

**FISH AND WILDLIFE OFFICERS GUILD**

**and**

**STATE OF WASHINGTON**

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**DECISION AND AWARD OF ARBITRATOR**

**PERC # Case 132969-I-20**

**and**

**Case 132968-M-20**

**JEFFREY W. JACOBS**

**ARBITRATOR**

**September 29, 2020**

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IN RE ARBITRATION BETWEEN:

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FISH AND WILDLIFE OFFICERS GUILD

and

STATE OF WASHINGTON

**DECISION AND AWARD OF ARBITRATOR  
PERC # 132969-1-20 & 132968-M-20<sup>1</sup>**

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**APPEARANCES:**

**FOR THE UNION:**

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President of the FWOG  
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Keith Kirsch, WDFW Officer  
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**FOR THE STATE:**

Gil Hodgson, State Office of the Attorney General  
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Nona Snell, Ass't Director of OFM  
Leslie Connelly, Budget Analyst for OFM  
Angie Gill, Policy Analyst, OFM  
Captain Bob Weaver  
Deputy Chief, Paul Golden

**PRELIMINARY STATEMENT**

The parties were unable to resolve certain issues concerning the terms of the collective bargaining agreement and the matter was heard by video conference over 6 days, September 10, 11, 13, 14, 15 and 16. PERC submitted the following issues for certification: Article 5 – Hiring and Appointments; Article 11- Holidays; Article 14 – Shared Leave; Article 26.2 – Off-Duty Conduct; Article 40 – Classification; Article 41 – Compensation; Article 44 – Work Related Injury or Illness.

The parties agreed prior to the arbitration that there was a resolution of Article 35 – Layoff and Recall and that it would be removed from the successor CBA. The parties also agreed to continue the language of Article 26.2, Off-Duty Employment in the successor CBA as well. Accordingly, those issues will not be discussed or decided herein. The parties also agreed to use a single arbitrator to hear and decide the matter due to the time constraints set forth in the applicable statutes.

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<sup>1</sup> PERC's September 1, 2020 letter requires that the "I" designation be used in future references.

## BACKGROUND DISCUSSION

The record in this matter was voluminous to say the least. The matter was tried over the course of 5 days and involved many thousands of pages of exhibits submitted into evidence both before the hearing as well as during it.<sup>2</sup> In addition, there were several discussions held prior to the actual hearing itself regarding the submissions of documents and disputes about the timing of those submissions and pre-hearing briefs and submissions as well.

Initially it is important to discuss some general matters pertaining to the standards by which interest arbitrations should be decided and how those principles applied to this unique record.

The Guild submitted a helpful chart showing the areas of agreement and those of disagreement in these negotiations. As a background matter, the areas of agreement are listed in the chart below and will not be further discussed here. Only those areas where the parties disagreed will be discussed here.

That chart is as follows:<sup>3</sup>

### ANALYSIS OF CONTRACT PROPOSALS<sup>4</sup>

SECTIONS	STATE PROPOSAL	GUILD PROPOSAL	BASIS FOR GUILD PROPOSAL
5.1.A Hiring and Appointments- IBEW/UA	Delete entire subsection	Delete entire subsection	Inapplicable coalition language
5.1.B Hiring and Appointments- IBEW	Delete entire subsection	Delete entire subsection	Inapplicable coalition language
5.1.C Hiring and Appointments- IAFF	Delete entire subsection	Delete entire subsection	Inapplicable coalition language
<b>5.4 Types of Appointment</b>	<b>Delete entire section other than “non-permanent” appointments and “in-training employment”</b>	<b>Delete entire section</b>	<b>Guild rejects retaining inapplicable Coalition language on nonpermanent and in training employment. The Coalition language</b>

<sup>2</sup> The Guild submitted nearly 7000 pages of documents prior to the hearing as well as additional documents during the hearing. While there was some duplication, the State also submitted several thousand pages of documents as well.

<sup>3</sup> The State submitted a similar chart at on the last day of hearing. This showed a similar set of agreements and disagreements and in the interest of brevity, it will not be re-produced here.

<sup>4</sup> “CCL” – is defined as “current contract language” and is intended to convey the desire to retain the language in the coalition CBA for 2019-2021. The bold areas are those matters in dispute; the areas in italics are those with which the Guild and the State agree upon a review of the information presented at the hearing. Those items will not be further discussed at this point.

			should have no application to a law enforcement contract that, under the Guild proposal, would have a single officer classification with an 18-month probation period from the date of hire. See 5.5.A below and Article 41.
<b>5.5.A Review Periods- Probationary Period</b>	<b>Retain probationary period of 12 months following initial probationary period (referred to as trial service period) of 6 months (State proposal would increase to 12 months); Delete inapplicable coalition language</b>	<b>Change duration of probationary period from 12 to 18 months; Delete language requiring new probationary period if employee transfers or is promoted during probationary period; Delete reference to non-permanent appointments.</b>	<b>Guild proposes a single classification of Officer with a single 18 month probation period for the date of hire.</b>
<b>5.5.B Review Periods- Trial Service Period</b>	<b>Extend default trial service period to 12 months.</b>	<b>Delete entire subsection</b>	<b>Delete the separate “trial service period” and replace with the Guild’s 18 month probation period above.</b>
11.2.C Holiday Rules- FTEs with M-F Schedule	Delete entire subsection	Delete entire subsection	Inapplicable coalition language
<b>11.2.D Holiday Rules- F&amp;W Officers</b>	<b>CCL</b>	<b>Change requirement that employees work all 3 days of a holiday weekend to receive holiday OT pay, to providing holiday OT pay for one day worked of a holiday weekend, regardless of whether the employee works all 3 days.</b>	<b>Guild seeks to modify the current requirement that officers have to work both weekend days to be guaranteed the holiday premium. Guild compromise proposal would require officers to work one weekend day or the other, but not both.</b>
11.2.E Holiday Rules- Night shift employees	Delete entire subsection	Delete entire subsection	Inapplicable coalition language
<b>11.2.F Holiday Rules- PTE pay</b>	<b>Delete entire subsection</b>	<b>CCL</b>	<b>While there are no current part time employees LEOFF officers may be part time and the Guild sees</b>

			<b>no reason to remove this language</b>
11.2.H Holiday Rules- IAFF	Delete entire subsection	Delete entire subsection	Inapplicable coalition language
<b>11.3.A Personal Holidays- employee working less than 6 continuous months</b>	<b>Delete entire subsection</b>	<b>CCL</b>	<b>No basis to remove current language</b>
<b>11.3.E Personal Holidays- PTE personal holidays</b>	<b>Delete entire subsection</b>	<b>CCL</b>	<b>See above comment regarding part time employment</b>
<b>11.3.F Personal Holidays- hours for personal holidays</b>	<b>Clarify that personal holidays are the equivalent of 8 hours.</b>	<b>CCL</b>	<b>Appears to remove current benefit.</b>
<i>11.4 CWA- Observance of Holidays</i>	<i>Delete entire section</i>	<i>CCL</i>	<i>Guild agrees this language is inapplicable and modifies to agree to delete</i>
<b>Article 14 Shared Leave</b>	<b>Clarify date by which parental leave must be used (14.1.C.11), delete use of shared leave for work related injury (14.2.B), clarify language regarding deleting leave (14.3D), limit use of shared leave for industrial replacement leave</b>	<b>CCL</b>	<b>The State language regarding 14.3D regarding depletion of leave and 14.1 C11 does not appear necessary but may be a clarification of current language.</b>  <b>The language in 14.2B and 14.3D regarding using of shared leave for work related injury appears contradictory. The State has refused to accept the Guild’s workers comp time off proposal that would mitigate any of these changes.</b>
<b>Article 49 Classification</b>	<b>CCL</b>	<b>Delete entire article</b>	<b>Coalition language that addresses “classification plans, classification “position reviews,” “reallocation” of classifications, has no place in a law enforcement contract, especially one subject to the statutory interest</b>



