

**IN INTEREST ARBITRATION PROCEEDINGS PURSUANT TO  
A MEMORANDUM OF UNDERSTANDING BETWEEN THE PARTIES  
AND, TO THE EXTENT APPLICABLE,  
RCW 41.80 et seq. AND CHAPTER 391-55 WAC**

In the Matter of the Interest Arbitration

between

WASHINGTON FEDERATION OF STATE EMPLOYEES,

and

STATE OF WASHINGTON, DEPARTMENT OF CORRECTIONS.

OPINION AND AWARD

of

LUELLA E. NELSON,  
Interest Arbitrator

September 26, 2016

This Interest Arbitration arises between WASHINGTON FEDERATION OF STATE EMPLOYEES ("Union" or "WFSE"), and STATE OF WASHINGTON, DEPARTMENT OF CORRECTIONS ("Employer" or "Department"). LUELLA E. NELSON was selected to serve as Arbitrator.

At a hearing held on August 1-5, 2016, in Olympia, Washington, the parties had the opportunity to examine and cross-examine witnesses, introduce relevant exhibits, and argue the issues in dispute. Both parties submitted the matter on closing oral argument and on limited post-hearing briefs. The Union's brief was filed on August 11, 2015; the Employer's reply brief was filed on August 19, 2016.

**APPEARANCES:**

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The issues certified for interest arbitration by the Executive Director of the Washington Public Employment Relations Commission, pursuant to WAC 391-55-200 through 255, are:

- Article 8, Section 8.11 Training and Employee Development - Department of Corrections (Union)
- Article 20, Section 20.10 Safety and Health - Department of Corrections (Union)
- Article 21, Sections 21.4 & 21.5 Uniforms, Tools and Equipment - Department of Corrections - Firearms Training and Ammunition & Identification as Law Enforcement (Union)
- Article 22, Section 22.6 Department of Corrections Employees Only Drug and Alcohol Free Workplace - Reasonable Suspicion Testing (Employer)
- Article 25, Section 25.5 Commute Trip Reduction and Parking (Union)
- Article 36, Section 36.7 Employee Rights - Workload Department of Corrections Only (Union)
- Article 37, Section 37.2 & Section 37.3 Union-Management Communication Committees - Committees & Participation and Process (Union)
- Article 42 Compensation and attendant appendices L, M, P (Union and Employer)

In arriving at my Decision and Award, I considered proposals for Department of Corrections employees, subject to bargaining under RCW 41.80.020(1), and compensation for job classifications that are unique to the Department of Corrections, as provided in subsection (C) of Section 2 of the Memorandum of Understanding ("MOU") between the parties dated February 4, 2016. I considered only matters subject to bargaining under RCW 41.80.020(1), and did not consider those subjects under RCW 41.80.020(2) & (3) and RCW 41.80.040. I took into consideration the following factors stipulated by the parties in their MOU:

- i. The financial ability of the Department of Corrections to pay for the compensation and benefit provisions of a collective bargaining agreement;
- ii. The constitutional and statutory authority of the employer;
- iii. Stipulations of the parties;
- iv. Comparison of the wages, hours and conditions of employment of personnel involved in the proceedings with the wages, hours and conditions of employment of like personnel of like state government employers of similar size in the western United States;
- v. The ability of the Department of Corrections to retain employees;
- vi. The overall compensation presently received by Department of Corrections employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefits and all other direct or indirect monetary benefits received;
- vii. Changes in any of the factors listed in this subsection during the pendency of the proceedings; and
- viii. Such other factors which are normally or traditionally taken into consideration in the determination of matters subject to bargaining under RCW 41.80.020(1).

## PERTINENT STATUTORY PROVISIONS

RCW 41.80.020

Scope of bargaining.

(1) Except as otherwise provided in this chapter, the matters subject to bargaining include wages, hours, and other terms and conditions of employment, and the negotiation of any question arising under a collective bargaining agreement.

(2) The employer is not required to bargain over matters pertaining to:

(a) Health care benefits or other employee insurance benefits, except as required in subsection (3) of this section;

(b) Any retirement system or retirement benefit; or

(c) Rules of the director of financial management, the director of enterprise services, or the Washington personnel resources board adopted under RCW 41.06.157.

(3) Matters subject to bargaining include the number of names to be certified for vacancies, promotional preferences, and the dollar amount expended on behalf of each employee for health care benefits. However, except as provided otherwise in this subsection for institutions of higher education, negotiations regarding the number of names to be certified for vacancies, promotional preferences, and the dollar amount expended on behalf of each employee for health care benefits shall be conducted between the employer and one coalition of all the exclusive bargaining representatives subject to this chapter. ...

...

RCW 41.80.040

Management rights—Not subject to bargaining.

The employer shall not bargain over rights of management which, in addition to all powers, duties, and rights established by constitutional provision or statute, shall include but not be limited to the following:

(1) The functions and programs of the employer, the use of technology, and the structure of the organization;

(2) The employer's budget and the size of the agency workforce, including determining the financial basis for layoffs;

(3) The right to direct and supervise employees;

(4) The right to take whatever actions are deemed necessary to carry out the mission of the state and its agencies during emergencies; and

(5) Retirement plans and retirement benefits.

## BACKGROUND

The Employer operates corrections facilities (i.e., prisons - 2 for women, 10 for men) and community corrections programs (i.e., probation and parole) throughout the State of Washington. The Community Corrections Division ("CCD") is responsible for ensuring that offenders released into the community under supervision follow the conditions set by the court as part of their release. Toward this end, it provides a variety

of services, referrals, and interventions. The supervised population includes both offenders released from prison and offenders referred directly from jails or from court after conviction.

The Union represents 1,144 employees in the CCD. The Teamsters Union, Local 117, represents 5,620 employees, mostly in the prisons. 851 employees in the Department are non-represented, and 690 are “Not assigned” Washington Management Service and exempt management employees.

Some of the classifications in this bargaining unit exist statewide, and are not eligible for interest arbitration. Bargaining for the fiscal year (“FY”) 2017-19 Agreement for statewide classifications is ongoing at the General Government Table. The General Government Table bargaining also includes terms and conditions of employment, including general wage increases, of classifications that are eligible for interest arbitration. Negotiations are also ongoing at more than a score of Supplemental Tables. After negotiations have been completed at all of the tables, the Legislature will convene to consider whether to approve or reject the resulting agreements. If any agreement is rejected, bargaining will resume as to that agreement.

This case involves Supplemental Table bargaining for 881.5 FTE positions (as of FY 2015) in the following 12 classifications represented by the Union that are unique to the Employer and eligible for interest arbitration:

- \* Community Corrections Assistant (herein referred to as CCA)
- \* Community Corrections Officer 1 (herein referred to as CCO 1)
- \* Community Corrections Officer 2 (herein referred to as CCO 2)
- \* Community Corrections Officer 3 (herein referred to as CCO 3)
- \* Community Corrections Specialist (herein referred to as CCS)
- \* Corrections and Custody Officer 2 (herein referred to as CO 2)<sup>1</sup>
- \* Corrections and Custody Officer 3 (herein referred to as CO 3)
- \* Corrections Specialist 3 (herein referred to as CS 3)
- \* Correctional Hearings Officer 3 (herein referred to as CHO 3)
- \* Correctional Hearings Officer 4 (herein referred to as CHO 4)
- \* Corrections and Mental Health Counselor 2 (herein referred to as CMHC 2)<sup>2</sup>
- \* Corrections and Mental Health Counselor 3 (herein referred to as CMHC 3)

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<sup>1</sup> This position also exists within the Teamsters bargaining unit; the Teamsters-represented CO’s work in prisons.

<sup>2</sup> A CMHC 1 classifications exists, but has not been used since 2007. The Employer proposes to abolish that classification. There are currently no CMHC 2’s.

638 of these positions are CO's or CCO's who work directly with a caseload of offenders. CO's work in transport units and with offenders who are in the community on work release and are housed in work release facilities. CCO's supervise offenders who are on probation or parole; they are based in field offices and stations in communities which are administratively supported by Community Justice Centers (CJC's). CS 3's and CCS's supervise programs over larger geographic areas in which they provide a range of services, as well as provide training and oversight of staff. CS 3's in particular are responsible for training on firearms and defensive tactics, and are part of the SWAT team. The sole CCA assists CO's and CCO's in non-direct caseload work. CCH's hold hearings on charges of violation of the conditions of supervision. CMHC's work with offenders who have severe mental illness to arrange services in the community.

By all accounts, caseloads within the Department have changed dramatically in the past 2½ decades. While prisoner populations have risen slowly since 1993, the population of offenders under community supervision rose sharply from 33,250 in 1990 to a peak of 65,549 in 2003, then plunged to less than half that figure in the next fiscal year and continued to drop in the next fiscal year before a small rise between FY 2006-2007 and FY 2008-2009 brought it to a new, lower peak of 28,894; it then resumed its fall, to a low of 15,395 in 2013. It has risen since to a level of 17,236 in 2016. Most of the precipitous drop in the offender population under community supervision after 2003 resulted from legislative changes which eliminated supervision for certain felons, and later for certain low- to medium-risk misdemeanor offenders. Other legislative changes added greater supervision for sex offenders and identity theft offenders, causing a brief bump; still others reduced the period of supervision for certain offenses, reducing the caseload. The upshot of these changes is that, compared to 1993, the supervised population in the community consists of higher-risk offenders (i.e., offenders more likely to re-offend, and/or to be violent).

In 2012, legislation establishing the Swift, Certain and Fair Program ("Swift and Certain" or "SAC") gave CO's and CCO's the responsibility of making arrests when an offender on community custody commits a new crime in their presence, and reporting the crime to local law enforcement or prosecutors. Offenders who re-offend may receive hearings and may receive jail sanctions up to 30 days, with a CO or CCO presenting the

case against them before CHO's. The new authority under the SAC required CO's, CCO's, and to some extent CHO's to acquire greater knowledge of pertinent legal principles.

## ECONOMIC ENVIRONMENT

The State of Washington has been in a slow recovery since the Great Recession of 2008-2009. The most recent revenue forecast estimates an increase in revenues of 11.2% between the 2013-2015 and 2015-2017 biennia, and 7.5% between the 2015-2017 and 2017-2019 biennia. It is anticipated that increased demands for service will outstrip increased revenues for some time. At the moment, the State has unusual ongoing costs because it was found to be in contempt of a 2012 court order in *McCleary v. State of Washington*, 173 Wn2d 477, 269 P.3d 227 (2012), by failing to enact a feasible plan to address underfunding of the K-12 basic education system. The court has retained jurisdiction and is levying a fine of \$100,000 daily for failure to comply with its orders.

The CCD slightly outspent its 2013-2015 budget - \$200,701,253 in expenditures, as opposed to \$199,913,357 budgeted - despite having onboard 10.5 fewer FTEs than budgeted at a salary savings of over \$700,000. Most of the over-budget expenditures were for grants, benefits, and client services.

## OTHER STATUTORY FACTORS

The record has limited evidence regarding the statutory factors beyond ability to pay (factor i.) and a comparison of the wages, hours and conditions of employment with those of comparable employees in other states (factor iv.) discussed below. In some instances, noted below, the Employer's HR analysis for a classification notes, for example, concerns with recruitment and retention (factor v.). There was also limited testimony on this point. Beyond that, the record does not particularly address the other factors.

## ISSUES, ANALYSIS AND AWARD

### ARTICLE 42 COMPENSATION AND ATTENDANT APPENDICES L, M, P

The parties agree that 6 of the classifications should receive targeted wage increases; they differ on the amount of those increases. The Union seeks increases for all but one of the classifications; that one has no incumbents. On the first day of hearing, the parties signed a stipulation that, for purposes of this proceeding,

the only compensation issues before the arbitrator are any targeted increases for DOC-specific interest arbitration eligible classifications. The amount of any “general wage increase” or “general wage adjustment aka COLA” (cost of living adjustment, the term used by the WFSE for general wage increase and/or general wage adjustment) for the specific interest arbitration eligible DOC classifications is deferred to the WFSE General Government main table. The interest arbitrator shall be aware that a general wage increase is therefore outside the jurisdiction granted by the 2/4/16 MOU.

