

IN THE MATTER OF THE )  
 )  
INTEREST ARBITRATION )  
 )  
BETWEEN )  
 )  
INLANDBOATMEN'S UNION )  
OF THE PACIFIC )  
(The Union) )  
 )  
AND )  
 )  
WASHINGTON STATE )  
DEPARTMENT OF )  
TRANSPORTATION, )  
FERRIES DIVISION )

ARBITRATOR'S  
OPINION  
AND  
AWARD  
  
2011-2013 Collective Bargaining Agreement  
  
FMCS Case No. 10-50442-8

**HEARING DATES:** August 2-6, 2010

**HEARING CLOSED:** August 6, 2010

**ARBITRATOR:**

Sylvia Skratek, Ph.D.  
3028 Western Avenue  
Suite 405  
Seattle, Washington 98121

**REPRESENTING THE EMPLOYER:**

Robert McKenna, Attorney General  
By Donald Anderson, Assistant Attorney General

**REPRESENTING THE UNION:**

Schwerin, Campbell, Barnard, Iglitzin and Lavitt  
By Robert Lavitt, Attorney

**PROCEEDINGS RECORDED BY:**

Terilynn Pritchard, CCR, RPR, CRR, CLR  
Byers & Anderson, Inc.

**WITNESSES FOR THE UNION:**

Dennis Conklin, Regional Director  
Jay Ubelhart, Business Agent, Passenger Industry  
Margaret Pelland, Former Business Agent, Passenger Industry  
Kristine Seeklander, OS and AB On Call  
Gregory Faust, Relief Mate for Washington State Ferries

**WITNESSES FOR THE STATE:**

Robin Rettew, Senior Transportation Budget Advisor, Office of Financial Management (OFM)  
Jerry Holder, Chief Negotiator, Labor Relations Office, OFM  
Steven Rodgers, Director of Marine Operations  
Scott Kibler, Operations Manager, Central Accounting and Operations  
Matt Hanbey, Operating Program Manager  
Robert Covington, Director of Accounting and Financial services  
Michael Murdock, Team Leader  
Brad Killman, Compensation Analyst, OFM  
Kay Nichols, Former Payroll Assistant  
Doug Schlieff, Senior Shoreside Manager  
Carrie Wood, Human Resources Consultant II, Labor Relations Office  
Pete Williams, Operations Center Port Captain

**BACKGROUND**

The Washington State Department of Transportation (WSDOT), Ferries Division (hereafter “the State”) and the Inlandboatmen’s Union of the Pacific (hereafter “the IBU” or “the Union”) are parties to a collective bargaining agreement that expires on June 30, 2011. (Ex. J1) This matter came before the Arbitrator pursuant to Washington State Statute RCW 47.64.300. As provided at Section (2) of the statute, the parties agreed to submit the dispute to a single arbitrator. The Arbitrator convened a hearing in this matter beginning on August 2, 2010 and continuing through August 6, 2010. At the hearing the parties had full opportunity to make opening statements, examine and cross examine witnesses, introduce documents, and make arguments in support of their positions.

**STATUTORY CRITERIA**

Pursuant to RCW 47.64.320:

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

interest arbitration.

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

(3) In making its determination, the arbitrator or arbitration panel shall be mindful of the legislative purpose under RCW 47.64.005 and 47.64.006 and, as additional standards or guidelines to aid 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;

(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.

(4) This section applies to any matter before the respective mediator, arbitrator, or arbitration panel. [2010 c 283 § 15; 2006 c 164 § 14.]

RCW 47.64.006 provides:

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. [1989 c 327 § 1; 1983 c 15 § 1.]

RCW 47.64.005 provides:

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. [1961 c 13 § 47.64.005. Prior: 1949 c 148 § 1; Rem. Supp. 1949 § 6524-22.]

RCW 47.64.200 states:

As the first step in the performance of their duty to bargain, the employer and the employee organization shall endeavor to agree upon impasse procedures. Unless otherwise agreed to by the employee organization and the employer in their impasse procedures, the arbitrator or panel shall issue a decision it deems just and appropriate with respect to each impasse item. If the parties fail to agree upon impasse procedures under this section, the impasse procedures provided in RCW 47.64.210 and 47.64.230 and 47.64.300 through 47.64.320 apply. It is unlawful for either party to refuse to participate in the impasse procedures provided in RCW 47.64.210 and 47.64.230 and 47.64.300 through 47.64.320. [2010 c 283 § 12; 2006 c 164 § 7; 1983 c 15 § 11.]

### **CONTEXT OF THE DISPUTE**

The WSDOT Ferries Division was created in 1951. It is the largest ferry system in the United States and the third largest in the world. Nearly twenty three million people are transported by the ferry system annually. There are twenty auto-passenger ferries and two passenger only ferries. The ferries operate out of twenty terminals over nine routes and provide

450 trips per day. The ferry system is part of the state highway network serving eight counties and British Columbia, Canada. (Ex. U7) The ferry system is publicly supported through revenue sources that include but are not limited to: Ferry Fares; Motor Vehicle License, Permits & Fees; and the Motor Vehicle Fuel Tax Distribution. The Washington State Legislature authorizes the revenue sources, rates, uses and to which funds and accounts that the revenues will be deposited and appropriates the transportation funds. (Ex. SF1, pp. 4 and 12)

The Inlandboatmen's Union of the Pacific is the exclusive representative of the bargaining unit representing the approximately 950 employees in the Deck, Terminal and Information departments of the Washington State Ferries.

The parties began negotiations in February 2010 on a successor collective bargaining agreement in accordance with RCW 47.64.170. After a reasonable period of negotiations the parties were unable to reach agreement on several issues. Mediation sessions were held on July 7 and 9, 2010. As provided at Section (1) of RCW 47.64.300, all impasse items were submitted to arbitration. In accordance with that same section of RCW 47.64.300 the issues before this Arbitrator are limited to the issues certified by the Marine Employees' Commission.

The Marine Employees' Commission certified the Union's sixteen submitted issues and nine of the State's submitted issues. (Exs. U3 and U4) Both parties provided the Arbitrator with well prepared and thoroughly documented notebooks which provided their respective positions on each of the issues. During the proceedings the parties were able to reach a resolution on Rule 25 – Maintenance and Cure (Union Issue 10) and that issue is no longer before the Arbitrator. Resolution was also reached on Appendix A-Deck Department Personnel, Rule 1- Hours of Employment, Overtime and Assignment, 1.01 (State Issue 9; Union Issue 12) and that issue is no longer before the Arbitrator. Additionally the Union withdrew two issues: Rule 10.10 Sunday Pay (Union Issue 2) and Rule 10.11 Weekend Pay (Union Issue 3) and the State withdrew its proposal on Rule 19 – Seniority and Assignments (State Issue 7). The remaining issues have been addressed within this decision in the order in which they appear within the collective bargaining agreement.

The award in this matter is based upon the information provided in the submissions and the evidence, testimony, and arguments put forward during the hearing.

## ANALYSES AND DECISIONS

### **Rule 1 – Definitions**

#### **(State Issue 1)**

The State is proposing that the definitions at Rules 1.14, 1.15 and 1.16 be modified to reflect the anticipated changes that would occur if its proposal for modification to Rule 10 - Minimum Monthly Pay and Overtime at Rule 10.08 is granted by the Arbitrator.

#### *Decision*

These modifications to Rule 1 will be discussed within the analysis of Rule 10 below. The parties have agreed to the State’s proposed modification to Rule 1.27 which states “Spouse means all persons such as a wife, husband, or registered domestic partner.”