			<b>arbitration process.</b>
<b>41.1.A General Service Pay Range Assignments- General classification pay range</b>	<b>Delete entire subsection, suspending pay increases and step progression for duration of contract</b>	<b>Revise current pay steps, and increase revised pay step pay by 7.2% effective July 1, 2021.</b>	
<b>41.1.B General Service Pay Range Assignments- General employee pay range and steps</b>	<b>Delete entire subsection, suspending pay increases and step progression for duration of contract</b>	<b>Delete entire subsection</b>	
<b>41.1.C General Service Pay Range Assignments- Year 1 general pay increases</b>	<b>Retain current range and steps, suspending pay increases and step progression for duration of contract</b>	<b>Delete entire subsection</b>	<b>Year 1 pay increase already addressed in Guild’s proposal for 41.1.A.</b>
<b>41.1.D General Service Pay Range Assignments- Year 2 general range and step increases</b>	<b>Delete entire subsection, suspending pay increases and step progression for duration of contract</b>	<b>Increase revised pay step pay by 7.2% effective July 1, 2022.</b>	
<b>41.1.E General Service Pay Range Assignments- \$14 minimum wage</b>	<b>Delete entire subsection</b>	<b>Delete entire subsection</b>	<b>Inapplicable coalition language</b>
<b>41.1.F General Service Pay Range Assignments- Increases in pay to employee pay exceeding pay range</b>	<b>Delete entire subsection</b>	<b>Delete entire subsection</b>	<b>Inapplicable coalition language</b>
<b>41.1.G General Service Pay Range Assignments- Longevity increase</b>	<b>CCL</b>	<b>Revise longevity from a single step to the following compounding rates:</b>  <b><u>Years of Service</u></b> <b><u>%</u></b> <b>5</b> <b>3%</b> <b>10</b> <b>2%</b> <b>15</b> <b>2%</b> <b>20</b>	

		2% 25 1%	
41.1.H General Service Pay Range Assignments- Local minimum wages	Delete entire subsection	Delete entire subsection	Inapplicable coalition language
<b>41.2- Wage Schedule</b>	<b>Delete entire section</b>	<b>Implement pay classification and step compression, combining Officer 1 and 2 classifications while creating a recruit/academy step; Move 10% pay increase for working 171-hour schedule from Appendix I to 41.2; Delete subsections 41.2.B-F.</b>	
41.3 “N1” Pay Range Assignments	Delete entire section	Delete entire section	Inapplicable coalition language
41.4 “SP” Pay Range Assignments	Delete entire section	Delete entire section	Inapplicable coalition language
41.5 Recruitment or Retention higher salary range assignment	Delete entire section	Delete entire section	Inapplicable coalition language
<b>41.6 Pay for Performing the Duties of a Higher Classification</b>	<b>CCL</b>	<b>Change required time period of performing higher classification duties from 30 days to 5 days; Change 5-10% pay increase to 5% or rate of supervisor pay, whichever is higher.</b>	
<b>41.7.A Establishing Salaries for New Employees and New Classifications- Assignment of range and step</b>	<b>CCL</b>	<b>Clarify that newly hired employees will be placed at the appropriate range and step, corresponding with their law enforcement experience.</b>	<b>Defines credit allowed for prior law enforcement to be placed into Guild proposed pay step system.</b>
41.7.B Establishing Salaries for New Employees and New Classifications-	Delete entire subsection	Delete entire subsection	Inapplicable coalition language
<b>41.7.C Establishing</b>	<b>CCL</b>	<b>Delete entire subsection</b>	<b>See discussion above</b>

<b>Salaries for New Employees and New Classifications-</b>			regarding Article 40 on “Classifications.” Issues around new law enforcement classifications maybe subject to negotiation and binding arbitration
<b>41.8.A Periodic Increases</b>	<b>CCL</b>	<b>Increase salary ranges and steps by 7.2% in year 1 of CBA</b>	<b>Guild proposal for pay step system</b>
<b>41.8.B Periodic Increases</b>	<b>CCL</b>	<b>Increase salary ranges and steps by 7.2% in year 2 of CBA</b>	<b>Guild proposal for pay step system</b>
<b>41.8.C Periodic Increases</b>	<b>CCL</b>	<b>Clarify FWOG proposal, where new employees will begin at a step for “recruit/academy,” and progress to a new step after 6 months and annually thereafter, with a 6% pay increase at each step.</b>	<b>Guild proposal for pay step system</b>
41.8.D Periodic Increases	Delete entire subsection	Delete entire subsection	Inapplicable coalition language
<b>41.8.E Periodic Increases</b>	<b>CCL</b>	<b>Delete entire subsection</b>	<b>Guild proposal for pay step system</b>
41.8.F Periodic Increases	Delete entire subsection	Delete entire subsection	Inapplicable coalition language
<b>41.9 Salary Assignment Upon Promotion</b>	<b>CCL, except some inapplicable coalition language</b>	<b>Delete entire section</b>	<b>Guild believes none of this language applies to this bargaining unit</b>
<b>41.10 Salary Adjustments</b>	<b>CCL</b>	<b>Delete entire section</b>	<b>This language is inapplicable under the Guild’s revised pay step and longevity system.</b>
<i>41.11 Demotion</i>	<i>CCL</i>	<i>Delete entire section</i>	<i>The Guild is not opposed to retaining this language</i>
<b>41.12 Transfer</b>	<b>CCL</b>	<b>Delete entire section</b>	<b>Inapplicable coalition language</b>
<b>41.13 Reassignment</b>	<b>CCL</b>	<b>Delete entire section</b>	<b>Inapplicable coalition language</b>
<b>41.17 Callback</b>	<b>Delete subsection A, removing requirement that 3 hours of pay be provided if callback is required, and removing</b>	<b>CCL</b>	<b>Removes current benefit of callback pay and protection of officers against last minute schedule changes.</b>

	<b>requirement that employees be notified of a change in the start time of their next shift before the end of their previous shift.</b>		
41.18 Shift Premium (Except FWOG and Teamsters Local 760)	Delete entire section	Delete entire section	Inapplicable coalition language
41.19 Shift Premium for Registered Nurses and Related Classes	Delete entire section	Delete entire section	Inapplicable coalition language
41.20 Supplemental Shift Premium for Nurses	Delete entire section	Delete entire section	Inapplicable coalition language
41.21 Standby	Delete entire section	Delete entire section	Inapplicable coalition language
<b>41.24.B Assignment Pay Provisions-approved classes</b>	CCL	<b>Delete entire subsection</b>	<b>Inapplicable with FWOG-proposed deletion of Appendix I</b>
<b>41.24.C Assignment Pay Provisions-specialty positions</b>	<b>CCL (\$10 per hour while performing duties for specialties, 1 hour OT per shift worked as FTO)</b>	<b>Identify premium pay for the following specialty positions:</b> <b>Instructors</b> <b>3%</b> <b>Animal Handlers</b> <b>3%</b> <b>Divers</b> <b>3%</b> <b>FTO</b> <b>5%</b>	
<b>41.25 Medical/Dental Expense Account</b>	Delete entire section	CCL	<b>This is a benefit officers should retain. This is not employer provided “insurance” coverage but it a payroll deduction issues that impacts employee federal taxes.</b>
<b>41.26 Dependent Care Salary Reduction Plan</b>	Delete entire section	CCL	See above
<b>41.27 Pretax Health Care Premiums</b>	Delete entire section	CCL	See above
<b>41.28 Voluntary Separation Incentive</b>	Delete entire section	CCL	See above
<b>41.29 Emergency/Disaster</b>	Delete entire section	CCL	<b>No evidence to support State claim that these</b>

<b>Operations Compensation</b>			<b>officers would not be eligible for this payment.</b>
<i>41.30 Board Certification Payment UPW and AWP</i>	<i>Delete entire section</i>	<i>CCL</i>	<i>Guild agrees this language is inapplicable.</i>
41.32 Special Commitment Center	Delete entire section	Delete entire section	Inapplicable coalition language
<b>41.33 Geographic Premium Pay</b>	<b>CCL</b>	<b>Increase geographic premium pay for King County (5% to 10%), Snohomish County (0% to 5%), and Pierce County (0% to 3%).</b>	<b>Aligns Officers with WSP CBA</b>
<b>41 [New Section] Education Pay</b>	<b>CCL</b>	<b>Provide new incentive pay (up to 1) for those that have obtained an Associate Degree (2%) or Bachelor Degree (4%).</b>	<b>Aligns Officers with WSP CBA</b>
<b>44.1 Compensable Work-Related Injury or Illness Leave</b>	<b>CCL</b>	<b>Provide workers compensation top off pay equivalent to the LEOFF II supplement.</b>	<b>Provides one half of WSP “top off” pay but aligns benefit with other local government law enforcement officers</b>
<i>44.4 Return to Work (Excluding DFW)</i>	<i>Delete entire section</i>	<i>CCL</i>	<i>Guild agrees this language is inapplicable.</i>
<i>44.5 Return to work (for DFW)</i>	<i>Replace reference to specific positions with “Employee”</i>	<i>CCL</i>	<i>Guild agrees employer’s changes are appropriate</i>
<b>Appendix I</b>	<b>Delete inapplicable coalition language</b>	<b>Move 10% pay increase for 171-hour employees to Article 41; Move specialty pay language to Article 41; Delete remainder of Appendix I.</b>	<b>Applicable portions moved into Article 41</b>

The next issue is to discuss those areas of disagreement as a more general matter that will establish a basis for the awards rendered herein.

