alternate Staff Chief Engineer 1%
- Chief Engineer 1%
- Assistant Engineer 5%

(d) Effective July 1, 2008, each classification represented by the Union will be increased 2%.

The wage table below reflects the above agreed upon increases:

WAGES AND OVERTIME TABLE

Classification	Effective July 1, 2007		Effective July 1, 2008	
	<u>ST/Hour</u>	<u>OT/Hour</u>	<u>ST/Hour</u>	<u>OT/Hour</u>
1. Staff Chief Engineer	\$44.47	\$88.94	\$45.36	\$90.72
2. Alternate Staff Chief Engineer	\$41.33	\$82.66	\$42.16	\$84.32
3. Chief Engineer	\$40.53	\$81.06	\$41.34	\$82.68
4. Assistant Engineer	\$34.15	\$68.30	\$34.83	\$69.66

Current Collective Bargaining Agreement, Unlicensed Employees for the term July 1, 2007 to June 30, 2009

RULE 19 – CLASSIFICATIONS AND RATES OF PAY

(a) Effective July 1, 2007, each classification represented by the Union will be increased by 1.6%. This increase continues the previously granted 1.6% increase that was in effect from September 1, 2006 to June 30, 2007.

(b) Effective July 1, 2007, each classification represented by the Union will be increased by 3.2%.

(c) Effective July 1, 2008, each classification represented by the Union will be increased by 2%.

The wage rates are as follows:

Position	Effective July 1, 2007		Effective July 1, 2008	
	<u>S.T./ Hour</u>	<u>O.T./Hour</u>	<u>S.T./ Hour</u>	<u>O.T./ Hour</u>

Yard Oiler	\$23.97	\$47.94	\$24.45	\$48.90
Oiler	\$22.77	\$45.54	\$23.23	\$46.46
Yard Wiper	\$21.11	\$42.22	\$21.53	\$43.06
Wiper	\$20.06	\$40.12	\$20.46	\$40.92
Wiper (temporary)	\$19.62	\$39.24	\$20.01	\$40.02
Wiper (employees working less than 1044 hours)	\$19.14	\$38.28	\$19.52	\$39.04

Union's Proposal

Union Exhibit 10 presents the wage proposal, in the following array, as one item to be considered by the Arbitrator:

For Licensed employees (Section 6 of their Agreement):

<u>Staff Chief Engineer</u>		<u>Increase</u>
Current	\$45.36	...
Effective July 1, 2009	\$46.27	2.0%
Effective July 1, 2010	\$47.19	2.0%

Alt. Staff Chief Engineer

Current	\$42.16	...
Effective July 1, 2009	\$43.64	3.50%
Effective July 1, 2010	\$45.27	3.75%

Chief Engineer

Current	\$41.34	...
Effective July 1, 2009	\$42.79	3.50%
Effective July 1, 2010	\$44.39	3.75%

Assistant Engineer

Current	\$34.83	...
Effective July 1, 2009	\$36.05	3.50%
Effective July 1, 2010	\$37.41	3.75%

For Unlicensed employees (Rule 19 of their Agreement):

Oiler

Current	\$23.23	...
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Effective July 1, 2009	\$24.12	3.85%
Effective July 1, 2010	\$25.25	4.65%

Wiper

Current	\$20.46	...
Effective July 1, 2009	\$21.25	3.85%
Effective July 1, 2010	\$22.24	4.65%

Evidence submitted by the Employer, Management Exhibits 10 and 11, not contested by the Union, sets forth the cost of the Union's wage proposal as:

For Licensed employees:

<u>INCREASE</u>	<u># of POSITIONS</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>2009-11 BIENNIUM</u>
Targeted 2%-2009; 2%-2010	23	50,385	101,778	152,163
Targeted 3.5%-2009; 3.75%-2010	169	<u>549,983</u> 600,368	<u>1,161,907</u> 1,263,685	<u>1,711,890</u> 1,864,053

For Unlicensed employees:

<u>INCREASE</u>	<u># of POSITIONS</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>2009-11 BIENNIUM</u>
3.85%-2009	167	359,430	359,599	719,029
4.65%-2010	167	----- 359,430	<u>451,043</u> 810,642	<u>451,043</u> 1,170,072

Is supporting its wage proposal, the Union relies heavily upon MEC's 2008 survey. In describing its methodology, the survey states at page 16 that four ferry systems, Alaska Marine Highway System, British Columbia Ferry Corp., Blackball Transport and Golden Gate Ferry Corporation provided data to the survey. Data from British Columbia Ferry Corp. and Golden Gate was received too late to include in the body of the report, those reports having included no headcount numbers and benefits data. The report states that the significance of this data to a comprehensive competitive analysis of the other ferry system employers required that the results

that were obtained be documented. That compilation results in the chart at Exhibit 4 Addendum, which was added to provide base rate comparisons only between Washington State Ferries and other ferry system participants. The addition of the base salary rates from the British Columbia Ferry Corp. and Golden Gate Ferry Corporation has a recognizable impact on the competitive position of the Washington State Ferry System for most of the ferry system group benchmarks. Exhibit 4 Addendum uses non-weighted rates and excludes benefits and COLD. The comparison of those base rates results in MEBA employees' compensation being below comparables by the percentages illustrated in the chart below:

Classification	Percentage that MEBA is below MEC Simple Mean Hourly Base Pay
Staff Chief Engineer	-5.10%
Alt. Staff Chief Engineer	-----
Chief Engineer	-23.90%
Assistant Engineer	-15.30%
Oiler	-11.30%
Wiper	-13.20%

The Union characterizes these differences as dramatic, especially when compared to the public safety sector, where disputes proceed over far smaller discrepancies, and demonstrate that it is sharing the burden of difficult financial times with the Employer, insofar as their proposal fails to close the gap to the mean. In support of this, the Union would point to the percentage increases their proposal seeks over a two year period:

Staff Chief Engineer	4%
Alt. Staff Chief Engineer	-----
Chief Engineer	7.25%
Assistant Engineer	7.25%
Oiler	8.5%
Wiper	8.5%

The Union also speculates that the gap may be even greater insofar as other bargaining units, for example IBU, are expecting raises effective July 1, 2007 and July 1, 2008, and Washington State Ferry July 1, 2008 raises are already included in the data. Page 4 of the report makes these "key findings":

"A comparison of data from both the 2006 and 2008 surveys shows that the WSFS has lost ground competitively on an overall basis in all three benchmark groupings (ferry system, shipyards, administration). The overall percentage lag of 4.6% (Exhibit IV Addendum) is determined on a simple pay rate basis."

"The positions that are most closely associated with the *actual operation of the ferry boats*, benchmarks 1 through 12, (the subject positions are represented by benchmarks 4 through 9) consistently lag or show reductions in their lead position across all wage and benefit comparison exhibits. Clearly the WSFS is less competitive for these positions, but more competitive for those that are primarily terminal work, benchmarks 13 through 18."