The parties agree that Employer’s wage proposal of July 28, 2016, will be amended as a result of this stipulation.

The Union further reserved

the right to argue the arbitrator has jurisdiction to award the specific proposal for Hearing Officer (DOC) stand-by pay in Article 42.1.F.

As discussed below, the Employer disputes whether the Union’s stand-by pay proposal for CHO’s is properly a part of this proceeding; it also opposes the proposal on its merits.

#### MARKET SURVEYS

In preparation for bargaining, both parties conducted surveys to compare the salaries and benefits offered by comparable states for comparable positions. The two studies took such different routes that a comparison is difficult. Table 1, attached, summarizes some of the comparative data from the two studies. Table 2, attached, summarizes comparisons between the average pay rates in comparator states found in the studies and the pay rates for individual positions studied.

Segal Waters Consulting (“Segal”) conducted the survey for the Employer for this round of bargaining; it conducted similar surveys for prior rounds of bargaining, including for the current FY 2015-2017 Agreement, for which the parties did not go to interest arbitration. For this round of bargaining, Segal surveyed 5 benchmark positions – CO 2 and 3, CCO 2, CHO 3, and CCS – in 7 states – Arizona, Colorado, Montana, Nevada, New Mexico, Oregon, and Utah. Both the benchmark positions and the comparator states for the Segal survey were selected by the Employer. The five benchmark positions in the Segal study included the first and third most numerous bargaining unit positions (CCO2 and CCS, respectively), as well as three considerably smaller classifications, and totaled 652, or 73.09% of the 892 positions. Montana, New Mexico, and Oregon have union representation; the others do not.

The Union surveyed the positions of CCO 2 and 3 and CCS in 9 states – 6 of the 7 in the Segal survey (minus Utah), plus California, Idaho, and Wyoming. The positions surveyed were the three most numerous positions in the bargaining unit, a total of 797, or 89.3% of the 892 positions. California, Montana, New Mexico, and Oregon personnel are represented by unions; the others are not.

The Segal survey was conducted by providing job summaries of the five benchmark positions<sup>3</sup> to contacts in the comparator states and asking them to identify matching positions in their workforce. The comparator states were asked to provide:

- The matching title
- Whether the classification is represented or unrepresented
- The effective date of the salary schedules
- The definition of the workweek (e.g., 40 hours/week)
- The annual scheduled base pay rates for the following years of service as of January 1, 2016:
  - » Minimum (0 years)
  - » 6 months
  - » 1 year
  - » 5 years
  - » 10 years
  - » 15 years
  - » 20 years
  - » 25 years
  - » Maximum
- Pay differentials (longevity, language, shift, geographic location, PSST training)
- Supplemental pay (dangerous work environment, dog handler premium, emergency response team, instruction pay, meal allowance, relocation allowance, uniform allowance)
- Paid time off
- Health benefits
- Life, supplemental life, and long-term disability insurance
- Retirement benefits

The Segal report adjusted the direct compensation data for differences in the length of the work week, to calculate pay for a 40-hour workweek. It also adjusted for cost of living differences, using the Regional Price Parities (“RPP”) Index. All of the states surveyed had a lower RPP Index than Washington. Segal drew comparisons for each of the positions surveyed for which it had sufficient market data. It considered a position to be at market if the adjusted direct compensation (adjusted for work week, longevity pay, and cost of living)

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<sup>3</sup> The Employer did not provide Segal with recently-draft class specifications for the CCO, which include the new duty of making arrests, among other changes. Comparator states were not asked about that duty, nor whether their matching position for that title was armed, as CCO’s can be.



was between 95% and 105% of the overall average midpoint<sup>4</sup> for the comparators, which Segal used as the market pay rate. With these adjustments, three of the benchmark titles were below market at the midpoint; one was at market; and one had too little data to draw conclusions.

The Segal study did not prescribe the percentage wage increases that would bring the classifications studied to 95% of the average at the midpoint. That would be calculated by subtracting the percent of the midpoint average from 95, then dividing by the percent of the midpoint average. Thus, for example, if a position was at 78% of the midpoint average, the percentage raise to bring that classification to 95% of the midpoint average would be  $(95-78)/78 = 21.8\%$ .

As to the last five of the factors studied, Segal found that

- the Employer's supplemental pay policies were consistent with the comparators but more generous regarding Dangerous Work Assignment Pay
- the Employer's cost sharing percentage for health benefits was slightly lower than the market average for employee only coverage, but slightly higher for the other three tiers of coverage
- the Employer contributes less than the average for retirement benefits.

The Union's survey was conducted by examining job descriptions and specifications to identify the most closely-matched positions in each of the states it surveyed. As no two states' classifications are identical, the standard used for matching was 75% rough comparability. The Union found no match for the CCS in four states - Arizona, Montana, New Mexico, and Nevada. It surveyed the minimum and maximum hourly pay; it did not adjust its figures for cost of living.<sup>5</sup> It sorted the survey results by minimum hourly pay for each of

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<sup>4</sup> The midpoint is the mathematical midpoint between the lowest and highest pay rates. The only states for which the Segal report set out longevity-based increments were Montana, Nevada, and Oregon. Most of the midpoints for those three states fall between the pay rates at the 1-year and 5-year levels. Taking Oregon as an example, for Correctional Corporal (comparator for the bargaining unit CO 2), the adjusted minimum is \$45,095; the adjusted midpoint is \$54,668; and the adjusted maximum is \$64,242. The 1-year pay rate in Oregon is \$47,014 and the 5-year pay rate is \$56,349.

<sup>5</sup> I am personally familiar with the relative cost of living in California, and can confidently say that its RPP Index is higher than Washington. The other two comparators added by the Union - Idaho and Wyoming - likely have a lower RPP Index than Washington.

the three positions it studied.<sup>6</sup> California had the highest minimum and maximum hourly rates for each of the three positions; Idaho had the lowest minimum hourly rates, but ranked toward the middle for maximum hourly rates; its maximum hourly rate exceeded the Employer’s maximum hourly rates in each position.

PROPOSED TARGETED JOB CLASS INCREASES

The proposed wage increases (as amended by the Employer pursuant to the parties’ stipulation) are:

Classification	FTE’s	Current Range	Union Proposed Range	Employer Proposed Range <sup>7</sup>
CCA	1	36	40 (10%)	+ 1.3% “CC Range”
CCO 1	0	39	47 (20%)	43 (10%) + 1.3% “CC Range”
CCO 2	472	49	57 (20%)	51 (5%) + 1.3% “CC Range”
CCO 3	223	51	60 (22.5%)	53 (5%) + 1.3% “CC Range”
CCS	102	54	64 (25%)	55 (2.5%) + 1.3% “CC Range”
CO 2	45	43 “CC Range”	46 (7.5%)	
CO 3	7	47 “CC Range”	50 (7.5%)	48 (2.5%)
CS 3	6	57 “CC Range”	65 (20%) or 66 (22.5%) <sup>8</sup>	
CHO 3	26	60 “CC Range”	62 (5%)	
CHO 4	4	63 “CC Range”	65 (5%)	
CMHC 2	0	47 “CC Range”	[no proposal]	49 (5%)
CMHC 3	6	49 “CC Range”	55 (15%)	51 (5%)

For the 2017-19 Biennium, the estimated cost of the Employer’s proposed targeted job class increases is \$6,504,771; the estimated cost of the Union’s proposed targeted job class increases is \$24,256,485.

<sup>6</sup> The Union’s survey report used the “CC Range” schedule for the three positions it surveyed. None of the three positions the Union surveyed is currently on the “CC Range” wage schedule. Thus, the pay rates used in the Union’s survey report to compare with other states overstate the Employer’s current pay rates by 1.3%. However, the Employer proposes to place all of these positions in the “CC Range.”

<sup>7</sup> The Employer proposes a 1.3% increase for the CCA, CCO, and CCS positions by expanding the application of the “CC Range” wage schedule to the entire population of unique jobs in this agency.

<sup>8</sup> The Union’s written proposal states that it proposes a 9-range (22.5%) increase for the CS 3 position; however, the stated “proposed increase” in the proposal brings the range from 57 to 65, or 8 ranges (20%).

### Uses and Limitations of the Survey Data

It is appropriate at this point to discuss the uses and limitations of salary surveys in interest arbitration. No two states have positions with exactly the same duties and responsibilities. Selecting the most comparable position is a judgment call. Illustrating this point, there was only slight overlap in the comparator positions chosen for those classifications that were studied by both Segal and the Union.

The Segal study results for the CO 2 demonstrate the consequences of those judgment calls. Segal selected some higher-paid positions in 2014 compared to the positions selected in 2016. As one example, it selected Colorado's Correctional, Youth, or Clinical Security Officer II as a comparator for the CO 2 in 2014; it selected the Level I in 2016. As one might expect from the title, the Level II position was higher-paid. The Union asserts that some of the positions selected in the Segal survey also had less demanding responsibilities than the Employer's employees. As a different source of uncertainty, the Union's survey tends to understate the disparity in pay between Washington employees and those of other states because it does not account for the relatively high cost of living in Washington (not counting California, which is in a class by itself).

Salary surveys also rarely study all of the classifications, and did not in this case. To fill the gap, it is common to rely on generally accepted salary administration principles. One of the most widely accepted such principles is that relative pay rates between levels of the same series should maintain a reasonable progression. Gaps that are too large or too small tend to skew the ability to recruit and retain qualified employees.

In analyzing the data presented in this case, I will discuss the results of the surveys, but consider them as only part of the larger picture.

### Past Use and Disuse of Interest Arbitration

The Employer observes, inter alia, that the Union failed to seek interest arbitration for the 2015-2017 Agreement, and thus did not make up for lower-than-market wages that were identified at the time. It argues that the Union may not now seek large wage increases to make up for its own failure to assert itself in prior bargaining cycles.

The difficulty with this argument is that the record is devoid of an explanation for the decision not to go to interest arbitration in the last round of bargaining. Any number of legitimate reasons come to mind for not going to the mat. The recovery from the Great Recession was less firmly established; the Union may have concluded that wage increases were not feasible at that time based on ability to pay. In any event, to the extent that employees in this bargaining unit have been paid less than market under the current Agreement, the Employer benefitted from the two years of lower salary costs. Ultimately, as discussed below, paying below-market rates has its own costs in the form of recruitment and retention. It is therefore appropriate to look at comparability in this market and this economy.

#### Community Corrections Assistant (CCA)

The CCA is the first level of the series that includes CCO's and CCS's, and is support staff to those positions. The Employer proposes to move the CCA to the "CC Range," providing a 1.3% increase, but otherwise to leave compensation unchanged other than whatever wage increase may be agreed upon in bargaining at the General Government Table. The Union proposes a 4-range (10%) increase for this position. Its written proposal for the series refers to law changes that "directly impacted the work of the CCO series and the Community Corrections Specialist." No evidence was offered specifically regarding changes in the work, turnover, or other pertinent information regarding the CCA, of whom there is one incumbent.

The CCA position is currently paid at range 36, three ranges below the next position in the series, the CCO 1. The Employer's proposals for the rest of the series would leave the CCA position 7 ranges below its proposed new range for the CCO 1. The Union's proposal would give this position a smaller (4-range) increase than the CCO 1, also leaving the position 7 ranges below the Union's proposed new range for the CCO 1. Generally accepted pay practices argue for maintaining some comparability among positions in a series. However, the evidence regarding changes in qualifications and responsibilities of the higher-paid classifications in this series is not matched by evidence of similar changes for this position. Absent evidence of factors warranting a change in the range for the CCA position, I award the 1.3% pay raise to the "CC Range" that has been offered by the Employer.