#### **LEGAL ISSUES REGARDING COLLECTIVE BARGAINING AND CIVIL SERVICE.**

The Guild cited *City of Yakima and IAFF 117*, Washington 2<sup>nd</sup> 65 (1991) and *City of Spokane and Spokane Civil service Comm’n*, 989 P. 2d 574 (1999). Those cases make it clear that the interest arbitrator has the discretion to harmonize the collective bargaining process with a civil service process.

The clear holdings of those cases show that the collective bargaining process generally takes precedence over civil service. The statutory guidelines set forth below, provide the framework for interest arbitration and what factors are to be used to decide such cases.

### **INABILITY TO PAY AND FISCAL ISSUES**

Throughout much of the discussion about all of the issues the State claimed that due to the recent COVID-19 pandemic and the resultant economic downturn, its budget faced serious shortfalls. The State's projections show an \$8.4 billion deficit over the next biennium. While the State has a \$2.4 billion reserve fund, that still leaves the State of Washington \$6 billion short.

The State insisted that it must take action now to resolve that deficit in order to balance the budget and still provide necessary services to its resident and businesses. The State also presented a number of documents in support of the claimed fiscal crisis and loss of revenue as well as the projected loss of revenue in the foreseeable future.

The Guild cited numerous decisions for the proposition that an employer bears a heavy burden to show that it does not have the ability to pay the requested wage increases by a Guild. See *Whatcom County Sheriffs* (Snow 1986) where the arbitrator drew the distinction between *inability to pay* versus an *unwillingness* to pay.

As in many cases, the real inquiry is "can" versus "should." The fact that an employer has the ability to pay the requested increases does not always mean those should be awarded. As discussed herein, there are a number of factors that play into that determination and the ability to pay does not equate with an award of them.

On the other hand, a projected deficit does not always mean that the employer does not have the ability to pay the requested increase or that it should not be ordered to if the other factors weigh in favor of them. Ability to pay arguments are a fact specific inquiry.

Here, it was clear that while the State faces a budget shortfall and is taking steps across much of its operations to balance the budget; the projections were not shown to be as dire as once predicted. See Guild's Section L, which purported to show that the economy, while down at this point, is forecasted to recover nationwide and in the State of Washington as well. Predictions of the future are never easy or exact. This contract is not slated to even go into effect until July 1, 2021. Predicting where and how societal and economic matters will be then is speculative at best. It was apparent however, based on the greater weight of the evidence and the forecasts from economic experts and predictors, that the economy is steadily recovering, which will likely result in an increase in revenue for the State of Washington as well. The overall evidence showed that the most pertinent projections are that the economy will be far better in a year than it is now.

The State introduced a number of exhibits showing the projected shortfall. See State exhibits 3, 4, and 27, showing the extent of the projected shortfall. The State also argued that it has instituted a hiring freeze and the Governor vetoed new spending measures, furloughed a great many State employees in order to cut costs. In addition, a projected pay raise for many State employees was cancelled in July and the clear order to the labor negotiators was not to agree to anything in a CBA that would increase the costs. As discussed herein, Ms. Murphy gave evidence that she had been given clear marching orders not to agree to any provision in any of the labor contracts that would increase the economic costs of that contract. That included no wage increases, no step increases, See State exhibit 15g, showing the previous step and range increases, and to essentially freeze those steps and not give time credit for PID, Periodic Increment Date, of each employee on which that employee gets their annual step increase each year. All this was done to save money on labor contracts.

In addition, as discussed more herein, the other comparable bargaining units agreed to these wage freezes and contract provisions as well. The State argued throughout the case that the Guild is looking for wage increases that are not consistent with the prevailing labor trend and the agreements reached with other relevant units; including the Washington State Patrol.

The parties agreed that the comparable bargaining unit for these officers in the Fish and Wildlife Guild, FWOG, was the Washington State Patrol.<sup>5</sup> That unit agreed to a wage freeze for the 2-years of its current agreement and a similar freeze on step and range movement.

The Guild, on the other hand, pointed out that the somewhat dire projections regarding the State's budgetary shortfall as stated in June 2020 were inaccurate and that in actuality the State brought in far more revenue than was predicted. See State Exhibit 27, at page 4 as follows:

“Major General Fund-State (GF-S) revenue collections for the July 11 - August 10, 2020 collection period came in \$382.3 million (25.3%) higher than the June forecast. Cumulatively, collections are now \$643.0 million (19.6%) higher than forecasted. ... Revenue Act taxes consist of the sales, use, business and occupation (B&O), utility, and tobacco products taxes along with associated penalty and interest payments. The revenue collections reported here are for the July 11 – August 10, 2020 collection period. Collections correspond primarily to the June 2020 economic activity of monthly filers and second quarter 2020 activity of quarterly filers. Revenue Act collections for the current period came in \$349.2 million (29.3%) higher than the June forecast.”

The Guild argued that the historical trend is that the State will recover, and that it has over time and pointed to the 2001 recession and the “Great Recession of 2009-2013.” The Guild argued that the trend is showing a steady recovery and that the State is in fact not in as bad a fiscal position as the State's advocates would have the arbitrator believe. There was also persuasive evidence submitted as part of the Guild's exhibits that the more accurate forecasts showed that the “worst” may be over and that economic matters are likely to improve over time. See page 5668 to 5770 in the original Guild's submission of documents. This showed that the State's economy is recovering and that revenue should increase. As discussed below, this was a factor taken into consideration and which supported the wage award and the reopener prospect for the second year of the CBA.

Thus, the State has the ability to pay the requested increases, especially given that this contract will not go into effect until 2021 – well after it is projected that the State will recover from the financial downturn of 2020.

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<sup>5</sup> There was a dispute about whether WSP was the comparable jurisdiction for economic issues only or for all issues. It was clear that it was the latter. It remained unclear, given the Guild' position that WSP was the comparable, why it continually used other jurisdictions as comparable jurisdictions in and around the State. Due to the stipulated comparable, the evidence of “other” jurisdictions was given very little evidentiary weight



## RECRUITMENT AND RETENTION ISSUES

The Guild asserted that due to the wages being kept artificially low when compared to other comparable units, there has been a recruitment and retention issue and that officers are difficult to recruit and that officers have been leaving this agency before the time they would “normally” leave prior to retirement. The Guild cited several cases that stand of the proposition that where it is shown that the employer is having difficulty attracting or retaining qualified employees/candidates that is due to pay and salary issues, a “catch-up” increase is warranted. The Guild also noted that the arbitrator found only that the City was “close” to having a critical problem with recruitment and retention. See *City of Wenatchee* (Savage 2003). See also, *Snohomish County (Deputy Sheriffs)* (Krebs 1987) (citing low turnover) and *City of Pasco (Police)* (Krebs 1990) (citing high turnover) and *City of Everett v. IAFF Local 46*, (Krebs, 2016) (127442-I-15).