### **Rule 7 – Crew Requirements**

#### **(State Issue 2)**

#### ***Rules 7.01 through 7.04***

The State is proposing that the minimum manning schedules currently established within the Agreement be eliminated and replaced with a requirement that the State *follow COI*. The proposed change would require the State to man each vessel as provided on the Certificate of Inspection that is provided by the United States Coast Guard for each vessel within the ferry system. The State provided a list that illustrated the effect of its proposal. On that list two vessels are currently manned at the COI, thirteen vessels are manned at one Ordinary Seaman above the COI, and four vessels are manned at two Ordinary Seamen above the COI. (Ex. S2, addendum) The State further provided an analysis of the potential cost savings if its proposal were to be adopted: \$6,736,858 biennially which represents approximately 1.5% of the Ferries’ operating funds. An additional savings of \$62,466 biennially will be achieved by the elimination of short crew pay given the fact that there is no possibility of operating a vessel with a crew less than what is provided on the COI. The State has not calculated what costs might be incurred in

the event that there is not sufficient crew available to man a vessel to the COI. When questioned about such costs the State's witness Steve Rodgers testified:

**Q** Is there a cost to the employer if-- let's assume that you got your druthers and the arbitrator were to say, "We'll go with manning your vessels at COI." If a vessel is ready to sail and you're short of COI requirements, what cost is it to the employer?

**A** Well, that's really dependent on where the vessel is, on whether it's starting out in the day or whether it's ending or in the middle of the day or whether it's at its relieving port or not.

If a vessel doesn't sail-- just in a simplistic form, if a vessel doesn't sail, there really isn't any cost to the employer, except for the service aspect, the public impression of the system.

We get a black eye, basically, in the public if that should happen.

There are other situations, however, if a boat does not sail, and there are relieving crews that need to be at certain places, there may be an overtime factor that's caused in a different bargaining unit. For example, the engine room crew, if they have to be relieved at a different port and that boat doesn't sail at that particular time of the day, they may miss their relief and cause some overtime.

Most frequently when this scenario happens, it's usually in the morning at the beginning of the service day. We either receive a late call from an employee that they're having car trouble, woke up late, sick, can't get in, not going to make it on time—

**Q** And there's not enough time to--

**A** With not enough time to dispatch someone out, so-- and from our perspective, that's the usual reason why this happens or the most common reason why this happens.

From our perspective, we don't believe we should be penalized if an employee is late, that we have to pay the rest of the crew just simply because someone gives us a late call not allowing us enough time to dispatch another crew member to that vessel.

**Q** You don't want to have to pay the rest of the crew the short-crew pay?

**A** Correct. (Tr. V. 5, pp. 28-30)

Further in his testimony, Rodgers emphasized that it is not the State's interest to mandate that the vessels be manned at COI but rather that the State have the ability to do so. At page 37 of Volume 5 of the transcript, Rodgers states that "there are customer service aspects involved, cleanliness aspects involved, other issues to have extra people on the boat... What the proposal is requesting is that we be able to run at COI and that we be relieved of the burden of sharing the expense on the short crew when we have to sail at COI." Rodgers also expressed the reality that financial resources are limited and that the economic state of the State could lead to decisions that include a review of the COI on all of the vessels that are over COI.

The Arbitrator appreciates the dilemma facing the State however she cannot accept the State's proposal to eliminate the minimum manning schedules that are currently within the Agreement. She notes that Arbitrator Michael Beck addressed manning issues in his 2005 decision for the parties (Ex. U15). In that decision at pages 10-11, Beck found for the Union in its proposal that all auto carrying vessels shall have a Boatswain and at pages 40-41, Beck found for the State regarding the Union's proposal to increase the minimum crew requirements aboard the Rhododendron, the Steel Electric, and Jumbo classes. Clearly, the manning issues are of significance to both parties and have been negotiated throughout the years to address the needs and interests of the parties. To simply eliminate the minimum manning schedules from the Agreement would be to negate the years of negotiations that have been dedicated to developing the schedules. Presumably the specific details that are contained within the current language did not occur without some careful thought and consideration by both parties. For example, the Arbitrator's review of the current language found that consideration was given to the fact that manning on the graveyard shifts of the Super Class could be at a lower level than on the other shifts on certain specified runs and that manning of the Super Class in the San Juan Islands could be at a lower level from October 15 through April 14. The Arbitrator cannot ignore such careful consideration and simply wipe out what has evolved over the years within this contractual provision. In fairness to the State, that was not the main focus of their presentation at the hearing. Instead, the State is looking for financial relief in the event that staffing is below the contractually stated minimums and presumably at or above the COI. The language contained within Rule 7.04 requires that if a vessel is not "...manned in accordance with the minimum manning schedules of unlicensed personnel in the Deck Department, the wages of the position(s) shall be divided equally among the employees performing the work of the unfilled position(s). If a crew shortage occurs on a holiday, the holiday rate of pay shall apply." The cost savings to the State if this provision were eliminated would be \$31,233 annually. The Arbitrator notes that in effect, the State may now operate the vessels at the COI level but if it does so, it must provide compensation to the employees who have assumed an additional workload. Given the concession on the part of the Union to not seek a wage increase during these difficult economic times, the Arbitrator is unwilling to find that the employees should undertake an increased workload without additional compensation. The minimal savings to the State could potentially be outweighed by the decrease in morale to the employees.

The Arbitrator recognizes that there are additional concerns that have been raised by the State regarding the costs involved in the manning of the vessels. It is not simply a matter of the short pay that is distributed to the crew members who perform the work of the unfilled position but also is a matter of the additional pay for the person who is eventually dispatched to fill the position and in some cases that person might be entitled to a guaranteed overtime of eight hours. Those additional concerns however were not quantified financially and the Arbitrator has no basis to determine the financial significance of those concerns. She must therefore conclude that the most pressing concern for the State is the short pay that is identified within State exhibit 2 as an average yearly cost of \$31,233 representing a very small percentage of the overall Ferries' annual operations budget of over two hundred million dollars. (Ex. SF1)

### ***Decision***

The Arbitrator finds that the current contract language at Rules 7.01 through 7.04 shall be maintained at Rule 7-Crew Requirements.

### ***Rules 7.06, 7.08 and 7.09***

The Arbitrator has reviewed the testimony and evidence and can find no references to the State's proposed changes to Rules 7.06, 7.08 and 7.09 and therefore can make no determination on the State's proposal. Given the lack of attention given to these rules, the Arbitrator can only award current contract language.

### **Rule 10 – Minimum Monthly Pay and Overtime**

**(State Issue 3; Union Issue 1)**

#### ***State's Proposal***

The State has proposed that Rule 10.02 be modified to provide that when work is extended beyond the regular assigned work day that the time shall be paid at the overtime rate in six (6) minute increments. The current language provides that any extension of fifteen minutes or less beyond the regular assigned work day would be paid at the overtime rate for one quarter of an hour. If the work is extended by more than fifteen minutes, the time worked shall be paid in increments of one hour. The State's proposal would result in a savings of \$226,542 annually.

The State has also proposed that the current Rule 10.08 be replaced with new language that requires that “all employees in year round positions shall be assigned forty (40) hours of work per one (1) week work schedule in the Terminal Department or eighty (80) hours of work per two (2) week work schedule in the Deck Department as set forth elsewhere in this agreement.” The State’s proposal also requires that “all employees designated as relief positions as defined in Rule 1.14 shall be offered forty (40) hours of work per one (1) week work schedule in the Terminal Department or eighty (80) hours of work per two (2) week work schedule in the Deck Department as set forth elsewhere in this agreement. Reliefs that reject work offered shall forfeit guarantee pay and all paid premiums afforded the position of Relief for the work period in which the work was rejected.” Concurrent with these proposed changes, the State has proposed that Rule 1-Definitions be modified at Rules 1.14, 1.15 and 1.16 to reflect the changes anticipated within Rule 10.