### Community Corrections Officers (CCO) 1, 2, and 3

The Employer proposes salary increases for the CCO series (4 ranges, or 10%, for the CCO 1; 2 ranges, or 5%, for the CCO 2 and 3) based on higher-level duties caused by legislative mandates. It also proposes to move this series to the “CC Range” salary schedule, providing an additional 1.3% increase. The State HR analysis noted an increase in the level of responsibility, the impact of the decision making required, and the increased complexity in these positions since the last revision of the series in 1996. It observed, “This class series has become increasingly more complex and the level of accountability and risk involved in the decisions they are now required to make can lead to agency lawsuits, sanctions, litigations and more.” As to the CCO 1 level, it also noted the need to “bring into alignment with other classes in the series” and “recruitment and retention and inequities with other class series.”

The Union proposes salary increases of 8 ranges (20%) for the CCO 1 and 2, and 9 ranges (22.5%) for the CCO 3. Its written proposal for the series refers to law changes that “directly impacted the work of the CCO series and the Community Corrections Specialist.” Among the changes addressed in testimony were the new arrest authority and increased need for legal knowledge, as well as the allegedly more dangerous supervised offender population resulting from changes in the laws that determine which offenders are subject to supervision. The Union also notes that the 2014 Segal study found the CCO class was 43% behind the market. It asserts that there is turnover among CCO 2's, who go to Oregon for higher pay and less complex duties.

The current Segal study found matching positions for CCO 2 in all seven of the comparator states. The adjusted direct compensation for this classification was at 98% of the average minimum, 88% of the average midpoint, and 82% of the average maximum monthly pay. This position was below market as defined by the Segal study. To bring the position to the 95-105% market range defined by Segal, a raise of at least 7.95% - under the Employer’s salary schedules, 4 ranges or 10% - would be required. For the three states reporting compensation at the time increments studied - Montana, Nevada, and Oregon - after six months, the adjusted direct compensation was at 92% of average, and dropped to 84% at the maximum compensation level.

The Union's study found matching positions for CCO 2 in all nine of the comparator states. The Employer's CCO 2's ranked fifth in unadjusted minimum compensation as calculated by the Union; however, because the Union used the "CC range" wage schedule for this position, their actual current pay rate is 1.3% lower (\$19.49, rather than \$19.75 per hour), and would drop their ranking to sixth. At the maximum rates, their ranking would be sixth using either wage schedule. Taking the Segal approach for purposes of comparison, the Union survey found the CCO 2 position to be at 88.9% of the midpoint. To bring the position to the 95-105% market range, a raise of at least 6.9% - effectively, 3 ranges or 7.5% - would be required.

The Segal study did not survey for CCO 3's. The Union found matching positions for CCO 3's in all nine of the comparator states. The Washington position ranked seventh at the unadjusted minimum rate and eighth at the maximum rate, regardless of whether one uses the "CC range" wage schedule or the general wage schedule. Taking the Segal approach for purposes of comparison, the Union survey found the CCO 3 position to be at 81.5% of the midpoint of the comparators. To bring the position to the 95-105% market range, a raise of at least 16.6% - effectively, 7 ranges or 17.5% - would be required.

The Employer's HR analysis notes "recruitment and retention and inequities with other class series" for the CCO 1, in support of its 4-range proposal. Currently there are no CCO 1's, supporting the observation of recruitment and retention challenges. The 4-range increase proposed by the Employer would slightly narrow the current 10-range (25%) gap between the CCO 1 and 2, to 15%. The 8-range increase proposed by the Union would bring this position to within 5% of the range at which the Employer has been hiring CCO 2's in the market. It is likely that qualified CCO 1's may be found at a lower salary than the full CCO 2 salary level. The Employer's proposal is likely insufficient to resolve the recruitment concern; the Union's proposal is on the generous side. I award a 6-range increase for the CCO 1, to Range 45, plus the 1.3% bump to the "CC Range" offered by the Employer.

Both the Segal study and the Union's study support an increase for the CCO 2. Despite the Employer's relatively larger size and higher cost of living, the compensation for CCO 2 and 3 positions is toward the bottom of the (mostly lower-cost) comparators. At least one of those comparators, the neighboring

State of Oregon, is the beneficiary of a retention gap. Generally accepted salary practices argue against compression within a series. A 3-range increase would place the CCO 2 position at Range 52, or 7 ranges above the new CCO 1 range, but still slightly below salaries in the nearest siphon point. I award a 3-range (7.5%) increase for the CCO 2, to Range 52, plus the 1.3% bump to the “CC Range” offered by the Employer.

The concern over wage compression supports also raising the pay range of the CCO 3. The Union’s survey puts this position at 81.5% of the average of the comparators at the midpoint. Using the Segal approach, a 16.6% increase would put this position within the market of the Union survey. Such an increase would, however, induce a large gap between the CCO 2 and 3. The current gap is 2 pay ranges (5%). That is a small gap for the difference in qualifications. On consideration of the competing concerns, I award a 4-range (10%) increase for the CCO 3, to Range 55, plus the 1.3% bump to the “CC Range” offered by the Employer.

#### Community Corrections Specialist (CCS)

The Employer proposes a 1-range 2.5% salary increase for the CCS classification. It states that its intent is to return this position to its historic 10% pay advantage over the CCO 3 level. However, a 1-range increase would achieved that objective only if the CCO 3 position received no pay increase. The CCS position is currently paid at Range 54, 7.5% above the CCO 3 position at Range 51. The Employer proposed a 2-range (5%) increase for the CCO 3 position, which would have further closed the distance between the two positions. Just to achieve a 10% pay advantage over the Employer’s proposed CCO 3 range of 53, the CCS would have to be paid at Range 57, a 3-range increase.

The Union proposes a 10-range (25%) salary increase for the CCS classification. It notes that, until 2007, the parties maintained a 10% salary advantage for the position over the CCO 3; the gap narrowed through negotiators’ lack of familiarity with the history of this series. It also believes that the duties of the CCS position are comparable to Classification Counselors and to Program Specialists 4 (who are paid at Range 56, or 55 in the Teamsters unit).

The Segal study was unable to draw any conclusions about CCS competitiveness because it found only one state with a comparable position, Colorado. The Employer’s pay for newly-hired CCS’s was 112% of the

pay for the matching Colorado newly-hired position, 91% at the midpoint, and 79% at the maximum. The Union found matching positions in five of the nine states it studied. At the minimum rate, the Washington CCS's ranked fifth out of the six states, regardless of which range is used; at the maximum rate, this position ranked fifth if the "CC range" rate is used and sixth if the general rate is used. Using the Segal midpoint approach, the Union survey finds this position at 72.5% of the midpoint average. If one substitutes the single data point found by Segal for the State of Colorado, the combined Union-Segal survey finds this position at 75.7% of the midpoint average. To reach 95% of the midpoint average would require a raise of 31% using the Union's figures or 24.2% using the combined Union-Segal figures.

The parties agree that, historically, the CCS position had a 10% pay advantage over the CCO 3 position. Given the increase I have awarded for the CCO 3, a 10% pay advantage would require a 5-range (12.5%) increase for the CCS, to Range 59. That figure is less than suggested by the combined Union-Segal figures. However, having considered the uncertainties and equities on this record, and considering the need to avoid both compression and an outsized gap within the series, I award a 5-range (12.5%) increase for the CCS, to Range 59, plus the 1.3% "CC Range" bump offered by the Employer.

#### Corrections and Custody Officers (CO) 2 and 3

The CO series is on the "CC Range." The Employer proposes no salary change for the CO 2 and a one-range (2.5%) increase for the CO 3. The HR staff analysis noted inequities between the CO 3 salary in this bargaining unit (range 47) and the CO 3 salary in the Teamsters bargaining unit (range 48). It also noted turnover from employees in this bargaining unit moving to the same (higher-paid) position in the Teamsters bargaining unit. Salary ranges in the Teamsters contract are higher than in the WFSE contract. The Teamsters Range 48 is paid between \$41,196 and \$55,416 annually; the WFSE CC Range 47 is paid between \$38,748 and \$52,080 annually. Thus, the effective difference between a Teamsters Range 48 and a WFSE Range 47 is 6.3%, i.e., between 2 and 3 ranges.

The Union proposes 3-range (7.5%) increases for both the CO 2 and 3. It notes a discrepancy with the Teamsters-represented CO's and salary compression within the classification series. It also notes that the



Segal study found this class series was behind by a minimum of 5%. It notes a discrepancy between the 2016 and 2014 Segal results for this series, in which some of the 2014 pay rates were higher than the 2016 pay rates.<sup>9</sup> It asserts that the job specifications from the states that responded in the Segal survey show that the duties of CO 2 and 3 are more dangerous and unpredictable than those of the comparators, even within the Washington prison system. Those job specifications are not in evidence.

The Segal study found matching positions for CO 2's in all of the comparator states. The adjusted direct compensation for this classification was at 98% of the average minimum, 92% of the average midpoint, and 87% of the average maximum monthly pay. This position therefore was below market as defined by the Segal study. A 3.26% raise - effectively, a 2-range (5%) increase - would bring this position into market range, as defined by Segal (95-105% of the average midpoint). For the three states reporting compensation at the time increments studied (6 months, 1 year, etc.) - Montana, Nevada, and Oregon - after six months, the adjusted direct compensation for this position was at 92% of average, and dropped to 82% at the maximum compensation level.

The Segal study found matching positions for CO 3's in 6 of the 7 comparator states, excluding Montana. The adjusted direct compensation for this classification was at 95% of the average minimum, 86% of the average midpoint, and 81% of the average maximum monthly pay. This position therefore was below market as defined by the Segal study. A raise of 9.47% - effectively, 4 ranges (10%) - would bring it to the market level (95-105%), as defined by Segal. For the two states reporting compensation at the time increments studied - Nevada and Oregon - after six months, the adjusted direct compensation was at 83% of average; it dropped to 79% at 1 year, rose to 81% at 5 years, and dropped to 73% from 10 years onward.

A factor in favor of a range increase for this series, which does not appear with most of the other positions before me, is the existence of an equivalent position in the Teamsters unit that is paid the equivalent of 2-3 ranges higher. It is undisputed that this has induced movement to the Teamsters unit. According to the

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<sup>9</sup> See Table 1, attached, for the discrepancies and Segal's analysis of the differences in results of the two surveys.

Union, CO's also leave to take positions in other states such as Oregon, where the legal structure is less complex, duties are more limited, and pay is much higher, particularly at the 10-year level. On this record, the Employer recruits CO's, pays them to attend its in-house academies and other training, weeds out the new recruits who are not a good fit for corrections, then watches the successful recruits take their training to greener pastures. There is a cost to serving as the "farm team" for the Teamsters bargaining unit and my home state that is not fully reflected in direct compensation studies. To reduce turnover and address the market findings, I award the CO 2 and CO 3 each 3-range (7.5%) increases, to Ranges 46 and 50, respectively.

#### Corrections Specialist 3 (CS 3)

The CS 3 is on the "CC Range." The Union's proposal as to this position is internally inconsistent, but in testimony it proposes a 9-range (22.5%) increase, from range 57 to range 66. In testimony, it suggested that it might be appropriate, instead, to create a new classification, as the current classification is not a good fit; however, it cannot propose that in this proceeding.

The Union asserts that employees in this position work side by side with CCO's and CCS's when instructing on, e.g., firearms and defensive tactics, but do not receive the \$15/hour assignment pay that those other positions receive when instructing. As a result, those other positions may receive as much as \$12.69/hour more than the CS 3 for the same work that the CS 3 performs on an ongoing basis.