The Guild further asserted through documents and testimony that retention has created difficulties in retaining officers and recruiting new ones in order to meet the State’s mission of protecting the environment and the public. This has also created concerns for the efficiency and safety of the other officers. The Guild asserted that the compensation package must be increased to deal with these recruitment and retention issues. The Guild asserted that the agency is “hanging by a thread” due to the loss of all but a few truly committed officers and is “hemorrhaging officers at an alarming rate” and that the agency is near crisis with unfilled vacancies. See pages 1 and 20 of the Guild’s pre-hearing brief. The Guild also noted that due to market and societal factors in recruiting new applicants to law enforcement in general, the market is even more competitive in terms of finding qualified applicants. Without a significant wage and pay increase, it is anticipated to be even more difficult to fill vacancies as they occur.

As discussed herein, there was testimony from the Guild’s President that it has been difficult to fill vacancies over time and that the standards have been relaxed to allow for applicants to be considered with less education and experience than was the case perhaps 10 years ago. He further indicated that some fellow officers have left for better pay and benefits in other law enforcement agencies throughout the State and that this was a surprise, since he felt that the Fish and Wildlife officer position was regarded at the very top of the law enforcement profession.

The evidence did not support the assertion that recruitment and retention was a major problem warranting arbitral intervention; at least not at this point. See e.g. State Exhibit 21, as follows:

“Statewide Retention – Retention for these classifications can be shown through turnover data in these job classifications. Based on the following data, there does not appear to be a retention issue within these job classifications at the agency.

Class Title(s)	FY17 July 2016–June 2017	FY18 July 2017–June 2018	FY19 July 2018–June 2019	FY20 (Q3) July 2019–Mar 2020
Fish & Wildlife Enforcement Officer 1	0.0% (0/18)	0.0% (0/17)	5.2% (1/19)	0.0% (0/24)
Fish & Wildlife Enforcement Officer 2	3.4% (2/58)	7.6% (4/53)	0.0% (0/54)	0.0% (0/54)
Fish & Wildlife Enforcement Officer 3	0.0% (0/11)	0.0% (0/13)	0.0% (0/14)	0.0% (0/14)
Fish & Wildlife Enforcement Detective	0.0% (0/6)	0.0% (0/7)	0.0% (0/7)	15.8% (1/6)

Deputy Chief Golden gave credible and persuasive testimony that recruitment has not been a problem and that the agency is able to attract qualified and competent candidates for any vacant positions. There was no evidence that FWOG employees have gone to the State Patrol, but there have been instances where the opposite has occurred in the recent past – even though there was evidence that the pay is lower and they are not credited for service in the Law Enforcement Officer and Fire Fighter, LEOFF, retirement program. He also indicated that retaining experienced and qualified employees has not been a problem either, see chart above.

It is clear from this evidence as well as the testimony from the State's witnesses that recruitment and retention is not as serious a problem as the Guild suggested. The Guild's president testified that when he started there were about 100 Fish and Wildlife officers in the agency. There are still 103 officers working for the department out of an authorized complement of 127.<sup>6</sup> There was persuasive evidence that there was a serious recruitment and retention problem at WSP in 2016 and that due to that the officers in the WSP received a rather significant pay increase in order to deal with that issue. There was also a study done to verify the recruitment and retention issue that showed that WSP had a retention problem and that this was in part due to the compensation package offered to those troopers.

There was no such study for the Fish and Wildlife officers and the anecdotal evidence did not provide the necessary evidence to establish the seriousness of the recruitment and retention issue the Guild asserted existed.

There was evidence that those unfilled vacancies have been in existence for some time but that when a new position is posted there are an ample number of qualified applicants for the positions. There was some indication that in 2019 the Chief reduced the minimum qualification for the positions but there was insufficient evidence to establish that this was due to a perceived poor compensation package or that unqualified candidates were being hired due to the inability to attract qualified candidates to perform the work required by the agency.

More to the point, generally, the issue of recruitment and retention is one that is the employer's issue, not generally the Guild. The Guild asserted that unless steps are taken immediately it "will become *more difficult for the Employer, not easier.*" (Emphasis in original).

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<sup>6</sup> It was not clear whether 127 is an actual number of officers who have ever been actually hired or whether this was a number of officers authorized to be hired. What was clear is that the total number of officers has not declined much if at all in the preceding decade and no evidence at all that those who remain are any less committed to the mission of the agency or are less competent or qualified to carry that mission out.

Therein lies the rub. This is the employer's problem to deal with. If it cannot attract sufficient qualified candidates to fulfill the agency's mission, there will be both economic and political implications for that and the State will have to face it. The Guild also asserted that the public interest compels a large increase in wages and cited *City of Tukwila* (LaCugna 1976) for that proposition.<sup>7</sup> The question is whether the problem is so serious that an interest arbitrator must step in and supplant their judgment for that of the State legislature and/or executive officers. On this record, the evidence fell short of that as a factor in rendering the significant, i.e. 7.2 + 7.2% increase, the Guild seeks here.<sup>8</sup>

If there is a problem, the employer must make adjustments to their compensation package, but without compelling evidence of a major problem with retention or recruitment, this is a management issue rather than a strong basis for an interest award made by an arbitrator.

The Guild put on a lengthy slide presentation showing the type of diverse work performed by the officers covered by this CBA. Clearly, the officers perform a number of vital and important functions to both enforce applicable wildlife laws and ordinances, protecting wildlife and the natural environment as well as protecting the public from mishaps, natural disasters and criminal activity. They assist other law enforcement agencies, such as Washington State Patrol, local law enforcement and the US Coast Guard in their regular duties. They even provide security at local festivals and perform drug enforcement activities.

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<sup>7</sup> While arbitral precedent is and can be an important factor, the notion of the public interest has changed considerably since 1976 and may not be as strong a factor today as it was 45 years ago. As noted above, interest arbitrators must be very cautious about substituting their judgment about what the public's interest is for that of the duly elected and appointed State and local representatives.

<sup>8</sup> It was noted that the 7.2% would be compounded, which yields a 2022-2023 increase of slightly above 7.7%. See table B on page 3175 of the Guild's submission.

Many of these services involve challenging and dangerous activities. Officers have to deal with all sorts of weather conditions and dangerous and difficult terrain to perform their work. They are often working alone in remote areas where assistance can be a long-distance away and where such help might have a difficult time even finding them should an officer be injured or require help out in the wilderness.

They are often confronted by individuals who are armed and even dangerous. The slides and testimony showed that persons who flaunt or evade regulations often are convicted felons who should not be in possession of firearms, yet they frequently are.

There was little doubt that these officers perform dangerous and sometimes perilous duty in all sorts of conditions. However, having said that it is clear that the work described is part and parcel of almost any law enforcement position. Indeed, in many of the slides, other law enforcement personnel, as described above, were in the pictures along with Fish and Wildlife officers.

Law enforcement can be and often is a dangerous and challenging profession and those who chose to do it are generally well aware of the risks and rewards involved. As noted herein, there was evidence that eight officers have left the agency over the past few years and none have gone to the State Patrol. There was evidence that State Patrol officers have chosen to switch to this agency despite the Guild's position that the pay and overall compensation package is far less.

Indeed, the better part of the Guild's section G in its documents showed that it is becoming increasingly difficult to attract and retain law enforcement officers not only the State of Washington but also across the country. Wages and compensation packages may well have something to do with that, but the articles referenced in Guild's Section G showed that there are a wide variety of reasons that lead to the conclusion that individuals either leave law enforcement or chose other career paths. Those articles also showed that people leave the WSP as well for reasons other than salary and compensation package issues.

The Guild's witness indicated that there was once a time when the agency would get 700 applicants for a vacancy but that over time law enforcement has become a less desirable profession. He candidly acknowledged that it is unclear why people would come to law enforcement as a profession at this point given the societal issues presented.

Lack of compensation is but one issue in why that is the case. He also indicated that the complement of Fish and Wildlife officers in the Guild has been as low as 96, but now is around 103 officers currently employed, although Officer Jones did not know how the State arrived at a complement of 127. He speculated that due to financial constraints there was some sort of directive not to fill positions, but that was frankly speculation at best. He speculated that some 14 to 16 officers have left the agency since 2010. That alone did not establish the sort of exodus from the department the Guild asserted.

There was insufficient evidence to establish that even, if there was the sort of hemorrhaging the Guild asserted, there may well be other reasons for that despite the fact that the Fish and Wildlife officers are paid less than the WSP. The Guild President gave but one example of an officer who left due to money but acknowledged that he heard that second hand.