Page 18 of the report notes that:

" An overall lag of 4.6% is not consequential; however *the average lead of the three positions above market* (Terminal Agent @ 40.5%, Ticket Seller @ 28.7% and Terminal Attendant @ 17%) clearly affects this percentage. The lag of the 14 positions behind the market averages 11.7%"

Relating wages to the Consumer Price Index generated by the Bureau of Labor Statistics, the Union argues that their proposal may not even keep pace with inflation, noted in Union Exhibit 11 as having risen 5.83% from June 2007 to June 2008 according to the CPI-U and 6.19% according to the CPI-W.

In explaining how its members fell behind, the Union in Exhibit 14 shows that in 2003 and 2004 all its classifications except for Assistant Engineers took a wage freeze. In 2005 and 2006 wages were delayed two months to September 1, to supply some economic value to the state. In 2007, different percentage increases were assigned by classification closing the gap for Staff Chief Engineers and Assistant Engineers. This correction of disparities was addressed by agreement of the parties and not through arbitration. Assistant Engineer raises for 2003 and

2004 were actually decided in late 2006, when the parties entered into an agreement that covered three biennia, 2003 to 2009, wrapping up at 2% effective July 1, 2008. A factor contributing to the lag seen in the MEC survey is the series of substantial raises Alaska ferry employees received: 7% in 2004, 6% in 2005, 6% in 2006: 19% over a three year period. Licensed employees received a 3% increase in 2007. Licensed and unlicensed employees in Alaska are now in negotiations. In sum, the 19% increase over the course of three years created the WSF lag. Another factor is B.C. ferries' receiving substantial increases over the period 2006 through 2009, approaching 26%. Blackball ferry employees receive CPI or 1% , whichever is greater, twice a year.

Union Exhibit 15 compares the position of the Union's proposal even if it is accepted effective July 1, 2009 against the current MEC survey numbers. The result is that even if the other comparables remain static and MEBA moves forward, MEBA employees will still be behind by the following percentages:

Classification	% Behind MEC 2008 Average on 7/1/09
Staff Chief Engineer	-1.07%
Alt. Staff Chief Engineer	-----
Chief Engineer	-17.37%
Assistant Engineer	-9.21%
Oiler	-5.08%
Wiper	-6.84%

Yet, the other comparables will not remain static. The comparables are in line for raises: B.C. engine room employees will get another 3% raise effective April 1, 2009. Blackball licensed employees will get two raises, October 1, 2008 and April 1, 2009, each for one half of COLA or 1% minimum. Alaska licensed engine room employees are currently in negotiations for a new contract to be effective July 1, 2008, and unlicensed employees are negotiating for a

contract effective July 1, 2007. Therefore, by the time MEBA's contract effective July 1, 2009 takes effect, Alaska's licensed employees will have received a raise retroactive to July 1, 2008 and its unlicensed employees will have received two raises retroactive to July 1, 2007. These raises were not considered in the MEC survey, and they further increase the discrepancy between MEBA and these comparables.

Last, the Union, in Union Exhibit 17, discusses MEBA's members' wage performance versus inflation before and after losing the right to strike in 1983. For example, an Assistant Engineer's wage of \$5.23 per hour in 1969 adjusted for inflation to 1983 dollars would be \$13.86. The actual wage of \$16.65 per hour received in 1983 placed the employee 20.13% *ahead* of inflation. In contrast, the same Assistant Engineer, at a wage of \$16.65 per hour in 1983, adjusted for inflation to 2008 dollars would be \$37.80. The actual wage received of \$34.83 in 2008 places the employee 8.51% *behind* inflation. The Union argues that because interest arbitration was the quid pro quo for the Union's losing its right to strike, the Arbitrator should give consideration in his deliberations to what salary increases the Union might now enjoy had it retained the right to strike.

Employer's Proposal.

The Employer's proposal on wages is stated as follows:

SECTION 6- WAGES and OVERTIME

- (a) Effective July 1, 2009, each classification represented by the union will be increased by 1.6%.
- (b) Effective July 1, 2010, each classification represented by the union will be increased by 1.7%

Management's proposal creates these cost figures:

For Licensed employees:

<u>INCREASE</u>	<u># of POSITIONS</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>2009-11 BIENNIUM</u>
1.6% -2009	192	291,552	291,993	583,545
1.7%-2010	192	-----	<u>315,206</u>	<u>315,206</u>
		291,552	607,199	898,751

For Unlicensed employees:

<u>INCREASE</u>	<u># of POSITIONS</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>2009-11 BIENNIUM</u>
1.6% -2009	167	149,374	149,444	298,818
1.7%-2010	167	-----	<u>161,325</u>	<u>161,325</u>
		149,374	310,769	460,143

The Employer urges the Arbitrator to consider the factors peculiar to the areas considered in the MEC survey; the past collective bargaining between the parties, and the interests and welfare of the public; the ability of the ferry system to finance economic adjustments, and the effect of the adjustments on the normal standard of services; the right of the legislature to appropriate and to limit funds for the conduct of the ferry system; and other factors that are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining. A major thrust of the Employer's presentation centered upon their ability to pay for the increases sought by the Union. Though not yet technically a recession, the state is clearly in an economic downturn that affects its ability to finance operations and agencies. Further, it is statutorily required that budgets presented to the legislature must be balanced and not go into the red. Employer Exhibit 2, the Washington Economic and Revenue Forecast dated June, 2008, contains the basis for the Employer's offer of 1.6% and 1.7% over the biennium. Those figures correspond to a measure of inflation known as the Implicit Price Deflator, hereinafter IPD .

Further, the State of Washington lacks an income tax. Instead, the bulk of its revenues come from a sales tax, a business and occupation tax, and real estate excise taxes. Ferries derive the bulk of their support from the fare box, a gasoline tax (funding ferries as part of the highway system), and concessions. Washington State is affected more acutely during an economic

downturn than states that have an income tax. The IPD is urged as a more appropriate measure of inflation for the purpose of establishing wages than the Consumer Price Index because it measures consumers' changing buying habits as they shift and adjust to the economy while the CPI does not. This is important because consumers are changing their spending habits in the face of rising gas prices and the rising price of food. The CPI is based upon the prices of goods in a fixed basket, and measures the change in the price of that basket from time to time in one location, and not across locations. Reliance on the gasoline tax has had its serious impacts as the price of oil has risen. Washington taxes purchasers by the gallon consumed, and not by the dollar spent. As the cost of food concomitantly rises, consumers find themselves having to spend more money on food, which is not taxed, and purchase less fuel. Less dollars are spent on items that are discretionary purchases, the things which do tend to be taxed. Employer Exhibit 3 shows revenues projected to decrease by \$117.3 million for the next biennium. This situation prompted the governor to send a letter to state agency directors, boards, and commissions asking them to take steps to increase budget savings, including freezes on hiring to fill new staff vacancies. Employer Exhibit 5, the August 10, 2008 Revenue Collection Report revealed that expected receipts were down 5%, \$59.9 million lower than expected. This trend is believed to be continuing, the result of shifting consumer purchasing patterns in response to the economy, supporting the use of the IPD as the appropriate measure of inflation. The state budget is based upon forecasted revenues and the IPD. The state also uses the IPD to forecast its expenditures, including labor, to help its employees keep up with inflation. Neither statute nor provision of the Washington Administrative Code requires the state to bring these employees' wages up to the standard in the salary survey urged by the Union. MEBA has never achieved the exact MEC mark. In better times, the state has brought MEBA employees further along. Examining in