The CS 3 position would benefit from a classification analysis to determine whether it is properly allocated. This is not that process. There is no evidence of changes in the work or responsibilities that would warrant a pay increase. I award no pay increase for the CS 3 position.

#### Correctional Hearings Officer (CHO) 3 and 4

The CHO series in on the "CC Range." The Union proposes 2-range (5%) increases for the CHO 3 and 4, based on additional responsibilities resulting from two court cases and legislative changes.

The Segal study found matching positions for the CHO 3 in four states - Arizona, Colorado, New Mexico, and Oregon. The Employer's pay for newly-hired CHO 3's was 106% of the average of the four states, 97% at midpoint, and 91% at maximum. The position therefore was at market as defined by the Segal study.

Only the progressions for the State of Oregon are set out in full in the Segal report. Newly-hired CHO 3's receive 88% of the minimum paid by Oregon; the percentage drops thereafter so that, from 10 years onward, CHO 3's are at 81% of the Oregon pay.

One cannot exclude the possibility that the enhanced responsibilities cited by the Union will eventually induce incumbents in these positions to take higher-paid positions across the Columbia River, but such evidence is not in this record. On this record, I award no range increase to the CHO 3 and 4 positions, leaving them at range 60 and 63, respectively.

#### Corrections and Mental Health Counselor (CMHC) 2 and 3

The CMHC series in on the "CC Range." The Employer proposes to abolish the unused CMHC 1 position and increase the salary levels of the CMHC 2 and 3 positions by two ranges (5%) based on recruitment and retention issues. The HR analysis of this proposal notes that CMHC's have been hired at the top step; thus, all of the CMHC 3's are at the top step of Range 49 in the "CC Range" with no hope of a step increase. The HR analysis notes these employees were taking higher-paid positions elsewhere. It further notes that, compared to comparably-paid positions, these positions require more education and experience, and perform higher-level duties. It also noted changes in the CMHC 1 and 2 work, abolishing custody duties and moving to an exclusively treatment oriented role. The HR analysis, which was prepared before the most recent Segal study, noted that the 2014 Segal study found the CMHC 2 and 3 classifications were 45% behind the state participant average.

The Union did not make a proposal regarding the CMHC 2 position; it proposes a 6-range (15%) increase for the CMHC 3 position. It asserts that the duties and responsibilities of this position are similar to those of a Mental Health Counselor, which is paid at Range 56.

The CMHC 2 position has no incumbents in the CCD. The Teamsters prison unit has CMHC 2 and 3 positions. The Teamsters CMHC 3 position is at Range 49 on the Teamsters scale, which is 4.9% higher than the same range on the WFSE scale. The State also has unrepresented CMHC 3 positions, which are paid slightly less than WFSE CMHC 3's.

The top step of the CMHC 3 position, at which the Employer has been hiring, is paid at 34.5% above the first step. Although hiring at the top step allows the Employer to recruit, new hires have no prospect of wage increases other than as part of a general wage increase. The Employer's proposed 2-range (5%) raise would raise the maximum step by 2 steps. As it already finds it necessary to hire at the top step, it is likely that any new CMHC 3's would be hired two steps, at most, from the top, and would soon exhaust their potential for pay raises. The proposed pay raise might reduce attrition to the Teamsters bargaining unit by bringing these employees to a comparable salary. However, it would do little to resolve the long-term retention concern from maintaining a pay scale that was found in 2014 to be significantly below market. The Union's proposed 6-range (15%) raise would allow more potential for salary advancement. I award the CMHC 3 position a 6-range (15%) raise, to range 55. The Union has not responded to the Employer's proposal for a 2-range (5%) raise for the CMHC 2 position, in which there are no incumbents. I award the Employer's proposed raise, bringing the CMHC 2 position to Range 49.

#### STANDBY PAY

Article 42, Section 42.1, provides for \$25 in standby pay for overtime-exempt employees while waiting to be engaged to work. On the first day of hearing, the Union modified a previous proposal to modify Article 42, Section 42.1; it currently proposes standby pay in the amount of \$30 for CHO's, as follows:

#### 42.1 Standby

...

**F. Department of Corrections Only - The Hearings Officers 3 & 4's who are overtime-exempt employees will be compensated thirty dollars (\$30.00) for each day or portion thereof spent in standby status. A day is defined as a twenty-four (24) hour period beginning on the first hour an employee is assigned standby status.<sup>10</sup>**

The Union argues that its standby pay proposal is within the scope of supplemental bargaining provided in the MOU, and is not precluded by the parties' stipulation of August 1 (J-4). It notes that the August 1 stipulation deals only with "general wage increase" or "general wage adjustment" issues, a/k/a COLA, which has

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<sup>10</sup> The Union's original proposal on stand-by pay did not specify that it would apply only to this Department's CHO's. Instead, it simply modified Section 42.1(E)'s provision for overtime-exempt employees, to make the daily compensation \$30 rather than \$25. The current proposal was submitted on August 1, the first day of hearing in this matter.

historically been negotiated at the general government bargaining table and will be addressed there in this round of bargaining. It notes that it specifically reserved the right, in the August 1 stipulation, to argue that the standby pay proposal was appropriate for hearing here.

The Union asserts that the Employer did not respond to its initial proposal on this issue, and waited until August 1 to assert that the proposal was outside the scope of the MOU. It notes that the MOU addresses proposals specific to classifications that are unique to the Employer. It points out that its August 1 modification of its standby pay proposal clarified that it was intended to apply only to the CHO 3 and 4 positions. It argues that this is an agency-unique compensation proposal within the scope of the MOU. It points to numerous agency-unique compensation provisions in the 2015-2017 Agreement, and argues that its standby pay proposal would be no different from those exceptions to the general rule.

On the merits, the Union states that standby is a new duty for the CHO 3 and 4 positions. It believes these are the only positions unique to this agency that are overtime-exempt. It seeks to have them compensated for this new duty. The \$25 rate for standby has been in the Agreement since 2007; the current value of that figure is in the range of \$29-30.

The Employer notes that the Union's original standby pay proposal did not limit its terms to CHO's, nor did its original pay proposals for CHO's mention standby pay. It argues that the standby pay proposal improperly sought a change beyond the scope of the MOU. It disputes the propriety of modifying the proposal on the first day of this arbitration. It argues that, since the parties are still in negotiations at the general government table, including on compensation, the proposal could result in confusion over what provisions apply to agency-specific classifications. It argues that the terms of the MOU should be strictly construed, and thus that this proposal should be rejected as beyond the scope of the MOU.

The Employer also argues that the last-minute modification of the standby pay proposal deprived it of an opportunity for meaningful bargaining. It also argues that the Union has not shown a compelling need for the change. In this regard, it notes that CHO's are already eligible for standby pay, and disputes the sufficiency of the testimony offered in support of the Union's proposal. It also notes that the Union has not

submitted cost figures. It argues that this standby pay proposal should be rejected on the merits, as well as for jurisdictional reasons.

I conclude that I have jurisdiction to consider the Union's standby pay proposal. The parties stipulated that the Union reserved its right to pursue this proposal. The proposal, as modified on August 1, does not impinge on the General Government Table bargaining. It is limited to the CHO 3 and 4 positions as an exception to the general rule of \$25 for standby pay. The Employer does not dispute the Union's assertion that it made no response to this proposal prior to August 1, when it asserted that the proposal was outside the scope of bargaining. Given this history, there can be little sympathy for the Employer's argument that there was no meaningful opportunity to bargain over the Union's modification of its proposal. That modification, on its face, was designed to meet the last-minute objection and clarify the intent of the Union's proposal.

Turning to the merits, the choice of any particular figure for standby pay is fairly arbitrary. The Teamsters Agreement provides for standby pay at the rate of 7% of hourly base salary for overtime-eligible employees; at \$50/day for overtime exempt employees in a handful of healthcare provider positions; and at \$25/day for all other overtime exempt employees. The Union's concern over ensuring that CHO 3's and 4's would be compensated for this new duty is unwarranted. The Agreement already provides for standby pay for overtime-exempt employees. No reason appears on this record why this particular subset of overtime-exempt employees should receive a higher rate. I therefore award the status quo.

#### ARTICLE 8, SECTION 8.11 TRAINING AND EMPLOYEE DEVELOPMENT

The Union proposes to add the following new provision to Article 8:

**8.11 To ensure the safety of staff and to foster professional development, the Employer will implement a formal mentorship program for employees in job classes with arrest authority. The mentorship program will last for six months, be based on best practices, and will be facilitated by the lead worker of the employer.**

The Employer opposes this proposal, but is currently trying to develop a formal mentorship program. Toward this end, it has submitted a budget proposal to increase staffing by 9 for a mentoring program, at an estimated cost of \$1.6 million. In Aylward's view, it would not be possible to implement formal mentoring

without additional staff, because there is insufficient work time for the current leads and supervisors to add this duty. The Union does not have a position as to whether additional staffing would be required.

The parties have discussed mentoring in UMCC meetings for several years. In formulating this proposal, the Union was aware of a mentoring program formerly used in the prisons called COACH, but it does not propose an exact duplicate of that model.

Currently, newly-hired employees receive training on basic administrative matters (e.g., locations of offices and equipment, how to use the computer, vehicle logs and fuel stations), as well as the information needed for day-to-day duties (e.g., applicable laws, policies, and procedures for handling offenders). CS 3's and CCO 3's provide on-the-job training. Newly-hired personnel who will be armed attend a 40-hour academy, and annually participate in refresher training consisting of two 8-hour sessions on firearms and 16 hours on defensive tactics. CS 3's provide training on use of force for both this bargaining unit and Prison employees in the Teamsters bargaining unit; firearms instruction is also provided by CCO's and CO's who have been certified to provide this training.

According to Raybell, several years passed with no new employees to be trained beginning in 2009, when the Employer reduced the number of positions. When the Employer resumed hiring, the training was inconsistent because of a lack of practice and changes in lead officers (CCO 3's). For example, the in-house academy for CCO's has a module for case management, but new CCO's may be assigned a caseload before they have taken that module. The Union seeks a more formal, metered and guided mentorship program in place of the informal, off-the-cuff process that is in current use. The hope is to keep track of where new employees are in learning the practical applications of the job after receiving more generalized academy training.

Raybell testified the Union only seeks the mentorship program for members with arrest authority because other job classes already have a pretty good training workbook, and because the work of members with arrest authority has changed drastically in recent years. With those changes, training in some historical aspects of the job has suffered. The Union proposed a 6-month duration for the mentorship because 3 months was too short, while the necessary knowledge needs to be learned in less than a year. Examples include how to park

and approach a house, how to speak to others in the vicinity, and where resources are. He testified that report writing has also suffered in recent years.

Raybell's understanding is that a new CCO would be assigned to a specific supervisor (CS 3) or lead (CCO 3) as a mentor. The mentor would be responsible for ensuring that a new CCO has received training on each of the areas needed, either from the mentor or from other CCO's. The Union's concern is that there is currently no formal comprehensive record of the training a CCO has received.

The Employer has developed checklists and other aids to enhance consistency in the training new employees receive. According to Aylward, the Employer is also developing additional trainings. In the past, the Employer has struggled to provide academies within six months of hire, but it is working to improve that.

In closing argument, the Employer opposed the Union's proposal because it would require additional staffing, and thus be expensive to implement. It stated that a mentoring program that did not require additional staffing would be acceptable. It is unclear whether the Employer's opposition to the Union's proposal stems, in part, from the fact that its own budget proposal to increase staff for a mentoring program is still outstanding, and would be resolved if that budget proposal were approved.

The Union's mentoring proposal is very general. A comprehensive mentoring program likely would require additional staffing; it is unclear if a more limited mentoring program could be implemented without increased staffing. For example, if a mentor was simply responsible for double-checking that someone had checked off boxes as the mentee completed phases of the training, it could be a limited administrative function. The Employer, to its credit, seeks to fund and develop a more comprehensive program.