The overall evidence thus did not establish that the compensation package or the provisions of the CBA made it more difficult to recruit qualified candidates and that if there is any such difficulty it has less to do with that compensation package and more to do with current events around the region and the country. That however is not a matter for interest arbitration to "fix." While there was some effort here to narrow the clear wage gap between these officers and the WSP officers and some of what the FWOOG seeks will be awarded; not all of their proposals can be granted in light of the fiscal difficulties in the State currently, and the equities involved.

#### **FACTORS TO BE CONSIDERED – GENERAL DISCUSSION**

The statute RCW 41.56.516 sets forth the factors to be considered in rendering this decision. As noted herein the parties have already stipulated that the Washington State patrol is the comparable

jurisdiction and agency for comparison purposes to these employees. RCW 41.56.473 defines these officers and places them in the same statutory section as the State Patrol.

As noted above, RCW 41.56.516 sets forth the factors to be considered by an interest arbitrator in rendering this decision. Those are as follows:

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

(b) Stipulations of the parties;

(c) Comparison of the hours and conditions of employment of personnel involved in the proceedings with the hours and conditions of employment of like personnel of like employers of similar size in the State of Washington;

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

(e) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under RCW 41.56.473.

These will be briefly discussed in order.

**Constitutional and statutory authority of the employer;**

The evidence showed that issues of health care benefits, retirement benefits or other employee insurance benefits are prohibited subject of bargaining. This pertained directly to the Guild's proposals for Article 41, specifically 41.25, 41.26, 41.27 and 41.28. The propriety of the Guild's proposals for those sections will be discussed below.

Further, RCW 41.04.550 provides that disability leave supplement payments for employees covered by chapter 462, Laws of 1985, are not subject to interest arbitration as defined in RCW 41.56.430 through 41.56.905.

The State argued throughout the case that state statute prohibits an award relating to matters of health care benefits, other employee insurance and retirement benefits. See, RCW 41.56.156 and 41.80.020, which does allow some bargaining over those issues. Further, the Guild pointed out the RCW 41.80 references the coalition contract not the new one contemplated by HF 5481. Moreover, as discussed below though, on a factual basis, the above provisions do not relate directly to health care, insurance benefits or retirement.

There were no other statutory or constitutional limitations raised by the parties to the decision or to either of the respective positions here.<sup>9</sup> It was further clear that the State has the legal authority to meet the Guild's requests. The question is whether those requests are in keeping with the other factors set forth above and the generally recognized factors to be considered in rendering interest awards.

The Guild argued throughout the hearing process that the change in legislation reflect in HF 5481, cited herein, was the result of a recognition by the State of Washington that the coalition bargaining that had been in place for years was unworkable and was resulting in large wage disparities between the Fish and Wildlife officers and WSP. See discussion below and Guild submissions at pages 1276 to 5628, particularly pages 5556 to 5628, showing the wage disparities between Fish and Wildlife officers' pay and other jurisdictions, including WSP.

The Guild noted that this is the "first" stand alone CBA between the State and FWOG and will thus set the tone for all future negotiations and that it seeks a more competitive wage structure in order to keep the agency from "melting down."

The Guild also pointed to the Fish and Wildlife Sergeants pay and noted internally there is a large and ever increasing wage gap between the line officers and the sergeants that it asserted needs to be rectified in order to bring the Guild's members' pay into line and make them competitive.

### **Stipulations of the parties**

Here, the most important stipulation was that the comparable jurisdiction was the Washington State Patrol, WSP. That agency performs a somewhat similar function, albeit usually to ensure highway and traffic safety, whereas these officers are charged with enforcing wildlife regulations and preserving and protecting the natural environment. The evidence showed that their duties can overlap and that the officers from each agency can and do assist each other with enforcement and public assistance roles.

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<sup>9</sup> The Guild provided a copy of the State's constitution and while it has some provisions regarding taxation and other issues with respect to sources of revenue and expenditures there was no apparent limitation raised to the award by interest arbitration in this matter.



There was a dispute raised on the third day of hearing by the State that the WSP unit is comparable only with respect to wage and salary issues but not for other issues, such as language. The Guild disputed that and asserted that the WSP unit was comparable for all issues, including language.

On this record, based on the evidence submitted, it was shown that the WSP contract was to be comparable in its entirety. That did not result in those provisions being taken word for word into this CBA however. “Comparable” does not always mean, “controlling.” There are still significant differences between the role and the functions of the two departments that have to be taken into account. See discussion immediately below.

**Comparison of the hours and conditions of employment of personnel involved in the proceedings with the hours and conditions of employment of like personnel of like employers of similar size in the State of Washington;**

As will be discussed below, what the State of Washington, WSP, s the stipulated comparable for these officers and what the WSP officers have negotiated is a strong guideline for what the appropriate award is here. While that may not be an exact match, it was certainly given great weight in terms of determining the most reasonable and rational award to be rendered in this matter.

While the parties did not formally stipulate that the Fish and Wildlife Sergeants, represented by Teamsters Local 760 was also an agreed upon comparable, that too was considered since the sergeants are employed by the same agency. The State and IBT 760 settled their contract by TA prior to the hearing in this matter but the case was originally set to be heard together in one hearing; IBT 760 would presents its case on the two days prior to September 10<sup>th</sup> and the FWOOG was to present its over the next few days. The IBT 760 contract was not controlling either, but was a factor that was considered in determining the appropriate awards here.

Clearly, comparisons of wages of similar agencies or departments is an important factor to be considered. Reviewing other similar types of agencies, like the WSP here, is important in determining the “fair” market value of the wages of the unit under consideration. See citations listed at page 10 of the Guild’s pre-hearing brief.

As discussed below, the total package should be considered in determining the appropriate award. Base wages are certainly a good starting point but as in most law enforcement agencies, there are other wage issues, such as longevity, steps and range increases, education incentives and others that can impact the determination of the appropriate award.

Those were indeed considered here; at least to the extent possible, as the full WSP CBA for 2021-2023 was not presented. There was however sufficient evidence about what that CBA said and what was TA'd by the parties to that contract to make a reasoned determination here.

**Changes in any of the foregoing circumstances during the pendency of the proceedings;**

This factor was a bit unclear but the parties spent considerable time discussing how the recent COVID-19 pandemic has affected both the economy and the health of the State's population and the impact all of that had on the State's financial ability to meet the requests of the FWOG in this matter.

It is entirely unknown how or when or under what circumstances the present pandemic has impacted or will impact the future of the State of Washington. As noted above, it was clear that the somewhat dire predictions about the economy and the revenue that was expected to come in did not pan out as projected. Clearly, though, this too was a factor that was considered.

In addition, it was clear that even during the hearing itself, wildfires in and around the State of Washington were causing considerable disruption in a great many aspects of life, but more to the point, in the duties of these officers in particular. As noted, one of their main duties is to protect the public and the natural environment. Such wildfires have a huge impact on both. While it was unclear what impact those will have (it was shown that such fires do occur and that the officers are trained and equipped to deal with them effectively and safely), the fact that these were shown to be somewhat more severe than in past years due to climate changes was considered.

**Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under RCW 41.56.473**

There are certain generally recognized factors that can help guide the determination of appropriate awards in an interest case, some of which are discussed above. In addition to ability to pay issues, comparables (which implies external consistency) there is the notion of bargaining history.

For example, has there been a history of settlement in line with the other units over time? Where has this unit “fit in” with regard to other units? Has this unit traditionally been last or first in terms of pay and other benefits? These are factors that were considered.

The Guild cited *Snohomish County* (25993-I-2014) award by arbitrator Wilkinson as follows:

Such other factors’ referenced in RCW 41.56.465(e) typically includes turnover, the fiscal health of the employer, general economic considerations, and considerations relating to internal parity or equity. The State does not specify the relative weight to be assigned to each enumerated consideration nor how they are to be measured. These matters are left to the discretion of the arbitrator.<sup>10</sup>

Here for example, the Guild showed that there is a gap between the pay of these officers and those employed by the WSP. It was clear though that this has been the case for some time and that over several rounds of bargaining, has stayed the same.