Employer Exhibit 9 how the transportation and ferry budget work, their funding sources, how revenues are distributed, and restrictions on spending, it is clear that ferry expenditures are in the red and are projected to be significantly more in the red by the end of the biennium, largely due to increased fuel costs, decreased consumption of fuel by consumers, and decreased ridership for discretionary trips. The situation is "bleak". The Employer maintains that, in the end, MEBA employees are state employees just like everybody else. The Operating Engineers International Union (OPEIU) employees received a wage increase greater than that proposed for MEBA because they were more than 25% behind comparables. Nowhere is MEBA more than 25% behind the MEC survey. Lastly, the MEC survey doesn't reflect dollars paid and actually received by MEBA employees. What is not being realized in base pay is being made up in overtime, travel time, mileage, and penalty pay. The lowest paid MEBA employee is above King County's median income. The Employer's proposal will keep MEBA's employees up with inflation.

ANALYSIS

The Arbitrator begins his analysis first, with the regulatory framework that has evolved governing marine employee collective bargaining, and second, with a discussion of the legislature's orientation of that process with its budgeting process.

The Regulatory Framework Governing Marine Employees Collective Bargaining and Interest Arbitration

The industry of the provision of public transportation by means of ferries in the State of Washington is subject to a statutory and regulatory framework designed to achieve a number of policy goals and interests of the State of Washington as a government, and of its citizenry. The Arbitrator summarily reconstructs the history of this regulatory framework, derived from pronouncements in MEC Case Number 13-06, Decision Number 466, and from the joint

orientation memorandum offered to the Arbitrator by the parties in advance of the hearing, as follows: Washington State's marine employees have had the right to bargain wages and benefits since at least 1949. In 1981, the Washington State Legislature enacted SSB 3359, which removed from the ferry system employees the right to bargain over wages and benefits. In mid-1981, marine engineers employed by the ferry system engaged in a three-day walkout protesting the enactment. In March of 1983, the Legislature enacted RCW 47.64, reinstating the right to bargain collectively for ferry employees, replacing the right to strike with interest arbitration, and making bargaining coincident with the biennial budget cycle. The legislation was intended to preserve "ultimate legislative control over budget and fare increases." The Legislature sought to achieve this goal at that time by providing that the biennial budget would be issued *prior* to the beginning of negotiation in a particular biennium. The legislative history provided, "negotiation will commence only *after* adoption of the biennial budget, and the resulting agreements are for two years, coinciding with the budget cycle." The Legislature substituted the right to strike with interest arbitration and, in so doing, was clear that the entire process should occur within prescribed time limits so as to coincide with the budget cycle.

Resulting RCW 47.64.240 set forth the following charge to an arbitrator selected to conduct interest arbitration following impasse by the parties (RCW 47.64.240 provided for a single arbitrator alternative to a panel):

- (9) The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:
 - (a) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;
 - (b) 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;
- (c) The interests and welfare of the public, the ability of the ferry system to finance economic adjustments, and the effect of the adjustments on the normal standard of services;
- (d) The right of the legislature to appropriate and to limit funds for the conduct of the ferry system; and
- (e) The limitations on ferry toll increases and operating subsidies as may be imposed by the Legislature.

The provisions of the Washington Administrative Code associated with that statute, WAC 316-55-110, mirrored those statutory provisions.

RCW 47.64 was extensively revised in both the 2006 and 2007 legislative sessions. The amendments were jointly drafted by representatives of both labor and management. Although the amendments are numerous and complicated, they were in the service of one mutual goal of labor and management: to put the collective bargaining and arbitration process "in front" of the state's budget and appropriation process, rather than behind it. Under the newly amended law, all agreements or arbitration awards must be concluded "on or before October 1 of the even-numbered years *next preceding* the biennial budget period during which the agreement should take effect." RCW 47.64.170(7). In order to meet this deadline in this case, the parties had to work together some time in later 2007 to prepare for and conduct bargaining, crystallize the issues remaining for certification of impasse by the MEC, and prepare presentations for interest arbitration so as to meet the October 1, 2008 deadline.

The current statutes charging the arbitrator provide:

RCW 47.64.300

(5)... the neutral...shall make written findings of fact and a written determination of the issues in dispute based on the evidence presented.... That determination is final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question whether the decision ...was arbitrary or capricious.

RCW 47.64.320

(2) The decision of an arbitrator is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to the 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... 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) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;
- (b) The constitutional and statutory authority of the employer;
- (c) Stipulations of the parties;
- (d) The results of the salary survey as required in RCW 47.64.220;
- (e) 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;
- (f) Changes in any of the foregoing circumstances during the pendency of the proceedings;
- (g) The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature; and
- (h) Other factors that are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under this chapter.

RCW 47.64.220

(1) Prior to collective bargaining and for purposes of collective bargaining and arbitration, the commission (the MEC) shall conduct a salary survey. The results of the survey shall be published in a report which shall be a public document comparing wages, hours, employee benefits, and conditions of employment of 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 classifications involved. Such survey report shall be for the purpose of disclosing generally prevailing levels of compensation, benefits, and conditions of employment. It shall be used to guide generally but not to define or limit collective bargaining between the parties.

Comparing the former to the new RCW 47.64, the new version :

- Adds: "the result of the (MEC) salary survey" as an area for consideration for the Arbitrator, while retaining the provision of the former statute, to consider the "comparison of wages hours employee benefits..." although the survey is required by statute to produce a comparison.

- Omits "the interests and welfare of the public, the ability of the ferry system to finance economic adjustments, and the effect of the adjustments on the normal standard of services," and "the right of the legislature to appropriate and to limit funds for the conduct of the ferry system," as specific directives for the arbitrator to take into consideration .
- Contains a new directive to the arbitrator, to be "mindful of the legislative purpose under RCW 47.64.005 and 47.64.006."

Other new provisions include "the constitutional and statutory authority of the employer," and "other factors that are normally and traditionally taken into consideration in the determination of matters that are subject to bargaining under this chapter." Of course, matters like "the interest and welfare of the public..." and the "normal standards of service" are matters within the constellation of "normal and traditional factors" an arbitrator may take into consideration. Further, the "ability of the ferry system to finance..." may be seen as restated in the new provision regarding the "constitutional and statutory authority of the employer." To the extent that the WAC, associated with the former statute, has not been updated to meet the pronouncements of the new statute, the Arbitrator will accord it lesser weight.