This subject is appropriate for further discussions in the UMCC. No compelling need has been shown to enshrine the subject in its current state of development in the Agreement. I award the status quo.

#### ARTICLE 20, SECTION 20.10 SAFETY AND HEALTH

On June 30, the Union proposed to modify Section 20.10 as follows:

20.10 Department of Corrections

A. The Employer will provide sufficient staff for the transportation of offenders in a safe manner in accordance with agency policy.



- B. The Employer will continue to provide controlled environments and the use of safety glass in its field offices for the safety of staff.
- C. The Employer will offer training to enhance staff's proficiency at detecting potential risk and dangerous situations. The Employer will also offer training on active threats and techniques of de-escalation.
- D. The parties agree to maintain the Community Corrections Division Security Advisory Committee and agree to use the Committee as one method to evaluate and propose solutions to improve the operational safety of staff performing the work of community corrections; provided, however, this committee will not be the only method used to perform such work.
- E. The Employer will develop and maintain a real-time system to monitor times, addresses, and other information related to field contact with offenders. The intent of this system is to ensure that emergency response is available to staff when needed.

Paragraphs B and C of the Union's June 30 proposal originally appeared in a June 30 Employer proposal in response to Union proposals that were presented in April and discussed in negotiations and mediation. The Employer's June 30 proposal also proffered the following as Paragraph D:

- D. The parties agree to maintain and utilize the Community Corrections Division Security Advisory Committee and agree to use the Committee as one method to evaluate and propose solutions to improve the operational safety of staff performing the work of community corrections.

The Employer's July 28 counter-proposal added the following proposed Paragraph E:

- E. The parties commit to work together within the term of this agreement to find a shared solution to the real-time monitoring concern.

The parties are in agreement on Paragraphs B and C, and those are awarded. The final phrase of the Union's proposed Paragraph D is redundant of the phrase stating that the Committee will be "one method" to achieve the aims of this paragraph. The Employer's proposed Paragraph D is awarded.

As to the competing Paragraphs E, both parties have expressed an interest in enhancing protection for personnel who may encounter a threat or mishap in the field. Discussions on the subject of real-time monitoring and a dispatch center date back to at least 2011, when the parties set up the Security Advisory Committee (referenced in Paragraph D) in response to a 2008 safety survey. According to the Union, this subject has been brought to negotiation because five years of discussion in the Union-Management Communication Committee (UMCC) have been futile.

The concern is that CCO's leave information as to which offenders they intend to visit and where, and they check in upon their return from the field, but they are not monitored in the interim. Some CCO's have radios that permit them to communicate with local law enforcement; others' radios can communicate officer-to-officer, but not to local law enforcement or the Washington State Patrol ("WSP"). Some have been issued cell phones. Teamsters-represented staff who transport from the prisons have radio contact with WSP; WFSE-represented staff who transport from jails do not have it.

In 2014, the WSP provided communications services to 19 state and federal agencies, including the Employer for its prison transport communications, at a total cost of \$326,484 per year for all those agencies together. As one example of the service provided, Gambling Commission employees check in with WSP by radio when they go into the field, and at the beginning and end of each stop. They are also issued cell phones, with which they can call WSP. They have both types of equipment because in some locations one will work but the other will not. The Gambling Commission decided to use WSP after investigating the cost of having its own dispatch system. It was able to get its first radios as surplus from WSP, and is about to update those radios with smaller, lighter, and more powerful radios with two bands.

The Employer's Electronic Security Systems Manager, Jose Zuniga, testified the Employer has approximately 27 contracts with counties allowing use of the local radio emergency communications frequencies when its employees are part of a task force team or patrol with local law enforcement. Until his testimony in hearing before me, Zuniga was unaware of the Union's proposal on this subject; he was not asked to be involved in the negotiations on this proposal. He testified there are various ways to accomplish what the Union seeks, and that details would need to be addressed before deciding on the type of system. Setting up a separate call center system would be expensive; partnering with other agencies such as the WSP would require working out the details. He testified that the MOU with WSP for prison employees includes 100 calls monthly in the base rate of \$400, then costs \$3.05 for each call thereafter or \$2.50/call for more than 4,999 calls. He has some concern that WSP might give higher priority to its own calls and take time to respond to calls from CCO's. In his view, the easiest and cheapest way to set up real time monitoring would be through contracts with local counties,

because their law enforcement officers will be geographically closest. He has negotiated such a contract with Grant County, at a cost of \$2,000/year, and is in negotiations with other counties currently.

In negotiations, the Union initially proposed a dispatch system; it later modified its proposal to call for “real time monitoring.” According to Senior Labor Negotiator Karl Nagel, who served as the Employer’s spokesperson, there was not a lot of discussion of what the latter term meant; the parties had earlier discussed services similar to the WSP dispatch, having personnel report where they were making stops, and similar concepts. He testified that, as a result of sitting through this interest arbitration, he now has a better understanding of what the Union seeks than he had in negotiations and mediation. He testified the Employer has suggested dealing with this outside collective bargaining, including in the Security Advisory Committee, to figure out how to do something about this concern.

This subject is one of several where the parties did not fully explore one another’s proposals in negotiations and mediation. Nagel was still learning about the Union’s interests and the intent of its proposals at hearing. Given that, it is not surprising that the parties made little progress in addressing this shared concern. The Union’s proposal would obligate the Employer to develop a real time monitoring system, leaving it unclear whether that expectation would be met if the Employer contracted out the real time monitoring through, e.g., contracts with WSP or local counties – or, for that matter, if the safety concern was addressed by something other than real time monitoring. The Employer’s proposal is an agreement to agree. One might infer that the Security Advisory Committee and/or the UMCC would have input in the efforts the Employer envisions, but its proposal does not make that connection directly.

The parties have a shared concern, and have been discussing that shared concern for a considerable time, albeit without the participation of at least one person whose insight would have been valuable. While the Employer’s proposal is so general that it risks simply kicking the can down the road for another biennium, it does prop the door open for more discussions. The likelihood of real progress would be enhanced if Zuniga, or someone in his function, becomes involved in those discussions. The Employer’s proposed Paragraph E is awarded.

ARTICLE 21, SECTIONS 21.4 & 21.5 UNIFORMS, TOOLS AND EQUIPMENT FIREARMS TRAINING AND AMMUNITION & IDENTIFICATION AS LAW ENFORCEMENT

The Union proposes to modify the process for distributing practice rounds of ammunition in Article 21, Section 21.4, as follows:

21.4 Department of Corrections - Firearms Training and Ammunition  
Community Corrections Officers and Specialists who are authorized to carry and use a firearm in the performance of their official duties are authorized to complete two (2) hours of firearm practice monthly including care and cleaning of firearms. Monthly firearms practice will be conducted by Department certified firearms instructors and will be scheduled by the firearms training specialist. Staff will be provided with two hundred (200) rounds of ammunition **per month** ~~at these practices~~.

The Union states that the purpose of the modification to Section 21.4 is to “allow for flexibility in weapons practice.” The Employer counter-proposed,

21.4 Department of Corrections - Firearms Training and Ammunition  
Community Corrections Officers and Specialists who are authorized to carry and use a firearm in the performance of their official duties are authorized to complete two (2) hours of firearm practice monthly including care and cleaning of firearms. Monthly firearms practice will be conducted by Department certified firearms instructors and will be scheduled by the firearms training specialist. **Each authorized staff must complete a firearms practice at least once each quarter.** Staff will be provided with two hundred (200) rounds of ammunition at ~~these~~ practices.

CCO’s historically were given a monthly allotment of practice ammunition and were allowed two hours per month for practice, weapons cleaning, and other related duties. About six years ago, the Employer implemented formal practice sessions at leased ranges, and began distributing practice ammunition only at those formal sessions. Employees were assigned to designated practice sessions.

The difficulty with these changes, from the Union’s perspective, is that exigencies at work sometimes prevented employees from attending scheduled practice sessions. This, in turn, meant that they did not receive practice ammunition, and therefore could not practice on their own at another time or range unless they bought their own practice ammunition. In addition, officers sometimes wanted to use less than a full allotment of practice ammunition at one session so they could have extra rounds for a future session at which they were practicing particular skills that required more rounds. When ammunition was issued monthly, they could make that adjustment; having it issued only at formal practice sessions prevents it.

A further concern for the Union is that instructors must go to the range at the scheduled practice times to issue ammunition and oversee the practice, but often find only 2 or 3 officers in attendance, or none, because of conflicting work commitments. While the instructors can perform some limited work functions at the range, they are taken away from their usual responsibilities. They find that frustrating. They have also observed that the difficulty in getting to scheduled practice sessions has led some officers to practice less than in the past, with a resulting diminution of their skills.

WSP officers are required to attend three firearms trainings yearly; they are also allowed to apply for 50 rounds of practice ammunition monthly to practice on their own (in addition to the three mandatory trainings).

According to Aylward, the Employer considers it best practice to tie practice to instruction. Also, practice ammunition is expensive and has safety issues. When the Employer stopped issuing it monthly and conducted a round-up of unused practice ammunition, some of it was found in desk drawers. The State's proposal to mandate firearms practice at least once each quarter was intended to ensure that employees practiced without insisting that it occur monthly. The Employer has been working with supervisors to find ways to give staff room in their schedule to practice. If the training was mandatory, employees would be required to attend on work time, and supervisors would be required to give them that time. It is possible that employees could be disciplined if they did not meet the quarterly minimum; if it was through no fault of their own, the Employer anticipates addressing that in the discipline process.

Both parties' proposals are problematic. Issuing practice ammunition outside of practice sessions requires tracking its whereabouts and use, and presents a concern over where it will be stored. There is also a legitimate goal of making practice sessions a real training opportunity through the use of trained instructors. While independent practice is also valuable, the Employer has articulated reasonable concerns with issuing ammunition for that purpose. At the same time, its proposed solution of writing a quarterly requirement into the Agreement is a meat cleaver response to the problem of insufficient practice time, made even more clumsy by the prospect of addressing conflicting workload through the discipline process of officers who do not meet

the quarterly minimum through no fault of their own. This subject warrants more discussion and thought by the parties. I award the status quo as to Section 21.4.

The Union also proposes to add a new Section 21.5, reading:

**21.5 Department of Corrections - Identification as Law Enforcement**

**The Employer will provide to each employee who has arrest authority, clothing that clearly identifies the employee as “police” for use while the employee is conducting arrest, search, or transport activities in the community.**

The stated purpose of the proposed new Section 21.5 is to promote safety in the field by making employees more identifiable as law enforcement. Currently, officers’ uniforms/jackets may identify them simply as “DOC” (Department of Corrections), as “DOC OFFICER,” or as “OFFICER WA DEPT CORRECTIONS.” According to the Union’s witnesses, members of the public may not recognize the term “DOC”; on one occasion, there was an inquiry as to why a “dog officer” was present. In the Union’s view, the word “police” is universally understood. In some counties, CO’s or CCO’s who participate in enforcement actions with local law enforcement agencies wear jackets or placards issued by those agencies that identify them as “police.”

In similar circumstances, Gambling Commission armed officers wear jackets that say “Police” on the back and “Gambling Commission” on the front. Department of Homeland Security officers’ jackets say “Police Homeland Security.” Bureau of Alcohol, Tobacco and Firearms special agents’ jackets say “Police ATF.” Teamsters-represented CO’s who do transport have placards that say “Police.” In contrast, armed fully commissioned WSP employees’ jackets identify them by position (e.g., “Trooper,” “Sergeant,” or “Detective”), while unarmed limited commission WSP employees do not have insignia on their jackets.