### ***Union Proposal***

The Union has proposed that Rule 10.02 be modified to delete the references to Rule 24.02 and Rule 24.03 of the Agreement and to add language that states that “no more than four hundred (400) hours of such compensatory time off may be accumulated by each employee. All accumulations beyond four hundred (400) hours shall be paid in cash, and all accumulated compensatory time off shall be taken prior to retirement.”

### **Discussion**

#### ***Rule 10.02***

The Arbitrator has reviewed the State’s proposal to modify Rule 10.02 to pay overtime in six-minute increments and hereby rejects that proposal. The State’s rationale for its proposal had as its basis that it would be consistent with the employees in general government however the Arbitrator notes that one of the criteria for her determination contained within RCW 47.64.320 at Section (3) subsection (f) requires a:

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.

There is nothing within the statute that requires or even suggests that a comparison with general government should be undertaken nor would it be appropriate for the statute to require or suggest a comparison with employees who are not doing comparable work. The Legislature in its wisdom has crafted the statute to provide fair and equitable comparisons with similarly situated employees. This Arbitrator will not exceed the provisions of the statute and add a new comparator group of “general government” to the statute. Furthermore, the Arbitrator notes that the issue of overtime has been a matter of negotiations between the parties going as far back as 1965. As the agreements from 1965 through 1967 and 1969 through 1972 (Exs. U31 and U32) illustrate, overtime was paid for any work that extended into overtime with a minimum payment of one hour. The agreement from 1974 through 1977 (Ex. U33) illustrates that the language was modified to a version that is very similar to the language that is in the current Agreement and provides for overtime payment when “work is extended fifteen minutes or less...at the overtime rate for one quarter of an hour”. The Arbitrator notes that the criteria within RCW 47.64.320 at Section (3) subsection (b) lists as a factor to be taken into consideration past “collective bargaining contracts between the parties including the bargaining that led up to the contracts”. It is clear from the evidence that overtime has been the subject of bargaining between the parties for over four decades. While a long bargaining history does not prohibit an arbitrator from recommending a change in the language in dispute, an arbitrator is not inclined to do so without some compelling evidence to support such a change. As recently as 2005 Arbitrator Beck rejected the State’s attempt to pay overtime only for the actual time worked. Beck found at that time that the State’s proposal was not supported by the evidence in the record and emphasized that the statutory comparators must be taken into consideration. (Ex. U15, pp. 19-21) This Arbitrator was not provided any evidence or testimony regarding the statutory comparators that would support a change in this section of the Agreement and therefore rejects the State’s proposal. While the State has put forward purported cost savings, such cost savings must be viewed in the overall context of compensation for ferry workers. The costs involved in the payment of overtime provide an opportunity for employees who do not receive salary step increases and who have agreed to forego wage increases to at least enjoy the benefits of years of negotiations that have resulted in long standing, well established overtime payments.

The Arbitrator has also reviewed the Union's proposal to remove the language that makes compensatory time subject to the conditions and limitations of Rule 24.02 and Rule 24.03 of the Agreement. The Union's proposed language change would have the effect of allowing employees to accumulate eight hundred hours of compensatory time: four hundred hours under Rule 10 and four hundred hours under Rule 24 – Compensated Holidays. The Union contends that its proposal is nothing more than a clarification of the current language within the Agreement.

The history of compensatory time accumulation was provided by Conklin who testified that in the early 2000's when Arbitrator Beck awarded an increase in vacation of ten days, the State sent "over a disk showing what everyone would be paid. It showed on that disk the accumulation of comp, and we had people that were at limits of a thousand, and then they showed holiday comp separate, so each one was a separate item." (Tr. V.1, p. 50) The State did not provide any contradictory testimony regarding the accumulation of comp time "at limits of a thousand". The language in the current Agreement at Rule 10.02 and Rules 24.02 and 24.03 must be read as a whole given the fact that Rule 10.02 is "subject to the conditions and limitations of Rule 24.02 and Rule 24.03 of this Agreement." When Rule 10.02 is read concurrent with Rule 24.02 it is clear that the compensatory time accumulated under Rule 10.02 "will be scheduled pursuant to 20.03 (c) and (d) and Appendix B, Rule 3.04"<sup>1</sup> and when Rule 10.02 is read concurrent with Rule 24.03 it is clear that "no more than fifty (50) days of *such* compensatory time..." may be accumulated. The word *such* must be read as referring to the compensatory time accumulated under Rule 10.02 given the fact that Rule 10.02 incorporates by reference Rule 24.03. Rule 10.02 does not incorporate the entire Rule 24 and therefore does not incorporate the compensatory time elected at Rule 24.01 which is also subject to Rule 24.03 and therefore limited to fifty days accumulation. This reading of the language in its entirety coupled with the accumulations "at limits of a thousand" in prior years leads to the conclusion that the Union is correct in its interpretation of the current contract language. The Arbitrator notes that the accumulated amounts are not unreasonable based upon the unlimited amounts that may be accumulated by Master, Mates and Pilots (Ex. U8), the Licensed Engineer Officers (Ex. U9) and the Unlicensed Engine Room Employees (Ex. U10). Given the fact that the Union is not seeking

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<sup>1</sup> Conklin testified that references to 20.03 should actually be 18.03. (Tr. V.1, p. 57)

any increase in the accumulation and that the current language has resulted in considerable conflict between the State and the Union as evidenced by Union Exhibit 11, it is in the best interest of the parties to adopt the language clarification that is sought by the Union. The Arbitrator however notes that the Union's clarification deletes a reference to Rule 24.02 which incorporates the scheduling of compensatory time pursuant to Rule 18.03(c) and (d) and Appendix B, Rule 3.04. Presumably this was an oversight by the Union and the Arbitrator will incorporate the language into the clarification language. Additionally, the Union's clarification is in "hours" rather than "days". There was no testimony as to why the clarification did not parallel the language that is currently incorporated within Rule 10.02 and for the sake of consistency the Arbitrator will provide specific language to be placed in the Agreement.

### *Decision*

#### ***Rule 10.02***

The State's proposal to modify Rule 10.02 to pay overtime in six-minute increments is rejected.

The Union's proposal to clarify Rule 10.02 is awarded and the language shall read as follows:

10.02...may opt to take compensatory time at a later date in lieu of receiving the overtime pay. Compensatory time off will be scheduled pursuant to Rule 18.03 (c) and (d) and Appendix B, Rule 3.04. No more than fifty (50) days of such compensatory time off may be accumulated by each employee. All accumulations beyond fifty (50) days shall be paid in cash, and all accumulated compensatory time off shall be taken prior to retirement.

#### ***Rule 10.08***

The Arbitrator has carefully reviewed the State's proposal to modify this provision in a manner that takes into consideration the changes that have occurred due to the elimination of Touring Watches. As outlined in the Memorandum of Understanding, additional work schedules have been established to address the effects of that elimination. (Ex. U21)