Legislative Purpose Declared in RCW 47.64.005 and 47.64.006

The arbitrator is directed by new RCW 47.64.320 to be mindful in his deliberations of the following:

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 its employees by permitting ferry employees to organize and bargain collectively; (4) protect the citizens of the 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.

This Arbitrator will seek to apply these standards in the context of a redesigned collective bargaining/interest arbitration scheme that places his decision first in the hands of the parties, thence to the governor's office for inclusion in the governor's budget proposal to the legislature, thence to review by the Office of Financial Management for review, and thence to the legislative budget process, where his decision 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:"

The Position of Arbitration in the Legislative Budgeting Process

In the past, the legislature, entering its budget cycle, looked at a total gross amount of dollars available to it for the running of whole government, and, after the interplay that characterizes the political process, assigned a number value of dollars that would be dedicated to the various sectors requiring its stewardship, including transportation, ferry transportation. This process, post-political resolution, provided a fixed pot of funds upon which stakeholders participating in collective bargaining and arbitration would base their transactions and decisions. Now, the parties are confronted with addressing the process pre-the sovereign's decision-making, pre-its exercise of assigning value and priority to competing areas of societal concern and the appropriate organs of government to be employed for their attention. Competition can be

“fierce” among the stakeholders, philosophies, and vested interests at that table. It is said that politics is modern society’s mechanism for reconciling this competition of interests and values at the governmental level. This Arbitrator, in shaping his decision, is bound to statutory commands, and desires so to act with respect for the roles, processes, and functions that will follow. Thus, it seems prudent to adopt a course that respects the province of the state by providing a determination that seeks to observe traditional arbitral principles, principles that would, for example, apply to a free market of labor, with a willing purchaser of labor bargaining with a free provider of labor, a principle that gives weight to an arbitrator’s consideration of labor market comparables. This is especially so where labor costs are a percentage of the total budget of the ferry system, a smaller percentage yet of the total budget of the Department of Transportation, and a smaller percentage yet of the total operating budget of the State of Washington.

The Nature of the Work (Taken from the MEC Salary Survey)

Staff Chief Engineer: Duties include the following: Supervises and ensures the efficient operation and maintenance of all propulsion and electrical systems of the vessel. Supervises and coordinates the activities of all engine room employees assigned to the vessel. Ensures that the vessel's mechanical and electrical machinery is properly maintained and serviced, including all watertight doors, valves, piping, wiring within engine room, as well as shaft alleys, steering compartments, storerooms, workshops, compartments, and areas below the floor plates, voids and uptakes. Makes frequent inspections of mechanical and electrical systems; orders necessary repairs and adjustments. Maintains active safety program. Knows and enforces applicable USCG rules and regulations. Minimum qualifications: valid USCG license as chief engineer... valid STCW certificate on designated runs

Chief Engineer : Duties include the following: Under the general direction of the Staff Chief Engineer, is in full charge of the engine department of a ferry of any class carrying vehicles and passengers. Other duties essentially mirror those of the Staff Chief Engineer.

Assistant Engineer: Duties include the following: Officer in engine room ranking directly below Chief Engineer. Responsible for running, operation and maintenance of propulsion and electrical systems aboard the vessel. General maintenance duties may extend throughout entire vessel. Routinely inspects and maintains all equipment; reports malfunctions and makes adjustments or repairs as directed by Chief Engineer's instructions. May direct and review work of unlicensed

employees on duty. Performs duties assigned by superiors. Minimum qualifications: a valid USCG license as First, Second or Third Assistant Engineer.

Oiler: Serves as the highest rated on the unlicensed members of the engine department crew. Under supervision of the licensed engineering officer, performs inspection, maintenance and repair duties throughout the vessel. Regularly checks all lubrication points, water levels and bilges; inspects water pressure and flow to all systems. Monitors temperature readings and inspects drive motors and generators for sparking; checks fuel and lubrication oil purifiers; inspects steering engines and safety barricades for such things as loose fittings, worn hoses, oil and grease levels, services as required and reports needed adjustments and special conditions to the licensed engineer in charge; keeps a log of inspection and readings. Assists a licensed engineering officer(s) in emergencies such as fire or abandon ship. Ensures proper lighting in all the engineering spaces, shaft alleys, repair, control and steering compartments; assists in fueling operations. Cleans and paints machinery and spaces; assists in fuel transfers, pumping bilges, etc. May serve as a mechanical or electrical aide for other repairs and maintenance. Minimum qualifications: a valid US CG certificate as a qualified member of the engine department in the rating of Oiler.

Wiper : Serves as the entry level of the unlicensed engine department crew of a ferry. Under supervision of the licensed engineering officer(s) assists in and learns inspection, maintenance and repair duties throughout the engine department of the vessel. Cleans and paints machinery and spaces as assigned; assists in fuel transfers, pumping bilges, etc. takes routine readings of quality, level, pressure and temperature indicators as assigned. Learns emergency practices and the care and handling of tools and special equipment. May perform those duties normally assigned to an Oiler under supervision and for training purposes. Minimum qualification: a valid USCG certificate as Wiper.

The Arbitrator notes that the work under consideration includes duties ranging from the skilled/technical roles of the Staff Chief, Chief, and Assistant Engineers, required to be knowledgeable in and responsible for the health of the systems that operate the vessels, through the more direct monitoring, repairs, maintenance, and working environment and cleanup tasks of the Oilers and Wipers. In addition, these positions operate as a system for ensuring the safety of the ships, ships' personnel, passengers, people and property affected by ferry operations. From the direction of the licensed officers, expert in the safety requirements mandated by the Coast Guard, law, and regulation, in the creation and implementation of safety programs, through the implementing functions, the supporting physical activities joined in by the Oilers and Wipers,

including sewage transfer, vessel fueling, fire and “abandon ship” operations, these employees deal with matters of mixed environmental, industrial hygienic, and safety concerns.

The Arbitrator finds that the subject employees, based upon the nature of work performed, viewed in comparison with other employees, in the nature of internal comparables, assigned to the operation of ferry vessels, are more appropriately grouped with those employees than with the state’s classified workers for purposes of determining wages. The Arbitrator will give great weight to the subject employees’ wage position in relation to the comparables, as they are a factor for consideration mandated by statute, and serve the normally and traditionally observed value of efficiency, that is, an Employer paying lower wage scales will ultimately tend to realize less efficient labor, being unable to attract and retain the most productive labor, to the detriment of the ferry system and the interests of the citizens for whom the system is administered by the Employer.