The Employer has several concerns over using “Police” insignia. Members of the public could believe that CO’s or CCO’s were available to give assistance that they are not authorized, trained, or equipped to give. For example, Gambling Commission employees attend the basic Law Enforcement Academy; CO’s and CCO’s do not. The Employer surveyed the terminology used by comparable personnel on tactical gear in other states and found no single standard. In some jurisdictions, they are identified with some iteration of the word “parole” or “probation” or “corrections.” In others, they are identified as “Officer” or “Police” or “Police Officer.” Those that use “Police” tend to restrict them to armed officers.

The subject of appropriate insignia has been under discussion by the parties for a considerable time. Reasonable minds can differ as to the appropriate insignia. While the Union's concerns are legitimate, it has not shown that its proposed solution is necessary. In these circumstances, I award the status quo.

ARTICLE 22, SECTION 22.6 DRUG AND ALCOHOL FREE WORKPLACE - Reasonable Suspicion Testing

Article 22, Sections 22.5 and 22.6, of the 2015-17 Agreement, reads:

22.5 Reasonable Suspicion Testing - All Employees Performing Safety-Sensitive Functions, and all Department of Transportation, and Washington State Patrol Employees

A. Reasonable suspicion testing for alcohol, marijuana or controlled substances may be directed by the Employer for any employee performing safety-sensitive functions performing safety sensitive functions or any employee of the Department of Transportation or Washington State Patrol when there is reason to suspect that alcohol, marijuana or controlled substance use may be adversely affecting the employee's job performance or that the employee may present a danger to the physical safety of the employee or another.

B. Specific objective grounds must be stated in writing that support the reasonable suspicion. Examples of specific objective grounds may include, but are not limited to:

1. Physical symptoms consistent with controlled substance, marijuana and/or alcohol, use;
2. Evidence or observation of controlled substance, marijuana or alcohol use, possession, sale, or delivery; or
3. The occurrence of an accident(s) where a trained manager, supervisor or lead worker suspects controlled substance, marijuana and/or alcohol use may have been a factor.

C. Referral

Referral for testing will be made on the basis of specific objective grounds documented by a manager, supervisor or lead worker who has attended the training on detecting the signs/symptoms of being affected by controlled substances, marijuana, and/or alcohol and verified in person or over the phone by another trained manager, supervisor or lead worker.

D. Testing

When reasonable suspicion exists, employees must submit to alcohol, marijuana and/or controlled substance testing when required by the Employer. A refusal to test is considered the same as a positive test. When an employee is referred for testing, he or she will be removed immediately from duty and transported to the collection site. The cost of reasonable suspicion testing, including the employee's salary will be paid by the Employer.

22.6 Drug and Alcohol Testing - General

For all employees tested in accordance with Sections 22.4 and 22.5 above:

A. Testing will be conducted in such a way to ensure maximum accuracy and reliability by using the techniques, chain of custody procedures, equipment and laboratory facilities, which have been approved by the U.S. Department of Health and Human Services. Employees in the

same agency as the employee being tested will not do collection and processing of samples, excluding law enforcement officers using a breath-testing device. An employee notified of a positive controlled substance and/or marijuana test result may request an independent test of his or her split sample at the employee's expense. If the test result is negative, the Employer will reimburse the employee for the cost of the split sample test.

- B. An employee who has a positive test for alcohol, marijuana, and/or a positive controlled substance may be subject to disciplinary action, up to and including dismissal, based on the incident that prompted the testing, including a violation of agency drug and alcohol free workplace policies.

The Employer proposes to modify Article 22 so that it may test all employees, not just those performing safety sensitive functions. Toward that end, its proposal renumbers Section 22.5 as 22.6, modifies it, and adds a new Section 22.7, as follows:

22.6 Reasonable Suspicion Testing - All Employees ~~Performing Safety Sensitive Functions~~

A. Standards

Reasonable suspicion testing for alcohol, marijuana or controlled substances may be directed by the Employer for any employee ~~performing safety-sensitive functions performing safety sensitive functions~~ when there is reason to suspect that alcohol, marijuana or controlled substance usage may be adversely affecting the employee's job performance or that the employee may present a danger to the physical safety of the employee or another.

B. Specific Objective Grounds

Specific objective grounds must be stated in writing that support the reasonable suspicion. Examples of specific objective grounds may include, but are not limited to:

1. Physical symptoms consistent with alcohol, marijuana, or controlled substance use;
2. Evidence or observation of alcohol, marijuana, or controlled substance use, possession, sale, or delivery; or
3. The occurrence of an accident(s) where a trained manager, or supervisor suspects alcohol, marijuana, or controlled substance use may have been a factor.

C. Referral

Referral for testing will be made on the basis of specific objective grounds documented by a manager or supervisor who has attended the training on detecting the signs/symptoms of being affected by controlled substances, marijuana, and/or alcohol. The appointing authority or designee must approve the testing.

D. Testing

When reasonable suspicion exists, employees must submit to alcohol, marijuana, and/or controlled substance testing when required by the Employer. A refusal to test is considered



the same as a positive test. When an employee is referred for testing, he or she will be removed immediately from duty and transported to the collection site. The cost of reasonable suspicion testing, including the employee's salary will be paid by the Employer.

E. Testing Procedures

Testing will be conducted by an outside certified agency in such a way to ensure maximum accuracy and reliability by using the techniques, chain of custody procedures, equipment and laboratory facilities, which have been approved by the U.S. Department of Health and Human Services. All employees notified of a positive controlled substance, marijuana, and/or alcohol test result may request an independent test of their split sample at the employee's expense. If the test result is negative, the Employer will reimburse the employee for the cost of the split sample test.

F. Positive Test Result

A positive test result will be defined as any result qualifying as legally intoxicated under Department of Transportation standards. Except as provided in Article 22.5, an employee who has a positive alcohol, marijuana, and/or controlled substance test may be subject to disciplinary action, up to and including dismissal.

22.7 Training

Training will be made available to managers, supervisors, and Union Stewards. The training will include:

- A. The elements of the Employer's Drug and Alcohol Free Workplace Program;
- B. The effects of drugs and alcohol in the workplace;
- C. Behavioral symptoms of being affected by controlled substances, marijuana, and/or alcohol; and
- D. Rehabilitation services available.

The Union accepted this proposal, with the following modifications in Paragraph C of Section 22.6 and in Section 22.7:

C. Referral

Referral for testing will be made on the basis of specific objective grounds documented by a manager or supervisor **who is a currently certified National Institute of Justice Drug Recognition Expert** ~~who has attended the training on detecting the signs/symptoms of being affected by controlled substances, marijuana, and/or alcohol.~~ The appointing authority or designee must approve the testing.

...

22.7 Training

~~Training will be made available to m~~ **Managers**, supervisors, and Union Stewards **will be trained**. The training will include:

- A. The elements of the Employer's Drug and Alcohol Free Workplace Program;
- B. The effects of drugs and alcohol in the workplace;
- C. Behavioral symptoms of being affected by controlled substances, marijuana, and/or alcohol;  
~~and~~
- D. Rehabilitation services available; ~~and~~
- E. The employer will ensure that two stewards per section will be trained by and certified by the National Institute of Justice as Drug Recognition Experts and will maintain such certification.

The Employer's current Drug and Alcohol Free Workplace Policy makes employees represented by the Union, among others, "subject to pre-employment, post-accident, post-shooting, and reasonable suspicion alcohol and/or drug testing." It states that

Employees covered by the WFSE CBA who perform health and safety sensitive functions may be subject to pre-employment, post-accident, post-shooting incident, and reasonable suspicion alcohol and/or drug testing ...."

It does not address testing of employees in this bargaining unit who do not perform health and safety sensitive functions. It permits testing of all employees in the Teamsters unit. It does not require that the referring supervisor/manager be certified as a Drug Recognition Expert; no current supervisors or managers are so certified.

The Employer has approximately 78 supervisors, including work release supervisors. Until the Union proposed certification of the referring supervisor or manager as a Drug Recognition Expert, the Employer was unaware of that certification. According to Nagel, the National Institute of Justice does not provide Drug Recognition Expert training. The WSP sends officers to a 16-hour pre-school training and 56-hour full school training in Arizona. This is followed by approximately 40 hours of field certifications, then a knowledge exam that can take up to 8 hours to complete. Recertification involves 8 hours of drug impaired driving training and four evaluations every two years, for a total of about 20 hours over the 2-year certification cycle. The cost of training and equipment is approximately 3,000 per student for the initial training. According to Nagel, none of the other union contracts with the Employer require such certification. The Union insisted on the Drug Recognition Expert standard because testing is a physical invasion by the government and the stakes are incredibly high.

The Union's proposal for certification would require training at a level sufficient to permit the referring supervisor or manager to testify in court regarding intoxication. This level of training is unnecessary in a workplace setting where the employee may be referred for testing on reasonable suspicion. Unlike, e.g., a field sobriety test, where elements of subjectivity may be involved, workplace testing boils down to the presence or absence of substances in bodily fluids or breath. I award the Employer's language.

#### ARTICLE 25, SECTION 25.5 COMMUTE TRIP REDUCTION AND PARKING

The Union proposes to add a new Section 25.5 to Article 25, as follows:

**25.5 The Department of Corrections will provide each employee upon the employee's request, a regional, monthly transit pass at the beginning of each month.**

The Employer proposes to add a new Section 25.5 as follows:

**25.5 The Department of Corrections will provide an ORCA pass for employees stationed at the King County Criminal Justice Center.**

Article 25 of the 2015-17 Agreement includes the following related provisions:

- 25.1 The Employer will continue to encourage but not require employees covered by this Agreement to use alternate means of transportation to commute to and from work in order to reduce traffic congestion, improve air quality and reduce the need for parking.
- 25.2 Agencies will provide commute trip reduction incentives consistent with agency policies and within available resources.

The Employer currently has a Commute Trip Reduction policy that is applicable only to work sites that have 100 or more full-time employees - effectively, its CJC's in Seattle and Tacoma. The Employer implemented its proposal for ORCA passes for employees at the King County CJC as of August 1.

Some state agencies have implemented transit subsidies in various forms. Some of those were abandoned during the economic downturn but have recently been reinstated. The State Office of Administrative Hearings (OAH) provides regional transit passes for employees assigned to work sites in Thurston County, Spokane County, and King County. The State Board of Industrial Insurance Appeals provides transit passes for employees assigned to a work site in Thurston County. It also provides a nontaxable subsidy for vanpools and for Pierce Transit, King County Metro, Community Transit, Sound Transit, and the Washington State Ferry System. The State Department of Licensing reimburses employees for vanpools, buses, and ferries; its

commute trip reduction program applies to work sites with 100 or more employees, and to all offices in the Olympia-Lacey-Tumwater area.

The Union acknowledges that not all counties have transit passes. It seeks passes for employees assigned to work sites in those counties that have such passes. It argues that smaller agencies, with smaller budgets, provide much more substantial commute trip reduction benefits.

Of the counties where the Employer has bargaining unit employees, 24 have regional transit, and 4 do not. The Employer estimated the cost of providing passes to all bargaining unit employees in those counties that have regional transit passes at \$532,349.60. In its view, in most counties, there is sufficient parking and ease of access to its facilities to make transit passes unnecessary. It suggests that the Union narrow its proposal to urban counties or to those counties with transit, but argues that the Union's current proposal is too costly. It argues that the current language provides the necessary flexibility.

The Employer has not offered a definition of an "urban" county under its suggested means to narrow the Union's proposal. An indication of the counties where the benefit sought by the Union would be sufficiently beneficial to warrant a close look may be found in the policies of other state agencies, which subsidize transit in King, Pierce, Thurston, and Spokane Counties. The record is silent regarding whether the workplaces of those agencies lie in different environments than those of the Employer, or whether some of the Employer's workplaces in additional counties have specific commute challenges that would warrant a different priority for this benefit.