The Arbitrator has reviewed the testimony of Steven Rodgers, the Director of Marine Operations and appreciates the intricacies of assigning the Relief Employees. As Rodgers

testified there are occasions when a Relief Employee could select to work seven hour days over a ten day period and be guaranteed straight time pay for eighty hours even though the employee only worked seventy hours. There are also occasions when a Relief Employee could work a seven hour day that extended beyond the seven hours, receive the guarantee for an eight hour day, and also receive overtime pay for the time that extended beyond the seven hours. The examples of the difficulties that the State has experienced are numerous. A Relief Employee could work seven hours one day and receive eight hours of pay then work nine hours the next day and received eight hours of pay plus one additional hour for overtime. In effect that employee has received sixteen hours of straight time pay plus one hour of overtime pay for only working a straight sixteen hours. A Relief Employee could also work eight ten hour days and, based upon a grievance filed by the Union, receive eight hours of straight time pay for each of the eight days plus two hours of overtime for each ten hour day. As Rodgers testified, the State's ability to assign shifts in a cost effective manner was affected by the change that was incorporated into the current agreement that provided for dispatch by seniority. Under that provision Relief Employees can select by their seniority the shift that provides them the highest compensation in addition to any travel time that might accompany the selected shift. The Arbitrator has reviewed the decision by Arbitrator Byrne wherein he granted the Union's proposal for dispatch by seniority and finds that the Union's main concern during those negotiations was the desire "to give the reliefs a choice of what is available at the time of dispatch and the belief is that the reliefs would then be able to pick longer term, more desirable assignments." The State resisted the concept claiming that "employees would game the system to squeeze the most travel time they could out of the system." (Ex. U26, p.42) This Arbitrator can find nothing in Byrne's decision that indicates that either party anticipated that Relief Employees would select assignments that would yield payments beyond the straight time pay<sup>2</sup>. While such selection could have occurred under the provisions of the current Agreement, the likelihood of such selection increased with the addition of the work schedules contained within the September 2009 Memorandum of Understanding. (Ex. U21) The Union has made it clear in this proceeding that it does not want any modifications to the dispatch by seniority and this Arbitrator has no intention of making any such modifications however the Union must recognize that some of its members have learned to game the system and unfortunately those members have brought this

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<sup>2</sup> In fact Byrne implies at page 43 that dispatch by seniority could avoid overtime.

matter to the forefront. While the Union emphasizes that the State has raised this issue in prior interest arbitration proceedings, the Arbitrator notes that those prior proceedings occurred 1) prior to the establishment of dispatch by seniority and 2) prior to the elimination of the touring watch. When those two factors are taken into consideration this Arbitrator finds that it is appropriate to consider modifications to Rule 10.08. That is not to say however that she is granting the State's proposal. Instead she has modified the State's proposal to include: the current language that was not addressed during these proceedings and that has therefore presumably not presented a problem for the parties; changes to the relief language that has presented problems; and language to address a legitimate concern raised by the Union regarding the forfeiture of guarantee pay and all paid premiums.

### *Decision*

#### ***Rule 10.08***

Rule 10.08 shall be modified in the following manner:

Rule 10.08 All employees in year round positions shall be guaranteed forty (40) hours of pay per one (1) week work schedule or eighty (80) hours of pay per two (2) week work schedule as set forth elsewhere in this Agreement.

All employees in designated relief positions as defined in Rule 1.14 shall be offered forty (40) hours of work per one (1) week work schedule in the Terminal Department or eighty (80) hours of work per two (2) week work schedule in the Deck Department as set forth elsewhere in this agreement. Reliefs that reject work and fail to accept other comparable work within the one (1) or (2) week work schedule shall forfeit guarantee pay for the work schedule in which work was rejected.

Consistent with these changes in the language at Rule 10.08 the State's proposed modifications to the language at Rules 1.14, 1.15 and 1.16 are granted

#### **Rule 11 – Passes**

##### **(State Issue 4; Union Issue 4)**

During the proceedings the parties reached agreement on all language within this rule with the exception of the State's proposed language: *The Employer will comply with all applicable federal and state tax regulations regarding the use of passes.* The State's proposed language is a modification to the language that was included in its submission for certification (Ex. U4) and represents an attempt to accommodate the Union's expressed concerns regarding

the inclusion of the originally proposed language. The Union however objects to the inclusion of the modification on the basis that it is redundant and unnecessary given the fact that there is an assumption that the State must comply with any and all laws of the federal and state governments. If redundant and unnecessary were criteria to be considered in the negotiations of collective bargaining agreements then the language within many collective bargaining agreements could be eliminated. Many times however the parties insert language into an agreement to make certain that there is an awareness that there are obligations outside of the agreement that must be honored. There was no testimony at the hearing from an expert in federal (or state) tax regulations and presumably there will be careful consideration given to the application of any such regulations. The Arbitrator can find no good reason not to include the State's modified language into the Agreement and trusts that before there is any implementation of the language that there will be a full and complete review of any applicable regulations with recognized experts in the field.

### *Decision*

The State's proposed language shall be included in the Agreement:

The Employer will comply with all applicable federal and state tax regulations regarding the use of passes.

### **Rule 14 – Grievance Procedure**

#### **(Union Issue 5)**

The Union has proposed several modifications to the grievance procedure and the State has indicated that it has no objection to the modifications proposed at Rule 14.03 B., Steps 1, 2, and 3 and therefore the Arbitrator will not address those modifications. The State has objected to the Union's proposed modifications to the current Step 4 (which would become Step 3 after the inclusion of the modifications to Steps 1, 2, and 3). The Union's proposed modifications would eliminate the Federal Mediation and Conciliation Service (FMCS) as the agency to which a demand for arbitration must be filed and would revert to the previous contractual provision which referred all arbitrations to the Marine Employees Commission (MEC). The Union claims that the current language which was placed into the Agreement during the last round of negotiations has resulted in less grievance settlements. As Ubelhart testified, in prior years a grievance would be referred to the MEC and prior to the grievance being arbitrated, there would be a mediation step to attempt to resolve the grievance.

If you file a grievance with the Marine Employees' Commission, the first scheduled settlement conference, which is informal with one of the commissioners-- and they give you an opportunity, with both sides there, to maybe settle something before you actually have to go to the step of arbitration. With the FMCS, you file for arbitration, and both sides are committed to paying the costs of an arbiter, court reporter, and anything else.

...most of the time, when we've gone through that [MEC] step, grievances have been settled, grievances that have been taken to the MEC. (Tr. V.1, pp. 96-97)

The Union provided charts to illustrate its assertion that grievances were more likely to be settled if they were submitted to the MEC under the previous contract language than if they were submitted under the current contract language. (Ex. U13) Under cross-examination Ubelhart acknowledged that the Union does not have an objection to the referral of grievances to the FMCS for arbitration but rather the Union prefers to have a choice as to where a grievance will be submitted.

The Arbitrator has reviewed the Union's Exhibit 13 and finds that there is no definitive answer readily discernible as to why there were fewer grievances that were resolved prior to the arbitration step under the current contract language. As the Arbitrator noted at the hearing the grievances may not be settling because they involved difficult disciplinary cases, contract interpretation, or required money that may simply not be available. The lack of resolution cannot be directly attributed to the inclusion of the FMCS language within the Agreement.

As the Arbitrator listened to the testimony at the hearing and as she reviewed the transcript of that testimony she concluded that an important aspect that is missing from the FMCS requirement in the current Agreement is the ability to have the grievance reviewed at a settlement conference as had been previously done under the MEC. There is nothing in RCW 47.64 that requires the MEC to conduct a settlement conference<sup>3</sup> and the Arbitrator concludes that the MEC has seen the wisdom of helping the parties reach an agreement prior to the convening of the arbitration hearing. This is consistent with considerable research in the field of dispute resolution over the past three decades that has found that mediation as a step prior to

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<sup>3</sup> Chapter 316-65-515 of Washington Administrative Code provides the arbitrator with the authority to hold a pre-hearing conference which may include settlement discussions.

arbitration results in the satisfactory resolution of grievances over 86% of the time<sup>4</sup>. That is not to say that the Union's proposal to modify the grievance procedure by allowing the Union to select either the FMCS or the MEC to settle the dispute is the solution. Instead, regardless of which avenue is used by the parties, it would be appropriate to insert a mediation or settlement conference prior to the convening of the arbitration hearing. The Arbitrator has therefore revised the language of Step 4 in the following manner:

**Step 3 Step 4– Arbitration**

If the grievance is not resolved at Step 3 2, or the OFM/LRO representative or designee notifies the Union in writing that no pre-arbitration review meeting will be scheduled, the Union may file a request for arbitration. The demand to arbitrate the dispute must be filed with the Federal Mediation and Conciliation Service (FMCS) within fifteen (15) days of the Union's receipt of the written notification of results of the pre-arbitration review meeting or receipt of the notice no pre-arbitration review meeting will be scheduled. However, by mutual agreement the parties may instead refer the dispute to the Marine Employees Commission (MEC) for final resolution. **Once the dispute has been referred to arbitration with either the FMCS or the MEC, the parties will mutually request that a settlement conference be conducted by the MEC. If the MEC is unable or unwilling to conduct a settlement conference then the parties will mutually request that a mediator be appointed by the Regional Director of the FMCS.**

**C. Selecting an Arbitrator**

Current contract language with the exception of the following step and date modifications:

**Step 4 becomes Step 3**

**~~July 1, 2009~~ becomes July 1, 2011**

**~~July 1, 2010~~ becomes July 1, 2012**

**~~June 30, 2011~~ becomes June 30, 2013**

The Arbitrator appreciates the concerns expressed by the Union regarding the costs involved when a grievance is submitted to arbitration through the FMCS however the State has equally legitimate concerns regarding the submission of grievances to arbitration that might not be taken forward if the Union had to give consideration to the costs involved rather than simply submit

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<sup>4</sup> See for example the results of research conducted at Northwestern University by the Mediation Research and Education Project: [www.mrep.org/costs\\_results.html](http://www.mrep.org/costs_results.html)

the grievance to the MEC which results in very little financial commitment from the Union.<sup>5</sup> As the Union has experienced with the settlement conferences conducted by the MEC such conferences very often result in a satisfactory resolution to a grievance. That same experience should be obtained through settlement conferences conducted prior to the arbitration proceeding regardless of whether or not they are conducted by the MEC or the FMCS. Currently there are no costs involved through the use of a regionally appointed FMCS mediator provided there is a collective bargaining agreement in place.<sup>6</sup> By inserting a mandatory settlement conference step in the grievance procedure the parties should realize an overall settlement rate that is comparable to the 86% that has been experienced in other industries. Such a settlement rate should serve to keep the costs of arbitration conducted through the FMCS at a minimum since presumably there will be little, if any, need to go forward with an arbitration hearing. At the most the parties will incur the arbitration administrative costs of the FMCS and any cancellation fees that may be charged by the selected arbitrator. By allowing the current contract language to continue with the addition of the settlement conference step the parties should have sufficient time to be able to determine over the duration of the 2011-2013 agreement the most effective avenue for the resolution of their grievances. It may be that the most effective avenue is not which agency is used for arbitration but rather how effective the parties become at resolving the disputes prior to an arbitration hearing.

### *Decision*

The grievance procedure shall be modified as indicated in the above analysis of Rule 14.

### **Rule 17 – Classifications and Rate of Pay**

#### **(State Issue 5; Union Issues 6, 7 and 16)**

The Union is not seeking a wage increase during these difficult economic times but is simply seeking to protect that which its members have already received under the current Agreement and to provide its members with equal treatment in the event wage increases become available for state employees during the term of this Agreement. These are not unreasonable demands. In that regard Rule 17.01 shall be modified as follows: *Effective July 1, 2011 each*

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<sup>5</sup> The Arbitrator understands that the Union may incur the costs of legal counsel but these costs remain the same regardless of the agency selected whereas the costs of the arbitration proceeding itself are considerably less for cases that proceed through the MEC.

<sup>6</sup> Beth Schindler, Director of Mediation Services, FMCS, Seattle, Washington.

*classification represented by the Union will remain at the level established below for 7/1/08. If any other state employees get a raise during the time period of this Agreement, then each of these classifications will be entitled to the same raise. No change shall be made to the date of 7/1/08 within each of the rate schedules contained within Rule 17.02 thereby illustrating that the employees covered by this Agreement have agreed to freeze their salaries at the 2008 level. The Union's proposal to add an Addendum J to the Agreement to illustrate the wage increases awarded by Arbitrator Beck in September 2008 (Ex. U14) is rejected due in part to the confusion that may result by inserting what in effect are phantom wages. Furthermore, a new addendum to simply memorialize a prior interest award is not only too cumbersome but also sets bad precedent. The Arbitrator does not dismiss however the Union's interest in keeping the wage freezes that have been occurring and will most likely continue to occur, in the forefront and will therefore order that asterisks (\*) be inserted at the date 7/1/08 at each of the rate schedules with a footnote indicating that *Wage increases at the rate of 4.2% effective 7/1/09 and 7/10/10 were granted in Arbitrator Beck's Opinion and Award of September 2008 but were not funded by the State.* The Union also proposes to include the portion of Arbitrator Beck's award at pages 16-18 that eliminated the three tier system thereby creating a two tier system. For the same reason that this Arbitrator will not include the wage schedules awarded by Arbitrator Beck she will not include the striking of the third tier. She will however order that a double asterisk (\*\*) be placed at the heading Entry Level Rates within Rule 17.02 with an accompanying explanatory footnote: *Arbitrator Beck's Opinion and Award of September 2008 eliminated this third tier however that portion of his award was not implemented.**

The State's proposal to suspend for the life of the agreement the hours of service that have accumulated toward any future periodic increases would result in an unusually harsh penalty for employees who have in good faith fulfilled the requirement to perform at the entry or temporary position levels for the specified period of time. While the suspension of step increases is not unusual in difficult economic times, these employees are not on a wage schedule that provides incremental step increases as is found on the General Service Salary Schedule. (Ex. U3) On that schedule the suspension of a step increase represents an annual hardship for an employee of approximately \$900. If the employees who are at the Entry Level or Temporary Position Rates at Rule 17.02 are not allowed to apply their hours of service accumulated during the

Agreement towards any future periodic increases they will suffer an annual hardship that is considerably more than \$900. For example, an Entry Level OS at \$15.13/hour would be prohibited from moving to the Temporary Position Rate of \$18.34/hour which is a difference of \$3.24/hour. When \$3.24/hour is multiplied by 2080 hours the result is \$6676.80. Even if the \$3.24/hour were to be multiplied by 1040 hours, the result would still be considerably higher (\$3369) than the amount being foregone by the employees on the General Service Salary Schedule. That is simply too high of an amount to ask any employee to subsidize the state budget. The Arbitrator further notes that the step increases provided on the General Service Salary Schedule occur on a semi-annual basis for several years of employment unlike the employment progressions that are provided in the IBU Agreement. The progressions contained with the IBU Agreement represent three stages of an employee's experience: entry level, represented by employees who have worked less than 2080 straight time hours; temporary or what might be better characterized as mid-level employees who have worked less than either 5200 or 4160 straight time hours; and finally, the full experience level represented by the employees who have exceeded the number of straight time hours identified at the temporary level. Unlike the step increases contained within the General Service Salary Schedule these progressions do not occur every six months but rather are experienced based. To negate such experience by eliminating the ability to apply the hours of service or experience accumulated during the Agreement to any future periodic increases is unwarranted and could reasonably be expected to affect the State's ability to retain ferry employees-one of the statutory criteria for this Arbitrator's consideration within RCW 47.64.320 at Section (3) subsection (i). Finally, the IBU employees who would be denied these progressions do not represent the entire workforce as do the employees on the General Service Salary Schedule who forego a step increase. In effect, there would be only a segment of the IBU workforce who would be foregoing a progression increase rather than the entire workforce placing an unfair burden upon those foregoing a progression increase. That burden represents a total amount of \$750,000 for the biennium<sup>7</sup> that only a portion of the IBU workforce would be forced to forego. (Ex. S7) The Arbitrator deems that burden to be unfair, unjust and inappropriate. The State's proposal is hereby denied.