Factors Considered

Apparently, some requested material from some of the subject jurisdictions for use in the MEC survey was not forthcoming. The Union apparently relied upon the MEC survey as submitted to them, Appendix Section B Exhibit IV Addendum in particular, in formulating their proposals, and did not find out until the day before the hearing that some BC data was not included. (Testimony, Duncan, Tr. p. 349) The Arbitrator, however, has the parties’ stipulation as well as the other factors to which the statute directs his attention as additional guides. It is a commonplace of interest arbitration, observed, for example, in the authoritative Elkouri treatise, and mirrored in cases such as may be found in 12 LA 608, 610 (1949), that the enumeration of matters for an arbitrator’s consideration are cautions for the arbitrator that he is not to consider any other factors in making his decision. The assigning of weight to be accorded the factors

themselves however, whether or not they will be assigned equal importance in a given situation, is within the province of the arbitrator. In the end, there is no "universal standard." It is the arbitrator who must make the decision of determining which particular factors are more important in resolving a contested issue based on the singular facts of the case. 100 LA 581, 583 (1992). In that exercise, the arbitrator weighs evidence supporting the application of the given standard, and the quality of evidence presented by a party in respect of a standard determines the weight with which the standard is applied.

The Arbitrator finds that MEBA licensed and unlicensed member have lagged, and continue to lag behind their comparables considered in the MEC Salary. Consistent with the stipulations offered by the parties, the Arbitrator considered neither COLD nor non-watch pay in this determination. Additionally, base pay, rather than total compensation was a central focus, so as to cancel out skewing factors referred to in the Survey. As the closest source still consistent with the stipulation of the parties, the Arbitrator relies upon the results shown in Appendix Section B Exhibit IV Addendum of the Survey. In addition to the study of external comparables presented by the MEC Survey, the Arbitrator has considered the import of the internal comparables presented as well, the wage transactions between the Employer and other similarly situated employee groups. Management Exhibit 9 is an "Illustration of WSF union wage increases and Washington state employee wage increases." A review of that exhibit shows that from fiscal year 1999 through fiscal year 2003, IBU, MMP, Metal Trades, MEBA-Licensed, MEBA- Unlicensed and state classified employees received identical wage increases. From 2004, (Metal Trades received the only raise in 2004, 3.0%), through fiscal year 2009, IBU received raises totaling 14.1%, MMP received 15%, and Metal Trades received 17.8%. Licensed and unlicensed MEBA employees received 10% along with state classified employees. All the

employee groups except for state classified employees received targeted wage increases in various classifications. There is no support in the record for the Arbitrator treating target increases or benefits as having other than an equalizing effect. On average, the Exhibit's other maritime subjects received almost 16% in wage increases from 2004, compared with MEBA's 10%, the same received by state classified employees. The implication drawn by the Arbitrator is that the Employer likened the MEBA group to state classified employees rather than to the other maritime trades. This is somewhat confirmed in argument by the Employer's counsel that MEBA members are state employees after all, and by the testimony of Glenn Frye, a labor negotiator with the state's Office of Financial Management, (Transcript, p. 332) that Washington State Ferries is not the Employer making bargaining decisions, the State of Washington is. The witness went on to testify that OPEIU had received greater increases in certain classifications as an application of a philosophy to bring employees up to 25% below market survey. The 1.6%-1.7% increases offered by the Employer to MEBA and other state bargaining units were in addition to that adjustment. The witness also testified that 1.6%-1.7% was also offered to a bargaining unit that was more than 40% over other comparables in the MEC survey, the Ferry Agent Special Program Administrators.

Seeking an understanding of the array of classifications and their wages with the aid of Employer Exhibit 15, the figures reveal that the 22 Staff Chief Engineers, approximately 6% of the membership, account for almost 10% of MEBA labor cost expenditures by the State on a straight time and total compensation basis (\$1.5million compared to \$17 million for straight time, and \$3.3 million compared to \$32.6 million total compensation). Their position requires a significant amount of travel time and overtime work addressing vessel problems in port or in shipyards, which is paid per industry standard as double time. The assigning of all overtime is a

managerial function administered by the Employer through its Port Engineer position. Though the contract does not give employees the right to choose where they may be assigned to report, employees acting as vacation relief, for example, who tend to be senior, will tend to exert pressure and obtain assignments to posts that provide the greatest opportunities for travel time and mileage as well. (Testimony, Wit. Duncan, P. Tr. 336 et. Seq.)

As to their wage proposals, the Parties are \$965,302 apart with regard to the licensed employees, and \$ 709,929 apart with regard to the unlicensed employees, for a total of \$1,675,231 over the two year contract period for increases for these roughly 367 employees. In the interest of perspective, the wages paid to MEBA employees in 2007, summarized from Employer Exhibit 15, were (rounded figures):

<u>Straight T.</u>	<u>Overt.</u>	<u>Leave</u>	<u>Holiday</u>	<u>Comp T.</u>
\$17,525,957	\$2, 860, 565	\$2,516,124	\$847,407	\$900,633
<u>Travel</u>	<u>Mileage</u>	<u>Sub/categ Payout, Adjust</u>	<u>Total MEBA Wage, Wage Related</u>	
\$1,906,000	\$1,140,721	\$3,743,072*	**\$32,645,913	

*Neither the advocates nor their witnesses were able to provide an adequate description of this category.

**Given these figures, the overall effect of the Union’s proposal is roughly 5% over the total wage figure over the biennium.

The categories that draw the Arbitrator’s attention include overtime, travel, mileage, and the subcategory that remains somewhat vague. Query, of those funds, totaling almost \$9.7 million, how much may represent a possible source of savings.

The Employer’s Statutory Authority and Ability to Pay

Several considerations come into the Arbitrator's mind as he considers the state's claim, made in good faith, of the impending shortage of available monies to fund improvements in these employees' contracts. These claims are variously described as appeals to the statutory and constitutional authority of the employer and as a defense of inability to pay. It is not lightly that the Arbitrator receives the evidence and arguments urged by the Employer, and the Arbitrator here seeks to reconcile these within the context of the latest legislative approach to collective bargaining, interest arbitration, and the budget cycle. The Arbitrator's obligation is to test an Employer's proposition that severe financial hardship will result from funding a reasonable wage demand. For example, Arbitrators have held that continuing to pay reasonable salaries to top management while asserting an inability to pay line workers may render that plea invalid. Employees may be seen in the nature of suppliers, and employers would not expect price concessions from suppliers. Arbitrators have evolved approaches in considering such projections and their role in the interest arbitration process. But in the main, arbitrators view the budget process as an important piece of the wage package determination puzzle. In a survey of one thousand public employee awards, the factors cited most often by arbitrators were salary comparability, then ability-to-pay defenses, and then inflation/cost of living, in that order. And, as to the ability-to-pay defenses, the burden of proof is generally allocated to the Employer.

Witness Robin Rettew, Senior Transportation Advisor to the Governor and OFM, interpreting Employer Exhibit 9, described the fiscal structure of the Department of Transportation, the Washington State Ferries component, and the funding and budgeting process at the state level. The state biennial operating budget is \$59.5 billion. Eighteen state agencies are funded from the state's transportation budget of \$7.5 billion. DOT is one of them, with a budget of \$5.9 billion. The WSF budget within that is \$681.9 million. Of that, ferry operations (non

capital) represents \$ 428.7 million or approximately 7% of the DOT budget. Of this, the total ferry labor budget is \$257.5 million. Fuel accounts for almost all of the rest. For perspective, by the Arbitrator's calculation, the total ferry labor budget is .4% of the state's operating budget, of which MEBA employees are a still smaller percentage, approaching .1% of the state operating budget.