The Guild presented voluminous information regarding the historical wage gap between Guild member’s pay and the WSP. It was clear that the gap has been in place for a number of years, across several rounds of bargaining and has been increasing over time. For whatever reason Fish and Wildlife pay lagged behind WSP from at least 2000, and possibly longer, depending on which chart one uses, and that has been the case ever since. The Guild argued that this gap was one of the main reasons for the change in legislation, but that was not completely clear. The Guild also argued that WSP was able through interest arbitration to move to a more competitive market driven wage structure but that Fish and Wildlife officers did not have that ability until now – thus the wage gap.

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<sup>10</sup> See also, *Whatcom County* (Smith Gangle 2001). Many of the cases cited by the Guild were found on the PERC website.

Thus, the gap, as it was termed, is a double-edged sword for the FWOOG. Clearly there is a gap in pay but that has been the case for some time and those within the respective agencies are or certainly should be aware of that and choose to go to one agency or the other knowing what the pay is and where others units are in terms of their compensation package.

As discussed here already, recruitment and retention can be a factor as well in guiding the appropriate awards in these case, but, finally, that is mostly for the employer to deal with in terms of its ability to attract and retain qualified officers to perform the duties required of a Fish and Wildlife officer.

Turning back to bargaining history; in comparing other units has there been a *quid pro quo* for an increase in one area in exchange for concession in another? Here there was little evidence of that but in an interest case; one is always looking for that kind of evidence.

There is also the notion of internal consistency with other like units within the agency and within the same employer. Here, health insurance and retirement benefits are pointed subjects of bargaining but there are certainly other terms of the CBA that were reviewed to see if they were shown to be inconsistent with policies and practices in place of other similarly situated employees.

The Guild also asserted that the Consumer Price Index, CPI should be used to aid in the determination of an appropriate wage award and used Seattle as a guide. See pages 5639 to 5680 of the second submission by the Guild. The Guild also asserted that WSP has received increases above the CPI while Fish and Wildlife officers have gotten increases lower than that. The evidence showed that the CPI is not used by the WSP so that evidence was not given evidentiary weight.

The issue though as noted above, is that this argument was nothing more than an extension of the assertions regarding the wage gap discussed here. It also used the CPI from the Seattle area which is clearly higher than other areas in the State. It was noted that there is already a premium pay for officers that reside in King County already.

The CPI is a factor to be considered but there was insufficient evidence to render the wage increase the Guild seeks based on the CPI, which is currently low in comparison to historical time frames.

Finally, one of the time honored factors to be considered is to try to determine, or more properly stated, to divine, what the parties would have negotiated in the absence of interest arbitration. This was a most difficult factor here since this is the first time the Guild has been able to negotiate separately from the coalition that negotiated the previous contracts with the State.

This seems to be reflected in the citations to several of the cases cited by the Guild in its pre-hearing brief, that stand for the proposition that interest arbitration is an extension of collective bargaining. See *City of Poulsbo*, (Smith Gangle)

Still though, the Guild was part of that bargaining and the prior contract had in it the compensation and benefits and terms applicable to Guild members and Fish and Wildlife employees.

In some cases, the real question is whether there is a compelling reason to adopt a change from prior practice and terms in this round. That is by definition a very fact specific inquiry and requires a showing that something about the prior manner of doing things or benefits is so out of date or so inconsistent with the prevailing terms applicable to other units or such other factors that may be relevant that a change in the previous language is necessary and appropriate.

Radical changes in contractual language should ideally not come from arbitration but rather from arm's length, good faith negotiation and bargaining between the parties. Here, the question of what these parties might have negotiated for themselves in the absence of interest arbitration was a very subjective measure. They successfully reached agreement on a large number of issues, including two immediately before and at the hearing itself, as noted above. Sometimes, you have to do the best you can knowing that the parties can "re-negotiate" anything in the future if it turns out not to be workable.

## ASSERTION OF NEGATIVE INFERENCE

The Guild asked that a negative inference be drawn due to the State's refusal to provide certain information as requested. The Guild asked for wage records going back to 2010 and the State was only able or willing to provide information back to 2016. The Guild asked that a negative inference be drawn based on that failure to provide pertinent information.

The State responded that due to COVID, many offices were closed and the information could not be retrieved except those that were stored electronically. The State gave the Guild all of the information it could given that reality. There was no intentional refusal to provide information.

On this record no negative inference or conclusions were drawn. The awards rendered herein were based on the record presented and the testimony and documents introduced at the lengthy hearing in the matter.

It is against that general backdrop of considerations that the analysis of the matter proceeds. As noted, the record was quite extensive, involving some very long days of testimony, including one that proceeded partially on a Sunday, as well as many thousands of documents. First, the recitation of the applicable statutory provisions is necessary.

## RELEVANT STATUTORY PROVISIONS

### House file 5481<sup>11</sup>

NEW SECTION. Sec. 2. A new section is added to chapter 41.5623 RCW to read as follows:

- (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the State with respect to fish and wildlife officers except the State may not negotiate any matters relating to retirement benefits or health care benefits or other employee insurance benefits.
- (2) For the purposes of negotiating wages, wage-related matters, and nonwage matters, the State shall be represented by the governor or the governor's designee who is appointed under RCW 41.80.010, and costs of the negotiations under this section shall be reimbursed as provided in RCW 41.80.140.34
- (3) Fish and wildlife officers shall be excluded from the coalition bargaining for a master agreement of all exclusive bargaining representatives of fewer than five hundred employees under chapter 41.80 RCW.
- (4) The governor or the governor's designee shall consult with the director of fish and wildlife regarding collective bargaining.

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<sup>11</sup> This was the section that recently gave interest arbitration rights to the Guild individually and which partially governs the procedure used in this matter.

(5) The negotiation of provisions pertaining to wages and wage-related matters in a collective bargaining agreement between the State and the bargaining representatives of the fish and wildlife officers is subject to the following:

(a) The State's bargaining representative must periodically consult with the committee of the joint committee on employment relations created in RCW 41.80.007 or any such successor committee for the joint committee on employment relations; and

(b) Provisions that are entered into before the legislature approves the funds necessary to implement the provisions are conditioned upon the legislature's subsequent approval of the funds.

(6) The governor shall submit a request for funds necessary to implement the wage and wage-related matters in the collective bargaining agreement or for legislation necessary to implement the agreement. Requests for funds necessary to implement the provisions of bargaining agreements may not be submitted to the legislature by the governor unless such requests:

(a) Have been submitted to the director of financial management by October 1st before the legislative session at which the requests are to be considered; and

(b) Have been certified by the director of financial management as being feasible financially for the State or reflects the decision of an arbitration panel reached under RCW 41.56.475.

NEW SECTION. Sec. 3. A new section is added to chapter 41.56RCW to read as follows:

In addition to the classes of employees listed in RCW41.56.030(13), the provisions of RCW 41.56.430, 41.56.440, 41.56.450, 41.56.452, 41.56.470, 41.56.480, and 41.56.490 also apply to fish and wildlife officers as provided in this section. If more than one exclusive bargaining unit represents uniformed personnel who are fish and wildlife officers, they may choose to enter into separate bargaining with the employer or agree to conduct bargaining with the employer as one coalition of all the exclusive bargaining representatives. If more than one bargaining unit chooses to advance to interest arbitration, it shall be conducted as coalition. However, one exclusive bargaining representative may singly choose to exercise its right to engage in interest arbitration even if other exclusive bargaining representatives who have chosen to enter into separate bargaining have elected not to take that step. Any exclusive bargaining representative of uniformed personnel who are fish and wildlife officers choosing interest arbitration is subject to the following:

(1) Within ten working days after the first Monday in September of every odd-numbered year, the State's bargaining representative and the bargaining representative for the appropriate bargaining unit(s) as a coalition, shall attempt to agree on an interest arbitration panel consisting of three members to be used if the parties are not successful in negotiating a comprehensive collective bargaining agreement. Each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chair of the arbitration panel. Upon the failure of the arbitrators to select a neutral chair within seven days, the two appointed members shall use one of the two following options in the appointment of the third member, who shall act as chair of the panel: (a) By mutual consent, the two appointed members may jointly request the commission to, and the commission shall, appoint a third member within two days of such a request. Costs of each party's appointee shall be borne by each party respectively; other costs of the arbitration proceedings shall be borne by the commission; or (b) either party may apply to the commission, the federal mediation and conciliation service, or the American arbitration association to provide a list of five qualified arbitrators from which the neutral chair shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair shall be shared equally between the parties. Immediately upon selecting an interest arbitration panel, the parties shall cooperate to reserve dates with the arbitration panel for potential arbitration between August 1<sup>st</sup> and

September 15<sup>th</sup> of the following even-numbered year. The parties shall also prepare a schedule of at least five negotiation dates for the following year, absent an agreement to the contrary. The parties shall execute a written agreement before November 1<sup>st</sup> of each odd-numbered year setting forth the names of the members of the arbitration panel and the dates reserved for bargaining and arbitration. This subsection imposes minimum obligations only and is not intended to define or limit a party's full, good faith bargaining obligation under other sections of this chapter.