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<sup>7</sup> Hanbey testified that he added up the impact of the State's proposal for the biennium "...and projected a savings of \$750,000". (Tr. V. 4, p. 146, lns. 2-3)

The Union's proposal to dovetail the IBU wage schedules into the State of Washington General Service Salary Schedule at applicable range and steps is also denied. As previously discussed within this opinion and award, collective bargaining agreements are negotiated over the life of the employment relationship and in this matter that relationship has been ongoing since at least the mid 1960's. There are reasons that the wage schedule has developed in the format that it appears in the Agreement and to simply replace it with something that appears in the agreements of the general state employees would be premature and inappropriate at this time. As the Arbitrator discussed above regarding the State's proposal to modify Rule 10.02 to pay overtime in six-minute increments based upon its assertion that it would be consistent with the employees in general government the Arbitrator once again notes that one of the criteria for her determination contained within RCW 47.64.320 at Section (3) subsection (f) requires a:

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.

Just as the Arbitrator found that there is nothing within the statute that requires or even suggests that a comparison with general government should be undertaken regarding Rule 10.02 she also finds that there is nothing that would allow a comparison with general government in the development of a wage schedule. Based upon the cited criteria as well as upon the criteria at subsection (b) of the same section, *Past collective bargaining contracts between the parties including the bargaining that led up to the contracts*, the Arbitrator denies the Union's request.

### ***Decision***

Rules 17.01 and 17.02 shall be modified as indicated in the above analysis of Rule 17. The State's proposal to suspend for the life of the agreement the hours of service that have accumulated toward any future periodic increases is rejected. The Union's proposal to dovetail the IBU wage schedules into the State of Washington General Service Salary Schedule at applicable range and steps is also rejected.

## **Rule 18 – Vacations**

**(State Issue 6; Union Issue 8)**

### ***Rule 18.01 and Rule 18.02***

The State has proposed a rollback in the amount of vacation that an employee is credited based upon years of service. If the Arbitrator were to grant the State's proposal she would be negating the award granted by Arbitrator Beck dated September 9, 2005. (Ex. U15) In that award Arbitrator Beck did a careful comparison of vacation benefits and outlined his comparison in chart format found at page 13 of his award. At page 16 of his award, he found "...a substantial deficit in vacation benefits provided by WSF when compared to the comparators". He noted that the "...the WSF was limited in its ability to finance economic adjustments" and that "...employees will not receive a raise for the second year of the biennium." As noted by Arbitrator Byrne in his August 2006 award at page 24: "The last Arbitrator [Beck] believed that he acted sufficiently to maintain the system's competitive position with regard to the vacation benefit." This Arbitrator does not disagree with the comments of Arbitrators Beck and Byrne. The retention of ferry employees through difficult economic times is dependent upon maintaining a competitive position. When a wage increase is not forthcoming it must be balanced by the maintenance of benefits that are of value to the employees. As illustrated by the Union's vigorous defense of the vacation benefits that were awarded by Arbitrator Beck, these are not benefits to be taken lightly and withdrawn during difficult economic times. As also illustrated by the Union, in circumstances where the State has successfully rolled back vacation benefits, that rollback has been accompanied by a significant financial payment to the affected employees. (Ex. U35) No such financial payment has been offered by the State in this matter. Based upon the foregoing, the State's proposal to rollback vacation benefits is denied.

### ***Rule 18.03***

The Union has proposed that the pre-scheduling process provided at Rule 18.03A be modified to permit the scheduling of vacations *based on a three hundred sixty five (365) day calendar from which employees pick consecutive forty (40) hour segments which may or may not coincide with their days off.* The language that is currently in the Agreement requires the scheduling of vacation segments concurrent with the employee's regular days off. Vacation requests must be submitted to the State by October 31<sup>st</sup> which may lead to conflicts in the actual

scheduling of the vacation since an employee's days off may shift throughout the year based upon schedule changes and work bids that are submitted later in the year. (Ex. U16) As illustrated on Union Exhibit 17, an employee may bid a vacation segment for August 18-21 which is concurrent with that employee's days off of August 15-17. A new work schedule however based upon summer schedule changes results in that same employee's days off shifting to August 11-14 which is no longer concurrent with their vacation segment bid for August 18-21 and their five day vacation segment is moved to August 15-19 thereby interrupting their actual planned vacation. Under the Union's proposal the employee's vacation segment of August 18-21 would be protected. In the event that the employee's days off fell within that protected segment, then the days off would roll forward and the employee would be required to take additional days of vacation to retain the agreed upon 40 hour segment of vacation. The Union's proposal is not intended to alter the limit of fifty employees that is currently in place who can be scheduled to take a segment of vacation in a particular week. Nor is the Union's proposal intended to alter any other provisions contained with Rule 18.03. The Arbitrator finds the Union's proposal to be reasonable and the State does not object to the concept that is being presented however is concerned about the "devil in the details". As Williams testified, vacation scheduling under the current system is confusing for the employees and at times results in an employee making an incorrect assumption as to which days they are off:

What we have now is at least three or four times a month we will have an employee that doesn't show up for work the preceding week, and they'll call-- we'll call around, they don't show up for work, and they say, "I thought I had that-- I thought my vacation started, and then I went on my days off," and we say, "No. You really had the-- you really should have waited for this period to go on vacation." (Tr. V. 5, pp. 80-81)

It is clear to the Arbitrator that there is a "devil in the details" under the current system and while there are no guarantees that the Union's proposal will bring clarity to the employees, the Arbitrator can find no reason not to grant the proposal which will bring a level of certainty to employees as to which days they are guaranteed for a vacation segment. Presumably the "devil in the details" can be resolved prior to the implementation of the new agreement in 2011. The proposal is granted with the additional language: *In the event an employee's days off fall within the guaranteed vacation segment, then the employee's days off will move forward to ensure that the employee has fully used the required segment of vacation leave.* For housekeeping purposes the Arbitrator notes that the language in the two sentences following the Union's bold and

underlined revisions within Rule 18.03 as found at Issue #8 at Union Exhibit 3, page 12 of 30, should be stricken. The Union verbally made this modification at the hearing.

### *Decision*

The State's proposal to modify Rules 18.01 and 18.02 is rejected. The Union's proposal to modify Rule 18.03A is granted with the additional language and deletions noted in the above analysis of Rule 18.

### **Rule 23 – Holiday Pay**

**(Union Issue 9)**

#### ***Rule 23.02***

The Union has proposed that this rule be made applicable to part-time and on call employees "with respect to any recognized holiday which is not worked". In effect, such employees would receive holiday pay pro-rated by the amount of hours that they had worked in the preceding work period or work week. The Arbitrator appreciates that the Union is seeking to extend a benefit that is enjoyed by regular year around employees to the part-time and on call employees however the Union has failed to take into consideration the fact that regular year around employees have regular work schedules that may or may not include work on a recognized holiday. A year around employee is required to work their assigned watch prior to and after the holiday in order to receive Holiday Pay. This requirement serves as an incentive for year around employees to fulfill their obligations under their regular work schedules. If part-time and on call employees are afforded a similar benefit, there may in fact be a disincentive to work the holiday. Why should I respond to a call to come to work if I am going to be provided a pro-rated amount for the holiday that is based upon my work in the preceding work period or work week? As Schlieff testified:

From management's perspective, I've testified earlier about how I have concerns over what I call backfilling vacancies. It can also be extended to just making the assignments initially.

Depending on the shift, depending on the hours, there are just challenges in getting people to come to work on occasion.

If we're on a holiday or a holiday weekend and I have employees who are already getting prorated holiday pay without working it, to my way of thinking, that's a disincentive to try to get people to come to work when I need them for the holiday weekends or on the

holiday when the traffic patterns are sometimes higher and lower than what otherwise might be expected.

Management would not be in favor of creating such disincentives.

Your full-time employee has a permanent, fixed schedule. They bid an assignment. That's what they work.