The witness described the downturn as being driven by fuel prices, both in fuel consumed by ferries, 34 million gallons in the biennium, and consumers' using less fuel which generates less gas tax (tax is on the gallon used) as consumers buy less fuel. She described ways to work toward balancing budgets with project delays, cuts, and other tradeoffs. Last year's budget forecasts were based on fuel at \$2.61 @ gallon. At the time of the June 2008 forecast, the figure was \$4.06@ gallon. Ridership, especially discretionary trips, shows lower ticket sales. The Arbitrator notes the volatility of oil prices, as evidenced by significant declines in the price of oil to the time of the writing of this Award. Fares are 77% support of the ferry operations program, the highest among the comparables. The witness cited other methods of shoring up the budget, statutory distributions, administrative transfers, a transfer from the motor vehicle account, federal funds, a loan from the general fund as was done in 2001, etc. Concessions, vessel rental, and treasury deposit earnings are other potential support sources. Finally, the witness predicted a \$2 billion shortfall over the next biennium.

Under cross examination, the witness explained that after appropriations are made, it is a potential violation of the state's Budget and Accounting Act for an agency to spend beyond or differently from the legislation's direction, but the determination concerning spending is made over and at the close of the biennium, that is after June 30, 2011. The Arbitrator's decision would

be submitted to the executive branch and built into its budget proposal and would not itself constitute a violation of the Act if it produced numbers that went beyond forecasts.

In the 16 year projection contained in the Exhibit 42, Ms. Rettew explained that the shortfall in the ferry budget portion of the DOT budget attributed to operations was 18%. Until two years ago, significant fund transfers were made from the operations account to the capital account. Since 1999, the Department of Transportation/WSF has frequently spent under the budgeted amount for labor, sums amounting to close to \$5 million. Until 2006 those funds were eligible for diversion to the capital account. Engine room labor staffing on the ferries themselves peaked in 2001 then declined almost 10% into 2008 while off-vessel employees, administrative, increased by 8%. (Union Exhibit 37)

Witness Dr. Wolfgang Opitz, Deputy Director of the Washington State Office of Financial Management, described the legislative budgeting process, explaining that, upon proposal, budgets must be balanced and balanced across all funding sources and accounts and acknowledge the most recent revenue projections. He testified that the state offered "cost-of-living adjustments" of 1.6% for fiscal 2010 and 1.7% for fiscal 2011 based upon the Implicit Price Deflator reflecting the cost-of-living going forward. He described Washington as having a generally good economy, oriented to the global marketplace in manufacturing, aerospace and software, all benefiting from a weaker dollar, though somewhat troubled by turbulence in the credit markets. He reiterated the effects of food and fuel costs but noted that Washington enjoys lower than national unemployment and better job growth. Washington is also not in the steep downturn that it saw between 2001 and 2003. However, people are not spending enough on the things that produce revenue: household goods, remodels, repairs. Food and fuel dominate their spending. Employer Exhibit 4 predicts shortfalls that suggest a future deficit the state is not

going to accommodate in the next operating budget. The remainder of the witness's direct testimony discussed the availability of the state's so-called "Rainy Day Fund" and the differences between the inflation measure favored by the Employer, the Implicit Price Deflator, and the measure favored by the Union, the Consumer Price Index published by the Federal Bureau of Labor Statistics.

Reference to an external index that can be applied to the purchasing power of employees in a bargaining unit is a convention of interest arbitration. The rationale for applying that standard can be "to maintain a standard of living," or, "to keep pace with inflation," or any one of a number of descriptions of a factor that is applied to a current wage to provide a rational basis for its future increase or decrease for a purpose important to the purchaser of labor or the provider of labor. At the hearing, much credible, good faith testimony was provided by expert witnesses for the Employer and the Union. The differences in approach centered upon whether the application of the Employer's preferred index, the Implicit Price Deflator, or the Consumer Price Index would be the more appropriate index to apply to wages over the term of the contract. The differences between them were discussed at length in testimony and exhibits. Witness Dr. Daniel Jacoby, a labor economist, testified that there is no single agreed upon authoritative index for measuring the cost of living that is produced by the government, and that each is created for its own purpose of application. Dr. Opitz's testimony essentially agreed with this position. The central differences between the indices seems to be that the IPD depends upon a basket of goods that includes Gross Domestic Product, including products used in commercial/industrial settings, and reflects shifting consumer decisions, while the CPI centers on wage-earner purchases of a fixed basket of goods whose contents are periodically reviewed, and measures the changes in the price of that basket in one location over time. The Arbitrator is of the impression that the IPD, as

it may examine even commercial steel and farm implements, may be a more relevant tool for an employer purchasing supplies and durable goods for its industry in the marketplace, and thus may better guide the employer as they budget for the purchaser of goods. The CPI, however, geared to consumer purchases, seems the more appropriate index for reference when compensating humans. The Arbitrator is not prepared to, and does not need to, make a finding on that score at this time, however, as, based upon the record as a whole, the Arbitrator, respectful of the effort and analysis provided by the parties in discussing the varying indices, finds that the average increases of comparables who are in the circumstances referenced by the statute, and internal comparables in terms of wage and bargaining history, should carry the greater weight in assessing wages than such indices, a position mirrored in cases such as found at 107 LA 527.

The Arbitrator finds that there is insufficient basis for finding a threat of compromise of the statutory and constitutional authority of the Employer sufficient to outweigh the collective bargaining statute's other enumerated factors. At the least, any potential violation of the Budget and Accounting Act would not be determined until after July 1, 2011. Moreover, there are many procedures involving many officials that will have their input into the formulation of the budget well before that time, and well before the shaping of the state budget for the coming biennium.

Though the state's fiscal picture entering the next biennium is currently not optimistic, the Arbitrator finds that this does not, within the context of the collective bargaining statute and the processes prescribed thereby, outweigh the announced policy and purpose of the statute, including the weight the Arbitrator accords to the wages and bargaining of external and internal comparables. The Arbitrator has also considered the following:

The relatively small impact of the Union's proposal when viewed in light of the statutory factors, policy and purpose, and the state budget as a whole;

Evidence presented of a history of transfers from the ferry operations account to the capital account until that practice's prohibition two years ago;

The potential of savings that may be realized in cost centers largely under the Employer's control as developed in testimony and exhibits as set forth earlier: overtime/relief assignment, travel, and mileage practices;

Possible avenues of savings or resource: The Scanlon Report/Cedar River Study, describing areas of savings in the "millions" with the ferry system adopting two simple practices: slowing the ferries a bit enroute, adding as little as 2.6 minutes, and shutting engines down when in the dock;" capital project "slippage;" statutory distributions; administrative/Motor Vehicle Fund transfers; General Fund/Rainy Day Fund transfers or loans; federal funds; and a further examination of the entrepreneurial and concessions potential of the ferry system, to place less reliance on the fare box;

The decline in recent years in the number of employees "on the boats," versus the increase in personnel "off the boat (administrative/managerial);"

The volatility of forecasts, dependent as they have been on the price of oil and the impact of turbulence in the credit market. As admitted by Employer witness testimony, no one expected the jump in fuel prices that occurred in the period prior to, and which shaped, the economic and revenue forecasts of February and June 2008. The Arbitrator takes judicial notice that, since the date of hearing, the price of oil has dropped dramatically.