The testimony and argument on this proposal demonstrate that there is room for discussion between the parties. The record is insufficient at this stage of their discussions to warrant any change in the existing language of Article 25. I award the Employer's agreement to provide ORCA passes in King County.

#### ARTICLE 36, SECTION 36.7 EMPLOYEE RIGHTS - WORKLOAD

The Union proposes to modify Article 36, Section 36.7, as follows:

##### 36.7 Workload (Department of Corrections Only)

The Employer may adjust the caseload and/or work assignments of Community Corrections Officers and Community Corrections Specialists, if needed, when assigned offender groups or conducting training.

If an employee believes his or her workload is not achievable within the work time authorized by the Employer, the employee may seek the assistance of his or her supervisor. The supervisor is responsible for providing the employee with direction and guidance that may include the setting of priorities, adjustment of work, or other actions that will assist the employee in the accomplishment of his or her work assignments.

If the employee still has workload concerns after discussion with his or her supervisor, the employee may raise these concerns to his or her appointing authority. If the workload concerns are similar across the work unit, the union may raise these issues at the appropriate Union-Management Communications Committee under Article 37 of the parties' collective bargaining agreement.

The Agreement contains an MOU that is identical to this proposal, with an additional paragraph stating:

This MOU is not subject to the grievance procedure; however, the employee may file a complaint with their appointing authority or designee if the employee's supervisor or manager fails to discuss the employee's workload concerns with the employee.

At the General Government Table, management has agreed to maintain this MOU in its current form.

Although not explicitly stated in the proposal, the Union's summary of this proposal states that "This obligation is grievable." It acknowledges that management has the right to establish and direct work, but argues that employees cannot be expected to perform more than 40 hours' work in 40 hours. In its view, supervisors are leaving it to employees to prioritize work, a function that belongs to supervisors. It seeks to move the MOU language into the body of the Agreement and make it grievable to make it easier to track concerns and have a more concrete way to resolve workload issues.

Other than the unstated intent to make violations grievable, the proposed language adds nothing that is not already in the MOU. The other avenues available in the MOU provide an alternative to the grievance procedure. No compelling reason has been shown for this proposal. I award the status quo.

#### ARTICLE 37, SECTION 37.2 & SECTION 37.3 UNION-MANAGEMENT COMMUNICATION COMMITTEES - COMMITTEES & PARTICIPATION AND PROCESS

Paragraph 37.2.B of Article 37 of the Agreement provides for Union-Management Communication Committees (UMCC) meetings to be conducted "up to two (2) times per year, unless agreed otherwise." The Union proposes to modify the end of this paragraph as follows:

... Except for at the Department of Corrections, Committee meetings will be conducted up to two (2) times per year, unless agreed otherwise. At the Department of Corrections committee meetings will be conducted at least six (6) times per year, unless agreed otherwise.

The Union proposes to modify Paragraph 37.3 as follows:

37.3 Participation and Process

- A. The Union will provide the Employer with the names of its committee members at least ten (10) calendar days in advance of the date of the meeting in order to facilitate the release of employees. The Employer will release employee representatives to attend committee meetings if their absences do not cause a disruption of work. Employees will be granted reasonable time during their normal working hours, as determined by the Employer, to prepare for union management communication committee meetings. **In the Department of Corrections, the parties will exchange the names of their respective team members at least ten days prior to each meeting.**

The purpose of the first of these proposals is to ensure that the UMCC for this agency meets frequently enough to address the concerns that come up in a timely manner. For years, this UMCC has met monthly by agreement; in recent months it has met every other month. The Employer objects to being singled out for more meetings, and to committing to a frequency that may not be necessary.

The proposal is less onerous than long-standing practice, and allows the parties to reduce or increase the number of meetings by agreement. Setting a floor that is more consistent with the current practice reduces the potential for a new manager or Union official to read “up to two (2) times a year” as a ceiling. Setting a different frequency is not unprecedented; the Department of Social and Health Services provides for UMCC meetings “up to four (4) times per year, unless agreed otherwise.” I award the Union’s proposal.

The purpose of the second of these proposals is to permit the Union to know who it should bring when a manager who is responsible for a subject will be at the UMCC meeting. The existing language, requiring the Union to notify the Employer of its representatives, serves a different purpose, of permitting the Employer to arrange coverage for the employee’s meeting time. The Employer is concerned because other commitments may make it impossible for a planned attendee to be there. Aylward testified that last-minute changes happen on both sides. That is not surprising in this busy workplace. Despite the existing commitment for the Union to provide the names of its team members, the UMCC has managed to muddle through when work exigencies sideline a Union representative. Allowing the Union to plan which representatives to bring has advantages for both sides. If, for example, it was known that a particular manager was not going to be at the upcoming UMCC meeting, the Union would have the opportunity to let a steward who planned to attend solely to address an issue

with that manager remain at work rather than attend. That, in turn, would reduce the administrative time and cost of covering for that steward's attendance. I award the Union's proposal.

### SUMMARY OF AWARD

The wage range adjustments awarded are:

Classification	FTE's	Old Range	New Range
CCA	1	36	36 "CC Range"
CCO1	0	39	45 "CC Range"
CCO 2	472	49	52 "CC Range"
CCO 3	223	51	55 "CC Range"
CCS	102	54	59 "CC Range"
CO 2	45	43 "CC Range"	46 "CC Range"
CO 3	7	47 "CC Range"	50 "CC Range"
CS 3	6	57 "CC Range"	57 "CC Range"
CHO 3	26	60 "CC Range"	60 "CC Range"
CHO 4	4	63 "CC Range"	63 "CC Range"
CMHC 2	0	47 "CC Range"	49 "CC Range"
CMHC 3	6	49 "CC Range"	55 "CC Range"

#### ARTICLE 42.1 STANDBY PAY:

Status quo.

#### ARTICLE 8, SECTION 8.11 TRAINING AND EMPLOYEE DEVELOPMENT:

Status quo.

#### ARTICLE 20, SECTION 20.10 SAFETY AND HEALTH:

##### 20.10 Department of Corrections

- A. The Employer will provide sufficient staff for the transportation of offenders in a safe manner in accordance with agency policy.
- B. The Employer will continue to provide controlled environments and the use of safety glass in its field offices for the safety of staff.
- C. The Employer will offer training to enhance staff's proficiency at detecting potential risk and dangerous situations. The Employer will also offer training on active threats and techniques of de-escalation.

- D. The parties agree to maintain and utilize the Community Corrections Division Security Advisory Committee and agree to use the Committee as one method to evaluate and propose solutions to improve the operational safety of staff performing the work of community corrections.
- E. The parties commit to work together within the term of this agreement to find a shared solution to the real-time monitoring concern.

ARTICLE 21, SECTIONS 21.4 & 21.5 UNIFORMS, TOOLS AND EQUIPMENT FIREARMS TRAINING AND AMMUNITION & IDENTIFICATION AS LAW ENFORCEMENT

Section 21.4: Status quo

Section 21.5: Status quo

ARTICLE 22, SECTION 22.6 DRUG AND ALCOHOL FREE WORKPLACE - Reasonable Suspicion Testing

22.6 Reasonable Suspicion Testing - All Employees ~~Performing Safety-Sensitive Functions~~

A. Standards

Reasonable suspicion testing for alcohol, marijuana or controlled substances may be directed by the Employer for any employee when there is reason to suspect that alcohol, marijuana or controlled substance usage may be adversely affecting the employee's job performance or that the employee may present a danger to the physical safety of the employee or another.

B. Specific Objective Grounds

Specific objective grounds must be stated in writing that support the reasonable suspicion. Examples of specific objective grounds may include, but are not limited to:

1. Physical symptoms consistent with alcohol, marijuana, or controlled substance use;
2. Evidence or observation of alcohol, marijuana, or controlled substance use, possession, sale, or delivery; or
3. The occurrence of an accident(s) where a trained manager, or supervisor suspects alcohol, marijuana, or controlled substance use may have been a factor.

C. Referral

Referral for testing will be made on the basis of specific objective grounds documented by a manager or supervisor who has attended the training on detecting the signs/symptoms of being affected by controlled substances, marijuana, and/or alcohol. The appointing authority or designee must approve the testing.

D. Testing

When reasonable suspicion exists, employees must submit to alcohol, marijuana, and/or controlled substance testing when required by the Employer. A refusal to test is considered the same as a positive test. When an employee is referred for testing, he or she will be



removed immediately from duty and transported to the collection site. The cost of reasonable suspicion testing, including the employee's salary will be paid by the Employer.

E. Testing Procedures

Testing will be conducted by an outside certified agency in such a way to ensure maximum accuracy and reliability by using the techniques, chain of custody procedures, equipment and laboratory facilities, which have been approved by the U.S. Department of Health and Human Services. All employees notified of a positive controlled substance, marijuana, and/or alcohol test result may request an independent test of their split sample at the employee's expense. If the test result is negative, the Employer will reimburse the employee for the cost of the split sample test.

F. Positive Test Result

A positive test result will be defined as any result qualifying as legally intoxicated under Department of Transportation standards. Except as provided in Article 22.5, an employee who has a positive alcohol, marijuana, and/or controlled substance test may be subject to disciplinary action, up to and including dismissal.

22.7 Training

Training will be made available to managers, supervisors, and Union Stewards. The training will include:

- A. The elements of the Employer's Drug and Alcohol Free Workplace Program;
- B. The effects of drugs and alcohol in the workplace;
- C. Behavioral symptoms of being affected by controlled substances, marijuana, and/or alcohol; and
- D. Rehabilitation services available.

ARTICLE 25, SECTION 25.5 COMMUTE TRIP REDUCTION AND PARKING

25.5 The Department of Corrections will provide an ORCA pass for employees stationed at the King County Criminal Justice Center.

ARTICLE 36, SECTION 36.7 EMPLOYEE RIGHTS - WORKLOAD

Status quo

ARTICLE 37, SECTION 37.2 & SECTION 37.3 UNION-MANAGEMENT COMMUNICATION COMMITTEES - COMMITTEES & PARTICIPATION AND PROCESS

Section 37.2, Paragraph B:

... Except for at the Department of Corrections, committee meetings will be conducted up to two (2) times per year, unless agreed otherwise. At the Department of Corrections committee meetings will be conducted at least six (6) times per year, unless agreed otherwise.

Section 37.3

37.3 Participation and Process

- A. The Union will provide the Employer with the names of its committee members at least ten (10) calendar days in advance of the date of the meeting in order to facilitate the release of employees. The Employer will release employee representatives to attend committee meetings if their absences do not cause a disruption of work. Employees will be granted reasonable time during their normal working hours, as determined by the Employer, to prepare for union management communication committee meetings. In the Department of Corrections, the parties will exchange the names of their respective team members at least ten days prior to each meeting.