(2) The mediator or arbitration panel may consider only matters that are subject to bargaining under RCW 41.80.020.4

(3) The decision of an arbitration panel is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to wages and wage-related matters of an arbitrated collective bargaining agreement, is not binding on the State or the representatives of the department of fish and wildlife.

(4) In making its determination, the arbitration panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

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

(b) Stipulations of the parties;

(c) Comparison of the hours and conditions of employment of personnel involved in the proceedings with the hours and conditions of employment of like personnel of like employers of similar size in the State of Washington;

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

(e) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under RCW41.56.473.

**RCW 41.04.550 - Disability leave supplement for law enforcement officers and firefighter - Not subject to interest arbitration.**

Disability leave supplement payments for employees covered by chapter 462, Laws of 1985 shall not be subject to interest arbitration as defined in RCW 41.56.430 through 41.56.905.

**RCW 41.56.030 - Definitions.**

As used in this chapter:

(8) "Fish and wildlife officer" means a fish and wildlife officer as defined in RCW 77.08.010 who ranks below lieutenant and includes officers, detectives, and sergeants of the department of fish and wildlife.

(14) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more; (b) correctional employees who are uniformed and non-uniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(9), by a county with a population of seventy thousand or more, in a correctional facility created under RCW 70.48.095, or in a detention facility created under chapter 13.40 RCW that is located in a county with a population over one million five hundred thousand, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates; (c) general authority Washington peace officers as defined in RCW 10.93.020 employed by a port district in a county with a population of one million or more; (d) security forces established under RCW 43.52.520; (e) firefighters as that term is defined in RCW



41.26.030; (f) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other firefighting duties; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; (h) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer; or (i) court marshals of any county who are employed by, trained for, and commissioned by the county sheriff and charged with the responsibility of enforcing laws, protecting and maintaining security in all county-owned or contracted property, and performing any other duties assigned to them by the county sheriff or mandated by judicial order.

**RCW 41.56.430 - Uniformed personnel—Legislative declaration.**

The intent and purpose of chapter 131, Laws of 1973 is to recognize that there exists a public policy in the State of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the State of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.

**RCW 41.56.440 - Uniformed personnel—Negotiations—Declaration of an impasse—Appointment of mediator.**

Negotiations between a public employer and the bargaining representative in a unit of uniformed personnel shall be commenced at least five months prior to the submission of the budget to the legislative body of the public employer. If no agreement has been reached sixty days after the commencement of such negotiations then, at any time thereafter, either party may declare that an impasse exists and may submit the dispute to the commission for mediation, with or without the concurrence of the other party. The commission shall appoint a mediator, who shall forthwith meet with the representatives of the parties, either jointly or separately, and shall take such other steps as he or she may deem appropriate in order to persuade the parties to resolve their differences and effect an agreement: PROVIDED, that a mediator does not have a power of compulsion.

**RCW 41.56.450 - Uniformed personnel - Interest arbitration panel - Powers and duties - Hearings - Findings and determination.**

If an agreement has not been reached following a reasonable period of negotiations and mediation, and the executive director, upon the recommendation of the assigned mediator, finds that the parties remain at impasse, then an interest arbitration panel shall be created to resolve the dispute. The issues for determination by the arbitration panel shall be limited to the issues certified by the executive director. Within seven days following the issuance of the determination of the executive director, each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chair of the arbitration panel. Upon the failure of the arbitrators to select a neutral chair within seven days, the two appointed members shall use one of the two following options in the appointment of the third member, who shall act as chair of the panel: (1) By mutual consent, the two appointed members may jointly request the commission to, and the commission shall, appoint a third member within two days of such request. Costs of each party's appointee shall be borne by each party respectively; other costs of the arbitration proceedings shall be borne by the commission; or (2) either party may apply to the commission, the federal mediation and conciliation service, or the American Arbitration Association to provide a list of five qualified arbitrators from which the neutral chair shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair shall be shared equally between the parties.

The arbitration panel so constituted shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice thereof to the parties to the dispute. A hearing, which shall be informal, shall be held, and each party shall have the opportunity to present evidence and make argument. No member of the arbitration panel may present the case for a party to the proceedings. The rules of evidence prevailing in judicial proceedings may be considered, but are not binding, and any oral testimony or documentary evidence or other data deemed relevant by the chair of the arbitration panel may be received in evidence. A recording of the proceedings shall be taken. The arbitration panel has the power to administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be deemed by the panel to be material to a just determination of the issues in dispute. If any person refuses to obey a subpoena issued by the arbitration panel, or refuses to be sworn or to make an affirmation to testify, or any witness, party, or attorney for a party is guilty of any contempt while in attendance at any hearing held hereunder, the arbitration panel may invoke the jurisdiction of the superior court in the county where the labor dispute exists, and the court has jurisdiction to issue an appropriate order. Any failure to obey the order may be punished by the court as a contempt thereof. The hearing conducted by the arbitration panel shall be concluded within twenty-five days following the selection or designation of the neutral chair of the arbitration panel, unless the parties agree to a longer period.

The neutral chair shall consult with the other members of the arbitration panel, and, within thirty days following the conclusion of the hearing, the neutral chair shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on the commission, on each of the other members of the arbitration panel, and on each of the parties to the dispute. That determination shall be final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious.

**RCW 41.56.452 - Interest arbitration panel a State agency.**

An interest arbitration panel created pursuant to RCW 41.56.450, in the performance of its duties under chapter 41.56 RCW, exercises a State function and is, for the purposes of this chapter, a State agency. Chapter 34.05 RCW does not apply to proceedings before an interest arbitration panel under this chapter.

**RCW 41.56.470 - Uniformed personnel—Arbitration panel—Rights of parties.**

During the pendency of the proceedings before the arbitration panel, existing wages, hours, and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his or her rights or position under chapter 131, Laws of 1973.

**RCW 41.56.473 - Uniformed personnel—Application of chapter to Washington State patrol - Bargaining subjects. (Relevant portion)**

(b) Have been certified by the director of financial management as being feasible financially for the State or reflects the decision of an arbitration panel reached under RCW 41.56.475.

**RCW 41.56.475 - Uniformed personnel—Application of chapter to Washington State patrol - Mediation and arbitration.**

In addition to the classes of employees listed in \*RCW 41.56.030(7), the provisions of RCW 41.56.430 through 41.56.452 and 41.56.470, 41.56.480, and 41.56.490 also apply to Washington State patrol officers appointed under RCW 43.43.020 as provided in this section, subject to the following:

(1) Within ten working days after the first Monday in September of every odd-numbered year, the State's bargaining representative and the bargaining representative for the appropriate bargaining unit shall attempt to agree on an interest arbitration panel consisting of three members to be used if the parties are not successful in negotiating a comprehensive collective bargaining agreement. Each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chair of the arbitration panel. Upon the failure of the arbitrators to select a neutral chair within seven days, the two appointed members shall use one of the two following options in the appointment of the third member, who shall act as chair of the panel: (a) By mutual consent, the two appointed members may jointly request the commission to, and the commission shall, appoint a third member within two days of such a request. Costs of each party's appointee shall be borne by each party respectively; other costs of the arbitration proceedings shall be borne by the commission; or (b) either party may apply to the commission, the federal mediation and conciliation service, or the American arbitration association to provide a list of five qualified arbitrators from which the neutral chair shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair shall be shared equally between the parties. Immediately upon selecting an interest arbitration panel, the parties shall cooperate to reserve dates with the arbitration panel for potential arbitration between August 1<sup>st</sup> and September 15<sup>th</sup> of the following even-numbered year. The parties shall also prepare a schedule of at least five negotiation dates for the following year, absent an agreement to the contrary. The parties shall execute a written agreement before November 1<sup>st</sup> of each odd-numbered year setting forth the names of the members of the arbitration panel and the dates reserved for bargaining and arbitration. This subsection imposes minimum obligations only and is not intended to define or limit a party's full, good faith bargaining obligation under other sections of this chapter.