CONCLUSION

The Arbitrator considered the past collective bargaining between the Parties as set forth above, apparently not, in the main, producing a result where the licensed or unlicensed MEBA employees led comparables, or equaled their mean. The Union's proposal continues that pattern. The constitutional and statutory authority of the employer was considered by the Arbitrator. The Union's proposal admittedly may add some pressure to what may develop as difficult budgeting decisions on the part of the state. The Arbitrator does not take lightly the projections and forecasts presented, nor question the honesty or good faith of the state's witnesses. The Arbitrator has sought to balance all of the factors, including these predictions, together, considering the relatively low cost of the Union's proposal, the other factors that have been discussed above, the nature of the work, possible areas of savings in those areas within the Employer's control, the problems associated with straying too far from internal as well as external comparables, and has struck the balance in favor of an award the Arbitrator believes to

be in keeping with statutory direction and grounded in a free labor market approach to wage determination. The stipulations of the parties, insofar as they supplemented or cured various features of the MEC Salary survey, were considered by the Arbitrator. The Arbitrator considered the limitations on ferry toll increases and operating subsidies as may be imposed by the legislature, and struck the balance described above. “Other factors that are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining” were considered by the Arbitrator, including the internal comparisons made by the Arbitrator. Ultimately, the Arbitrator afforded the greatest weight to making these employees’ wages more comparable to those of maritime employees within and without the state, and less comparable to the wages of classified state employees, especially considering the policy and purpose of the legislation authorizing collective bargaining, with an emphasis on the quality, safety and continuity of ferry service in the interest of the citizens of the state.

After considering the record as a whole, the Arbitrator, consistent with the statutes authorizing collective bargaining and arbitration for these ferry employees, selects as more reasonable the Union’s proposal for wages for the period commencing July 1, 2009, and ending June 30, 2011, and it shall be awarded.

ISSUE 2 VACATION

Current Collective Bargaining Agreement, Licensed Employees, for the term July 1, 2007 to June 30, 2009

Section 18 (Arbitrator: Current vacation leave credit, as well as the Union’s proposed changes, is summarized in the chart below.)

Current Collective Bargaining Agreement, Unlicensed Employees, for the term July 1, 2007 to June 30, 2009

Rule 20.01 Each employee with a minimum of six (6) continuous months of employment shall receive one (1) working day of vacation leave, with full payment for each month of completed employment up to and including (12) months. Additional bonus days of vacation leave will be credited for satisfactorily completing the first two (2), three (3), four (4), five (5), fifteen (15), and sixteen (16) years of continuous employment.

(Arbitrator: Current vacation leave credit, as well as the Union’s proposed changes, is summarized in the chart below.)

Union’s Proposal

Chart Presenting Union Proposal Compared to Current Contract

<u>Service months/years</u>	<u>Current (hours) Lic/Unlic</u>	<u>Proposed (hours)</u>	<u>Difference</u>
6 mo	52/48	52/48	0
7mo	59/56	59/56	0
8mo	67/64	67/64	0
9mo	74/72	74/72	0
10mo	81/80	81/80	0
11mo	89/88	89/88	0
12mo	96/96	96/96	0
2yrs.	104	104	0
3	120	120	0
4	136	136	0
5	160	160	0
6	160	160	0
7	160	168	8
8	160	168	8
9	160	176	16
10	160	176	16
11	160	184	24
12	160	184	24
13	160	192	32
14	160	200	40
15	168	200	32
16	176	208	32
17	176	208	32
18	176	224	48

19	176	224	48
20	176	232	56
21	176	232	56
22	176	240	64
23	176	240	64
24	176	248	72
25	176	248	72
26	176	256	80
27	176	256	80
28	176	264	88
29	176	264	88
30+	176	272	96

The Union argues in support of its proposal that it is seeking only the vacation schedule that it's shipmates in IBU already have. IBU's schedule was awarded by Arbitrator Michael Beck by Award of September 2005, to be effective July 1, 2001. Two months later Arbitrator Michael Cavanaugh awarded the identical schedule to MMP, with like effect, which later bargained the arrangement set forth in the "Stipulations" section of this Award. The total cost of that arrangement, including the associated raise, was calculated as \$2,585,699 through June 30, 2007. The Union proposes no change before the seventh year of employment, then seeks to build in extra days for periods when, in the past contract, vacation credit did not improve. Union Exhibits 26 and 27 replicate Arbitrator Beck's calculations as they would apply to MEBA. In that calculation, Arbitrator Beck took vacation days per year at particular levels of seniority, beginning at the end of the service period having no change, then tallied to find the total vacation credit from six to 30 years of service. He then took these numbers and compared them. The same methodology has been followed by the Union in its Exhibit 27, and the differences among comparables are significant. Even if the Union's proposal is granted, MEBA licensed employees will still be 561.66 days behind the average of the other two public ferry systems. Unlicensed employees will be 433 days behind that average.

Employer's Proposal

The Employer proposes that there be no change in the terms of the contract with regard to these provisions.

The Employer admits that, compared to other maritime unions set forth in Employer Exhibit 16, MEBA's vacation credits are lower, but that the comparison should be made not with the approximately 1200 members of the IBU, but with the other 76,000 state employees, including classified employees, who accrue the same vacation credit as MEBA employees. Because of the administrative difficulties and expenses that would be incurred, including the possible need for the Employer to have to hire more personnel for relief, in this time of downturn, the Employer would prefer that the Union reserve this matter for future bargaining.