What I have with the on-calls, is I need a greater flexibility—(Tr. V. 5, pp. 91-92 and 98)

The Arbitrator believes there may be some merit in the Union's proposal however it is a proposal that is better suited for the bargaining table with the give and take by both parties that should yield contract language that will address both parties' issues. It is well accepted that interest arbitrators are reluctant to modify collective bargaining agreements without a significant showing of need for a proposed language change. There has been no such showing of need by the Union for this proposal. There is speculation but no proof that the lack of Holiday Pay has led to a retention problem. There is also speculation but no proof that the granting of Holiday Pay may cause assignment problems for the State.

### *Decision*

Given the uncertainties surrounding this proposal the Arbitrator is denying the Union's proposed changes to Rule 23.02.

### **Rule 24 – Compensated Holidays**

**(State Issue 8)**

#### ***Rule 24.02***

Consistent with the determination regarding Rule 10.02 earlier in this award, the language at Rule 24.02 shall be modified to replace the incorrect reference of 20.03 with the correct reference of 18.03. No other changes shall be made to Rule 24.02.

#### ***Rule 24.03***

The State's proposed changes to Rule 24.03 would contradict the determination made by this Arbitrator earlier in this opinion and award that accepted the Union's interpretation of the compensatory time language found within the Agreement. At Rule 24.03 the State is seeking to

combine for accumulation purposes the compensatory time accumulated at Rule 10 with the compensatory time accumulated at Rule 24 and to lower the limit of the total combined accumulations to two hundred and forty (240) hours. Neither of these proposed changes would be appropriate given the Arbitrator's earlier determination. It is also worth noting that an increased cap on comp time accrual from 24 days to 50 days was awarded by Arbitrator Byrne for the 2005-2007 agreement. (Ex. U26, pp. 45-46) There was no evidence or testimony for this Arbitrator to conclude that she should roll back the cap that he had awarded. Furthermore, there was insufficient testimony or evidence to support a change in the language to pay all accumulations in cash on a biennial basis and prior to retirement. Covington provided testimony regarding the unfunded liability, fiduciary planning and budgetary management that accompanies the unpaid accumulations (Tr. V. 4, pp. 163-165) however there was no data available to illustrate the affect of any of these matters. The Arbitrator therefore finds that it is a matter best left for the parties to fully explore in negotiations for future agreements.

### ***Decision***

Other than the housekeeping change to Rule 24.02 discussed above, there shall be no changes to Rule 24.

### **Rule 30 – Leave of Absence**

#### **(Union Issue 11)**

#### ***Rule 30.14 FMLA***

The Union has proposed that the language at the current Rule 30.14 be replaced with language that parallels the language contained within the collective bargaining agreement between the State and the Washington Federation of State Employees (WFSE). (Ex. U25) The language contained within the WFSE agreement to a large extent parallels the language within the *Family and Medical Leave Act (FMLA)* of 1993 and its subsequent amendments. The IBU contends that the inclusion of its proposed language into the agreement will not only provide parity with other state employees but will also serve as an educational tool for its members and their managers as to how the FMLA is to be accessed and administered. The State emphasizes that the Union's proposal not only goes beyond the eligibility requirements of the FMLA but also provides additional time off that is not anticipated nor provided in the FMLA, specifically parental leave of a longer duration and pregnancy disability leave that is in addition to the FMLA

leave. The State asserts that the language in the current agreement that guarantees a total of twelve work weeks of leave pursuant to the Family Medical Leave Act is sufficient.

The Arbitrator has previously stated in this award that the objection to the inclusion of a contractual modification on the basis that it is redundant and unnecessary given the fact that there is an assumption that the State must comply with any and all laws of the federal and state governments does not always serve the best interests of the parties. Just as the reminder that the State sought at Rule 11 that all federal regulations must be followed was found to be appropriate so too will the Arbitrator find that the inclusion of the requirements and provisions of the FMLA is appropriate. There is understandably confusion not only on the part of employees but also on the part of managers as to what are the rights and obligations of the FMLA. There is no harm in including clarifying language within the Agreement. The Arbitrator however will not go beyond the provisions of the FMLA. Any deviations from the FMLA are more appropriately negotiated by the parties allowing for the give and take that will accompany such negotiations. While the Arbitrator understands that there are differences in the Ferry system workforce that may have to be accommodated, those differences must be clearly delineated and addressed in future negotiations. At this time, the Arbitrator will grant only the language that parallels the FMLA and will leave it to the parties to determine in the negotiations for future agreements whether or not that language should be modified and/or enhanced.

### *Decision*

Based on the foregoing discussion, the Union's proposed language at Issue #11 of Union Exhibit 3 is granted with the following modifications:

#### **FAMILY AND MEDICAL LEAVE – PREGNANCY DISABILITY LEAVE**

##### **Page 15**

Line 7: ...and employee

Line 9: ~~forty (1040)~~ two hundred fifty (1250)...

##### **Page 16**

Line 5: ...~~forty (1040)~~ two hundred fifty (1250)

##### **Pages 17-18**

Delete everything beginning with Line 23 on page 17 through Line 23 on Page 18.

The Arbitrator notes that the language in the current agreement is found at Rule 30.14 and it may be reasonable for the parties to simply replace the language at that Rule with the above modification rather than create a new Rule 30A as suggested within the Union's proposal. The Arbitrator will leave it to the parties to determine the most logical placement of the new language within the Agreement.

## **Appendix A – Deck Department Personnel**

### **(Union Issue 14)**

#### **Rule 5 – Relief Deck Employees**

Within the past year there has been an unfortunate amount of media scrutiny applied to the amount of compensation that has been provided to the Relief Deck Employees. The media scrutiny focused on one small part of that compensation and failed to take into consideration the complete picture of what had transpired under the current collective bargaining agreement. The media sensationalized a small part of the data to make it appear that a large number of employees of the Washington State Ferry system were gaming the system. Employees were vilified by the media without the media taking the time necessary to scrutinize both the historical perspective and the overall perspective that led to the development of the current language. If the media had taken the time to review the data in a more comprehensive manner they would have discovered that while there may be a small number of individuals who were enriched in a rather generous manner, albeit within the parameters of the Agreement, there also are a much larger number of individuals who received fair compensation for the work that was being done and who were performing their jobs as anticipated within the Agreement.

There is no doubt in this Arbitrator's mind that the dispatch by seniority language that is currently within the Agreement was a significant gain by the Union in a prior interest arbitration. As is shown on State Financial Exhibit 2 page 10, the identified employee in years past experienced only one dispatch that was greater than four hours one way. Once dispatch by seniority was incorporated into the Agreement, that same employee experienced close to 200 dispatches greater than four hours one way, per year, over the life of the current Agreement. It's obvious that something in the prior years was restricting this employee's ability to be dispatched to assignments that would have provided him opportunities for additional compensation. The

Union is correct in its assertion that experience and years of service are important factors to take into consideration when assignments are being made and if this employee's experience and years of service were not being recognized in prior years, then it was appropriate for the parties to find a way to correct that problem. This Arbitrator has no basis to determine why that employee was not being dispatched prior to the change in the language however she assumes that the reasons are similar to those put forward by Arbitrator Ford at page 11 of her decision of June 2010 in which she states that *the WSF itself cannot describe the method of relief dispatch, some believing that seniority controls, some believing that location controls and some believing that it is completely discretionary.*(Ex. SF3) In other words, seniority was not a controlling factor and thus an employee could be ignored when dispatches became available. The change in the IBU language awarded by Arbitrator Byrne was intended to correct this deficiency. (Ex. U26, pp. 42-44)

To the credit of both parties, they recognize that there is a problem with the language as it appears in the current Agreement. A handful of employees have learned how to game the system and enrich themselves in a manner that neither of the parties ever anticipated or expected. Both parties have submitted data and proposals to address the problem. The Union has submitted a change to the Relief AB and Relief OS Wages to be inserted into the Agreement as Rule 5.07 of Appendix A. The Union's proposal would set the Relief AB Wage at \$34.39 and the Relief OS Wage at \$31.02. For purposes of vacation, comp time, sick leave and guaranteed holiday pay, the wages of the positions would be as currently stated in the Agreement. The Union further proposes rules to accompany the changes that would place limitations on the dispatches. The State opposes this proposal on the basis that it is in effect a wage increase for the Relief ABs and the Relief OSs and does nothing to solve the financial costs that have escalated under the dispatch by seniority system. As illustrated in State Financial Exhibit 2 at page 16, it is the State's analysis that the IBU's proposal does not result in any significant savings to the State and in fact may result in higher costs than the existing seniority based dispatch. The Arbitrator does not disagree with this analysis and to the Union's credit, it has signaled a willingness to approach the problem through a travel time pay cap.