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LUELLA E. NELSON - Interest Arbitrator

## WITNESSES FOR THE UNION

ALIA GRIFFING, Director of Research and Public Policy, Washington Federation of State Employees  
TON JOHNSON, Labor Advocate and Lobbyist for Law Enforcement, Washington Federation of State Employees  
MICHAEL MESSINA, Assistant Director of Department of Research and Collective Bargaining Services, American Federation of State County and Municipal Employees  
LLOYD RAY DeSHAZER, Corrections Specialist 3, Community Corrections Division, Department of Corrections  
JUDY KUSCHEL, Community Corrections Specialist, Community Corrections Division, Department of Corrections; Vice President, Washington Federation of State Employees  
JON OGLESBY, Community Corrections Officer 2, Community corrections Division, Department of Corrections; Shop Steward and State-Wide Policy Chair, Washington Federation of State Employees  
KARLA MORTENSON, Hearing Officer, Community Corrections Division, Department of Corrections  
NANCY TRAVIS, Hearing Officer 3, Community Corrections Division, Department of Corrections  
JOSHUA STUECKLE, Acting Special Agent in Charge of Regulation Unit, Washington State Gambling Commission  
IRIS PETERSON, Community Corrections Officer 3, Community Corrections Division, Department of Corrections; Executive Board Member, Washington Federation of State Employees  
SEAN RAYBELL, Community Corrections Specialist, Community Corrections Division, Department of Corrections; Exec Board Member, Washington Federation of State Employees  
KATHY ANDRUSS, retired  
SHERRI-ANN BURKE, Labor Advocate, Washington Federation of State Employees  
JOHN CONATY, Community Corrections Specialist, Community Corrections Division, Department of Corrections  
BILL COPLAND, Family Services Specialist, Community Corrections Division, Department of Corrections; Shop Steward, Washington Federation of State Employees  
ANITA HUNTER, General Counsel, Washington Federation of State Employees

## WITNESSES FOR THE EMPLOYER

JODY BECKER-GREEN, Deputy Secretary, Department of Corrections  
ANMARIE AYLWARD, Assistant Secretary for Community Corrections Division, Department of Corrections  
KARL NAGEL, Senior Labor Negotiator, Office of Financial Management, Labor Relations Section  
JIM CRAWFORD, Assistant Director for Budget, Office of Financial Management  
ELLIOT R. SUSSELES, Senior Vice President and National Practice Leader, Segal Waters Consulting  
TRANQUILINA (TINA) COOLEY, Classification and Compensation Supervisor, Office of Financial Management  
MELINDA ASLAKSON, Senior Compensation and Policy Analyst, Office of Financial Management, State Human Relations Division, Enterprise Classification and Compensation Section  
JOSE ZUNIGA, Electronic Security Systems Manager, Emergency Operations Unit, Department of Corrections  
MICHAEL DAHL, Captain, Commander of Motor Carrier Safety Division, Washington State Patrol  
STEVE JOHNSON, Acting Senior Operations Administrator, Community Corrections Division, Department of Corrections  
JEFF FRICE, Field Administrator, Community Corrections Division, Department of Corrections  
TOMAS FITHIAN, Security and Emergency Management Administrator, Community Corrections Division, Department of Corrections

## EXHIBITS

### Joint

- J-1 Certification of Issues to Interest Arbitration from PERC
- J-2 Memorandum of Understanding Between State of WA and WFSE
- J-3 Collective Bargaining Agreement Between State of WA and WFSE 2015-2017
- J-4 Stipulation Between Parties 7/29/16

### Employer

#### GENERAL INFORMATION<sup>11</sup>

- E-1 DOC Organizational Chart
- E-2 DOC Mission Statement, Executive Administration, Division and Programs
- E-3 Percentage of DOC Employees by Representation
- E-4 Community Corrections Fact Sheet
- E-5 WFSE-Two Separate Bargaining Processes
- E-6 WFSE-Job Classes
- E-7 Washington State Budget Process
- E-8 Economic and Revenue Forecast Council Executive Summary
- E-9 State Budget Overview (PowerPoint)
- E-10 Recent Court Orders in McCleary v. State of Washington
- E-11 Community Corrections Program Budget Overview
- E-12 Major Sentencing Changes Charts
- E-13 WFSE Corrections and Custody Officer 2 Sample Position Description

#### ARTICLE 42-COMPENSATION

- E-14 RCW 41.06.152 Job Classification Revisions, Class Studies, Salary Adjustments-Limitations
- E-15 Classification and Compensation Proposal Analysis Summary-Community Corrections Officer 1, 2, 3 and Community Corrections Specialist
- E-16 Classification and Compensation Proposal Analysis Summary-Corrections Mental Health Counselor 1, 2 and 3
- E-17 Salary Adjustment Proposal Corrections & Custody Officer 2 and 3
- E-18 Cost of State and Union's Proposals
- E-19 Cost Comparison of State and Union Proposals
- E-20 Resume-Elliot R. Susseles, Senior Vice President, Segal Company
- E-21 Segal 2016 Compensation Survey
- E-22 Segal 2016 Compensation Survey Results PowerPoint
- E-23 Union Compensation Proposal 6/14/16
- E-24 Union Compensation Proposal 6/30/16
- E-25 Employer Final Compensation Proposal 7/29/16

#### ARTICLE 8-TRAINING AND EMPLOYEE DEVELOPMENT

- E-26 CCO Lead Position Description
- E-27 CCO Training Guide (Section Specific)
- E-28 Teaching Points for New CCO's
- E-29 CCO Training List
- E-30 CCO Training Checklist

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<sup>11</sup> The index of Employer exhibits in the transcript, which is taken from the index provided by the Employer, bears incorrect dates for three exhibits. I have corrected the dates in this list of exhibits.

- E-31 2017-19 Biennial Operating Budget Requests
- E-32 Union Final Proposal 4/26/16
- ARTICLE 20-SAFETY AND HEALTH**
- E-33 Memo RE: Community Corrections Safety Committee
- E-34 CCD Safety Requests and Costs for 2015-2017
- E-35 Highlights from CCD Security Advisory Committee
- E-36 Statewide Community Corrections Survey
- E-37 DOC Policy - Field Work Protocols
- E-38 DOC Policy - Arrest and Search
- E-39 Sample Field Itinerary
- E-40 Union Final Proposal 6/30/16
- E-41 Employer Final Proposal 7/28/16
- ARTICLE 21-UNIFORMS, TOOLS AND EQUIPMENT**
- E-42 Ammunition Expenditures, Budget & Costs
- E-43 Union Final Proposal ~~5/23/16~~ 4/26/16
- E-44 Employer Final Proposal 5/23/16
- ARTICLE 22-DRUG AND ALCOHOL FREE WORKPLACE**
- E-45 Union Final Proposal ~~5/23/16~~ 6/21/16
- E-46 Employer Final Proposal ~~6/21/16~~ 5/23/16
- ARTICLE 25-COMMUTE TRIP REDUCTION & PARKING**
- E-47 Agreement for Purchase of ORCA Cards
- E-48 Cost of Union's Proposal
- E-49 Union Final Proposal 4/26/16
- E-50 Employer Final Proposal 7/11/16
- ARTICLE 36-EMPLOYEE RIGHTS**
- E-51 Union Final Proposal 4/26/16
- ARTICLE 37-UMCC**
- E-52 Union Final Proposal 6/14/16
- ADDITIONAL EMPLOYER'S EXHIBITS**
- E-53 Community Corrections Division Organizational Chart
- E-54 Teamsters 2015-2017 CBA Articles 13 & 14
- E-55 E-mails RE: DRE Training
- E-56 Teamsters 2015-2017 CBA Article 5
- E-57 RCW 41.80.020 and RCW 41.80.040
- E-58 CC Firearm Practice Costs
- E-59 DOC Policy - Drug and Alcohol Free Workplace
- E-60 Community Corrections Organization Charts Sections 1-7
- E-61 Arrest Statistics
- E-62 Community Corrections Identification Apparel
- E-63 Violator Transport Staff Budget Request
- E-64 Executive Order 14-02
- E-65 Placards for Tactical Gear
- E-66 E-mail from Luis Gonzales RE: Discrepancies in Segal Report
- E-67 Employer's Closing PowerPoint

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**BACKGROUND**

- U-1 Union Summary of Issues for Arbitration to Arbitrator
- U-2 Union Department of Corrections Bargaining Unit Descriptions
- U-3 Union Bargaining Unit Members by Work County and Job Class

- U-4 Union Proposal Article 8 4/26/16
- U-5 Union Proposal Article 20 6/30/16
- U-6 Union Proposal Article 21 4/26/16
- U-7 Union Proposal Article 25 4/26/16
- U-8 Union Proposal Article 36 4/26/16
- U-9 Union Proposal Article 37 6/14/16

#### COMPENSATION

- U-10a Union's Compensation Proposal Corrections & Custody Officer 2 & 3 6/14/16
- U-10b Union's Compensation Proposal Corrections Mental Health Counselor 3 [undated]
- U-10c Union's Compensation Proposal Corrections Specialist 3 [undated]
- U-10d Union's Compensation Proposal Corrections Hearings Officer 3 & 4 [undated]
- U-10e Union's Compensation Proposal Community Corrections Assistant; Community Corrections Officer 1, 2, 3; and Community Corrections Specialist [undated]
- U-10f Union's Compensation Proposal Standby Pay for Overtime Exempt Employees 6/30/16

#### EMPLOYER DESCRIPTIONS OF JOB DUTIES OF CLASSES INVOLVED

- U-11a Employer's Draft Class Specifications Community Corrections Officer 1
- U-11b Employer's Draft Class Specifications Community Corrections Officer 2
- U-11c Employer's Draft Class Specifications Community Corrections Officer 3
- U-11d Employer's Draft Class Specifications Community Corrections Specialist
- U-11e Employer's Draft Class Specifications Corrections Specialist 3
- U-11f Employer's Draft Class Specifications Corrections and Custody Officer 2
- U-11g Employer's Draft Class Specifications Corrections and Custody Officer 3
- U-11h Employer's Draft Class Specifications Corrections Mental Health Counselor 3

#### BACKGROUND REGARDING THE DUTIES AND ROLES OF EMPLOYEES

- U-12 Major Sentencing Changes DOC
- U-13 Community Supervision Caseloads
- U-14 Final Bill Report ESSB 5990
- U-15 Final Bill Report ESSB 5256
- U-16 Final Bill Report ESSB 5288
- U-17 Final Bill Report ESSB 5891
- U-18 Final Bill Report 2E2SSB 6204 and Session Law
- U-19 Changing Community Supervision May 2012
- U-20 Caseload Forecast Council Washington State-Corrections June 15, 2016

#### SALARY COMPARATORS AND CLASS INFORMATION

- U-21 AFSCME International Salary Survey Corrections
- U-22 2016 Segal State of Washington Corrections WFSE Survey
- U-23 2014 Segal State of Washington Salary Survey Department of Corrections
- U-24 Collective Bargaining Agreement State of Washington/Department of Corrections Teamsters 2015-2017
- U-25 Correctional Mental Health Counselor WFSE Class Specification
- U-26 Correctional Mental Health Counselor Teamsters Class Specification
- U-27 Mental Health Practitioner Class Specification
- U-28 Corrections and Custody Officer 2 Class Specification
- U-29 Corrections and Custody Officer 2 Class Specification WFSE
- U-30 Corrections and Custody Officer 3 Class Specification
- U-31 Corrections and Custody Officer 3 Class Specification WFSE
- U-32 Classification Counselor 1 Class Specification Teamsters
- U-33 Classification Counselor 2 Class Specification Teamsters

#### ARTICLE 20-SAFETY AND HEALTH

- U-34 Washington State Patrol Emergency Dispatch Study

ARTICLE 21-UNIFORMS AND EQUIPMENT

U-35 Monthly West CCD Firearms Practice Data

ARTICLE 25-COMMUTE TRIP REDUCTION

U-36 Commute Trip Reduction Policy, Office of Administrative Hearings, State of WA

U-37 Commute Trip Reduction Policy, BIIA, State of WA

U-38 Commute Trip Reduction Policy, DOC, State of WA

U-39 Commute Trip Reduction Policy, DOH, State of WA

U-40 Commute Trip Reduction Policy, DOL, State of WA

ECONOMIC DATA

U-41 State Negotiations WFSE 2017-2019 Fact Book

U-42 State Population Forecast

U-43 Union's Standby Pay Proposal, 6/30/16, hand-modified 8/1/16

U-44 Ton Johnson Notes

U-45 Job Titles Surveyed

U-46 State of Washington Class Specification Program Specialist 4 Range 56 - Teamsters

U-47 State of Washington Class Specification Program Specialist 4 Range 55 - Teamsters

U-48 Employer's Article 20 Proposal, 6/30/16