ANALYSIS

As the Arbitrator has previously found, these employees are more properly compared with other maritime employees than with classified state employees for the purpose of determining wages. This is also the view held by the last two arbitrators to examine this issue, and is a policy implicit in the statutory command to reference the MEC survey. Given that finding, the Arbitrator is left to examine this matter in the context of the relevant figures and policies. The Arbitrator finds the calculations and comparisons performed by Arbitrator Beck, and as built upon by the Union, to be uncontested and accepts them as accurate. There are significant discrepancies between the vacation credit applied to MEBA employees and those enjoyed by comparables, including public ferry system comparables. Further, consistent with his earlier findings concerning the grouping of these employees, looking at the nature of the work, and its locale, and to the extent that these employees all must work together as shipmates, all in the same boat, the Arbitrator will extend the rationale of the findings of Arbitrator Cavanaugh in

his November, 2005 Award to these MEBA employees. This would be consistent with the normal and customary arbitral practice of observing internal as well as external comparables, in a manner that outweighs contrary considerations and more closely follows the statute's charge to consider its factors and the policy and purpose of the law. The Arbitrator notes the Testimony of Jeff Duncan (Tr. p. 352) confirming the Union's vacation proposal as being effective July 1, 2009, with no change in vacation benefit for employees with six years or less seniority. According to that testimony, at least half of the unlicensed bargaining unit has that much or less seniority. The Arbitrator notes the proposal by the Union did not address or include retroactivity. The Arbitrator's Award is predicated upon that fact.

CONCLUSION

After considering the record as a whole, the Arbitrator, consistent with the statutes authorizing collective bargaining and arbitration for these ferry employees, selects as more reasonable the Union's proposal regarding vacation credit for the contract period commencing July 1, 2009, and ending June 30, 2011, and it shall be awarded.

ISSUE 3

EMPLOYER CONTRIBUTION TO MEBA'S EDUCATIONAL PROGRAM

Current Collective Bargaining Agreement, Licensed Employees, for the term July 1, 2007 to June 30, 2009

Section 29 (c):

- (c) It is agreed that the Employer will participate in the educational program of the Marine Engineers Beneficial Association. For this purpose, the Employer will agree to pay to the MEBA training plan one dollar (\$1.00) per day per person. Such training shall be subject to the provisions of this section excepting tuition costs.

Current Collective Bargaining Agreement, Unlicensed Employees, for the term July 1, 2007 to June 30, 2009

Rule 31.05:

It is agreed that the Employer will participate in the educational program of the Marine Engineers Beneficial Association. For this purpose, the Employer will agree to pay to the MEBA training plan fifty cents (\$0.50) per day per person. Such training shall be subject to the provisions of this section excepting tuition costs.

Union's Proposal

For Licensed employees:

Section 29 (c):

(d) It is agreed that the Employer will participate in the educational program of the Marine Engineers Beneficial Association. For this purpose, the Employer will agree to pay to the MEBA training plan three dollars (\$3.00) per day per person. Such training shall be subject to the provisions of this section excepting tuition costs.

For Unlicensed employees:

Rule 31.05:

It is agreed that the Employer will participate in the educational program of the Marine Engineers Beneficial Association. For this purpose, the Employer will agree to pay to the MEBA training plan three dollars (\$3.00) per day per person. Such training shall be subject to the provisions of this section excepting tuition costs.

Employer's Proposal

The Employer proposes that there be no change in the terms of the contract with regard to these provisions.

ANALYSIS

In supporting its proposal to raise the Employer's contribution to the educational program/Calhoon School, the Union points to the significant benefit enjoyed by the Employer in the form of increased skills and licensure opportunities for its engine room employees. The

school itself is a not-for-profit, privately owned facility funded by a Taft-Hartley trust governed by six members with 30 companies participating in the trust. A wide range of classes are provided at the school, including firefighting and diesel mechanics. The school also maintains a virtual simulation facility in which students may train for the configurations of the bridge of the various ferries they may be crewing in their careers, and the routes and ports they may be entering. The school also provides room and board for MEBA employees, as well as attendees' airfare and a \$50 per day stipend. The total value of services and cash received by MEBA Employees from the school from 2003 through the first half of 2008 is estimated by the Union to be several million dollars. Among the benefits enjoyed by the Employer are the increasing skills and licensure of lower-level employees, which creates a pool of qualified people to occupy vacancies created by retirement and other departures. Also, a pool of lower paid employees is created who can "bump up" to higher pay positions on a temporary relief basis, increasing the Employer's scheduling flexibility. The school has come upon hard times, and during the two-year period from January 1, 2006 through December 31, 2007, the school has lost \$16,147,301.00. The school's director, Lou Marciello, testified by telephone that he estimates that the school really needs \$12.35 in employer contributions per person per day in order to fund the school's year-to-year operations. The Union believes that, given these facts, the contribution it seeks is really a tiny percent of the value of the educational services and cash outlays the school provides to the Employer's engine room employees.

The costs associated with the Union's proposal for the next biennium are as follows:

For licensed employees:	\$98,404.00
For unlicensed employees:	<u>\$112,190.00</u>
Total for the Biennium:	\$210, 594.00

The Employer does not dispute the quality of the facilities and the training available at the Calhoon school. MEBA members are permitted, even encouraged, to attend training at the school per Employer policy. Upon successful completion of a class, the leave or comp time taken by the employee is reimbursed. Total attendance by MEBA employees peaked in 2004 and has been declining since. Testimony from Senior Port Engineer Mike Lacroix suggests that attendance at the school is related to changes in the school's travel reimbursement policy, and a school policy permitting the retaking of a given class only once every five years. Also, the structure of the management of the school is such that the Employer does not have a chair on its board and has no say in the operation of the school.

While the evidence presented was comprehensive and portrayed a quality facility and curriculum from which the Employer derives benefit, the Arbitrator is not persuaded, consistent with the factors set forth in the collective bargaining statute and its policy and purpose, that the Employer should be required to make the contribution proposed by the Union. Mere receipt of the benefit does not by itself create the sought obligation. The Arbitrator does not find the level of privity between the school and the Employer, nor an adequate pattern of bargaining or of comparables, such as to justify requiring an increase in its payments on the basis of the record presented.

CONCLUSION

After considering the record as a whole, the Arbitrator, consistent with the statute authorizing collective bargaining and arbitration for these ferry employees, selects as more reasonable the Employer's proposal regarding contributions to the education program of the Maritime Engineers Beneficial Association for the period commencing July 1, 2009, and ending June 30, 2011, and it shall be awarded.

AWARD OF THE INTEREST ARBITRATOR

The Award of the Interest Arbitrator with respect to Union and Employer proposals for the Agreements for licensed and unlicensed employees commencing July 1, 2009 and ending June 30, 2011 are set forth below:

1. Section 6 of the Agreement for licensed employees, "Wages and Overtime" and Rule 19 of the Agreement for unlicensed employees, "Classifications and Rates of Pay"

The Union's proposal for a wage increase effective July 1, 2009, is awarded.

2. Section 18 of the Agreement for licensed employees, "Vacations" and Rule 20.01 of the Agreement for unlicensed employees, "Vacations."

The Union's proposal to increase vacation benefits effective July 1, 2009, is awarded.

3. Section 29 (c) of the Agreement for licensed employees, "Education" and Rule 31.05 of the Agreement for unlicensed employees, "Allowance for Schooling and Upgrading."

The Union's proposal regarding contributions to the MEBA's education program is rejected.

DATED September 25, 2008

Friday Harbor, Washington

Anthony D. Vivenzio, Interest Arbitrator