Within the Union's proposal to change the wages of the Relief ABs and the Relief OSs there is an analysis of the cost savings if the wage changes were calculated using either a 3.5 or 3.0 hour travel time cap. (Ex. U23) According to the Union's analysis a 3.5 hour cap would yield annual savings of approximately \$278,000 and a 3.0 hour cap would yield annual savings of approximately \$414,000. The Union's analysis includes compensation for mileage and assumes that there will be a 50% decrease in mileage. This assumption is based upon the Union's belief that a travel time cap will make it less likely that an employee will accept a dispatch that requires driving distances that will take them beyond the cap. If mileage is removed from the analysis the 3.5 hour cap would yield annual savings of approximately \$90,000 and the 3.0 hour cap would yield annual savings of approximately \$225,000.

The travel time pay cap that is proposed by the State sets a limit of 2.5 hours that is consistent with the cap that was put forward by Arbitrator Ford in her previously cited decision. The State argues that a 2.5 hour cap would be a temporary fix for the duration of the Agreement at which point the parties could review and develop it further based on data that would be accumulated during the time of the cap's implementation. The State estimates that the annual cost of the 2.5 hour cap would be \$500,000 representing an annual savings to the State of approximately \$300,000. (Ex. SF2 at pp. 14 and 16) The State's analysis does not include compensation for mileage. The Arbitrator notes that the State references Schedule A of the Agreement in its analysis of the 2.5 hour round trip cap at page 14 of Exhibit SF 2. A review of Schedule A shows that while many of the trips can presumably be accomplished under the 2.5 hour round trip cap, there are several trips that will require more time. Furthermore, the parties have not updated Schedule A for several years and it is apparent that some of the times listed for a trip are most likely outdated given the growth within the region leading to greater travel times for the stated distances. The Arbitrator finds that a 3.0 hour travel time cap is reasonable based upon the available information. In this matter, unlike the matter before Arbitrator Ford, the parties have prepared financial analyses that provide information that may not be precise but that is sufficient to make a determination. By implementing a 3.0 hour travel time cap there should be significant savings to the State while at the same time Relief Employees will receive fair compensation and will continue to enjoy the rights and privileges that accompany their long time

service to the State. Additionally, if the Union's assumption regarding mileage proves to be correct, then there will be further savings to the State.

### *Decision*

Payment for travel time shall be capped at 3.0 hours.

## **Rule 6 – Part-Time and On Call Deck Employees**

### **(Union Issue 13)**

#### ***Rule 6.03 On Call Deck Employees***

The Union proposes to change the language at Sections E and F of this Rule in order to provide the on call employees a greater ability to decline certain assignments. The Union emphasizes that if an employee declines an assignment they do not get paid. The State however has raised a valid concern about the proposed changes in that the new language could in effect result in the payment of both travel time and overtime to the affected employees. The Union's witness Ubelhart acknowledged in cross-examination that theoretically the State was correct however Ubelhart also testified that such payments might also occur under the language in the current Agreement. The Arbitrator is reluctant to award this language change to the Union without specific analysis as to the costs involved. While there may be payments currently being made to employees for overtime and/or travel time, there is a legitimate question as to whether the Union's proposed language will result in additional payments. There is also a legitimate question as to how the on call employees will choose their home ports and relieving ports. If several employees choose the same ports, will that have a negative effect upon the State's ability to assign on call employees? While the Union has highlighted the changes that have occurred over the past several years that have impacted the on call employees such as the end of the touring watches and the changing of the vessel tie-up locations, at least one of those changes could be addressed through the parties' enforcement of the **Letter of Understanding No. 1** which requires a review of Schedule A. Such a review should take into consideration the fact that vessel tie-up locations have changed thereby rendering some of the mileage calculations obsolete. There was insufficient evidence and testimony for the Arbitrator to make any determination as to how the elimination of the touring watches can be effectively addressed through changes to this rule. While certainly there is more travel time involved given the fact

that the employees are no longer able to work back to back assignments and must therefore drive to more assignments, the Union's proposal simply gives the employees more opportunities to refuse an assignment and as previously discussed does not address the State's concerns as to whether or not it would have sufficient employees available to fill the assignments without incurring paid travel time and overtime beyond what it might currently be incurring under the current Agreement.

### *Decision*

Based upon all of the foregoing, the Arbitrator rejects the Union's proposal.

### **Appendix B Terminal Department**

#### **(Union Issue 15)**

#### ***Rule 1.06 Filling of Temporary Terminal Positions***

The Union proposes to change the language at this Rule which covers terminal employees to make it consistent with the language found at Rule 6.03 that covers the on call deck employees. The State however has emphasized that these are two different types of employees and that what may be applicable to one group does not necessarily work well for the other group. Specifically the State has raised concerns about: its ability to maintain its right to make a determination as to whether or not a position should be filled; the lack of a definition as to what constitutes an emergency in Section D of the proposal; the establishment of a form of a dispatch system which will place an additional time responsibility on its terminal supervisors; the possibility that the State will be hampered in its attempts to backfill a position; and the likelihood that additional costs will be involved to make certain that employees have the proper equipment such as the safes that are required for the employees who handle the seller funds. The State might also find itself in the position of having to incur overtime expenditures due to an employee being upgraded to a position that will result in their hours going beyond a 40 hour work schedule. The Arbitrator does not disagree with the State's analysis of this proposal and believes that the proposal warrants further negotiations between the parties to resolve the concerns raised by the State. The Arbitrator therefore denies the Union's requested modifications to this Rule with the exception of the proposed change at item C. The State's witness, Schlieff, testified that there is already in place a process that addresses the concept contained within item C and

brought forward a Schedule of Availability (Ex. S10) to illustrate how the process is implemented. Given this fact, the Arbitrator can find no good reason not to award the language within Item C of the Union's proposal and will therefore award that language to be incorporated into the current Agreement.

### ***Decision***

The Union's proposed modifications to Appendix B, Rule 1.06 are denied with the exception of the proposed change at item C which is granted.

### **AWARD**

Consistent with the statutory criteria contained within RCW 47.64.320(3) and consistent with the mandate put forward at RCW 47.64.200 that the Arbitrator shall issue a decision that she deems just and appropriate with respect to each impasse item, and for all of the reasons set forth in the analyses above, the Arbitrator hereby awards that the 2009-2011 Collective Bargaining Agreement between the parties shall be modified according to the decisions accompanying the analyses of each of the impasse items above and according to the agreements reached by the parties through negotiations prior to and concurrent with this proceeding. That modified agreement shall be the 2011-2013 Collective Bargaining Agreement between the parties.

***Respectfully submitted on this 22<sup>nd</sup> day of September, 2010 by***

A handwritten signature in black ink, appearing to read "Sylvia P. Skratek", with a long horizontal line extending to the right.

***Sylvia P. Skratek, Arbitrator***