(2) The mediator or arbitration panel may consider only matters that are subject to bargaining under RCW 41.56.473.

(3) The decision of an arbitration panel is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to wages and wage-related matters of an arbitrated collective bargaining agreement, is not binding on the State or the Washington State patrol.

(4) In making its determination, the arbitration panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

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

(b) Stipulations of the parties;

(c) Comparison of the hours and conditions of employment of personnel involved in the proceedings with the hours and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;<sup>12</sup>

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

(e) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under RCW 41.56.473.

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<sup>12</sup> The parties agreed that RCW 41.56.475 sets forth the procedure but that the factors set forth in section 4 are similar but not identical. The proper factors are set forth in RCW 41.56.516, i.e. the geographic area to be properly considered is the State of Washington, not the "west coast of the United States."

### **RCW 41.56.490 - Uniformed employees - Strikes prohibited - Violations - Contempt of court.**

The right of uniformed employees to engage in any strike, work slowdown, or stoppage is not granted. An organization recognized as the bargaining representative of uniformed employees subject to this chapter that willfully disobeys a lawful order of enforcement by a superior court pursuant to RCW 41.56.480 and 41.56.490, or willfully offers resistance to such order, whether by strike or otherwise, is in contempt of court as provided in chapter 7.21 RCW. An employer that willfully disobeys a lawful order of enforcement by a superior court pursuant to RCW 41.56.480 or willfully offers resistance to such order is in contempt of court as provided in chapter 7.21 RCW.

### **RCW 41.56.515 - Fish and wildlife officers - Application of chapter.**

- (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the State with respect to fish and wildlife officers except the State may not negotiate any matters relating to retirement benefits or health care benefits or other employee insurance benefits.
- (2) For the purposes of negotiating wages, wage-related matters, and nonwage matters, the State shall be represented by the governor or the governor's designee who is appointed under RCW 41.80.010, and costs of the negotiations under this section shall be reimbursed as provided in RCW 41.80.140.
- (3) Fish and wildlife officers shall be excluded from the coalition bargaining for a master agreement of all exclusive bargaining representatives of fewer than five hundred employees under chapter 41.80 RCW.
- (4) The governor or the governor's designee shall consult with the director of fish and wildlife regarding collective bargaining.
- (5) The negotiation of provisions pertaining to wages and wage-related matters in a collective bargaining agreement between the State and the bargaining representatives of the fish and wildlife officers is subject to the following:
  - (a) The State's bargaining representative must periodically consult with the committee of the joint committee on employment relations created in RCW 41.80.007 or any such successor committee for the joint committee on employment relations; and
  - (b) Provisions that are entered into before the legislature approves the funds necessary to implement the provisions are conditioned upon the legislature's subsequent approval of the funds.
- (6) The governor shall submit a request for funds necessary to implement the wage and wage-related matters in the collective bargaining agreement or for legislation necessary to implement the agreement. Requests for funds necessary to implement the provisions of bargaining agreements may not be submitted to the legislature by the governor unless such requests:
  - (a) Have been submitted to the director of financial management by October 1st before the legislative session at which the requests are to be considered; and
  - (b) Have been certified by the director of financial management as being feasible financially for the State or reflects the decision of an arbitration panel reached under RCW 41.56.475.

### **RCW 41.56.516 - Fish and wildlife officers - Application of certain uniformed personnel provisions.**

In addition to the classes of employees listed in RCW 41.56.030(14), the provisions of RCW 41.56.430, 41.56.440, 41.56.450, 41.56.452, 41.56.470, 41.56.480, and 41.56.490 also apply to fish and wildlife officers as provided in this section. If more than one exclusive bargaining unit represents uniformed personnel who are fish and wildlife officers, they may choose to enter into separate bargaining with the employer or agree to conduct bargaining with the employer as one coalition of all the exclusive bargaining representatives. If more than one bargaining unit chooses to advance to

interest arbitration, it shall be conducted as coalition. However, one exclusive bargaining representative may singly choose to exercise its right to engage in interest arbitration even if other exclusive bargaining representatives who have chosen to enter into separate bargaining have elected not to take that step. Any exclusive bargaining representative of uniformed personnel who are fish and wildlife officers choosing interest arbitration is subject to the following:

(1) Within ten working days after the first Monday in September of every odd numbered year, the State's bargaining representative and the bargaining representative for the appropriate bargaining unit(s) as a coalition, shall attempt to agree on an interest arbitration panel consisting of three members to be used if the parties are not successful in negotiating a comprehensive collective bargaining agreement. Each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chair of the arbitration panel. Upon the failure of the arbitrators to select a neutral chair within seven days, the two appointed members shall use one of the two following options in the appointment of the third member, who shall act as chair of the panel: (a) By mutual consent, the two appointed members may jointly request the commission to, and the commission shall, appoint a third member within two days of such a request. Costs of each party's appointee shall be borne by each party respectively; other costs of the arbitration proceedings shall be borne by the commission; or (b) either party may apply to the commission, the federal mediation and conciliation service, or the American Arbitration Association to provide a list of five qualified arbitrators from which the neutral chair shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair shall be shared equally between the parties. Immediately upon selecting an interest arbitration panel, the parties shall cooperate to reserve dates with the arbitration panel for potential arbitration between August 1<sup>st</sup> and September 15<sup>th</sup> of the following even-numbered year. The parties shall also prepare a schedule of at least five negotiation dates for the following year, absent an agreement to the contrary. The parties shall execute a written agreement before November 1<sup>st</sup> of each odd-numbered year setting forth the names of the members of the arbitration panel and the dates reserved for bargaining and arbitration. This subsection imposes minimum obligations only and is not intended to define or limit a party's full, good faith bargaining obligation under other sections of this chapter.

(2) The mediator or arbitration panel may consider only matters that are subject to bargaining under RCW 41.80.020.

(3) The decision of an arbitration panel is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to wages and wage-related matters of an arbitrated collective bargaining agreement, is not binding on the State or the representatives of the department of fish and wildlife.

(4) In making its determination, the arbitration panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

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

(b) Stipulations of the parties;

(c) Comparison of the hours and conditions of employment of personnel involved in the proceedings with the hours and conditions of employment of like personnel of like employers of similar size in the State of Washington;

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

(e) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under RCW 41.56.473.

## **RCW 41.80.020 - Scope of bargaining (Selected portions)**

(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. The exclusive bargaining representatives for employees that are subject to chapter 47.64 RCW shall bargain the dollar amount expended on behalf of each employee for health care benefits with the employer as part of the coalition under this subsection. Any such provision agreed to by the employer and the coalition shall be included in all master collective bargaining agreements negotiated by the parties. For institutions of higher education, promotional preferences and the number of names to be certified for vacancies shall be bargained under the provisions of RCW 41.80.010(4). For agreements covering the 2013-2015 fiscal biennium, any agreement between the employer and the coalition regarding the dollar amount expended on behalf of each employee for health care benefits is a separate agreement and shall not be included in the master collective bargaining agreements negotiated by the parties.

## **RCW 43.43.380**

### **Minimum salaries—Report. (Expires June 30, 2025.)**

(1) The minimum monthly salary paid to state patrol troopers and sergeants must be competitive with law enforcement agencies within the boundaries of the State of Washington, guided by the results of a survey undertaken in the collective bargaining process during each biennium. The salary levels must be guided by the average of compensation paid to the corresponding rank from the Seattle police department, King county sheriff's office, Tacoma police department, Snohomish county sheriff's office, Spokane police department, and Vancouver police department. Compensation must be calculated using base salary, premium pay (a pay received by more than a majority of employees), education pay, and longevity pay. The compensation comparison data is based on the Washington patrol and the law enforcement agencies listed in this section. Increases in salary levels for captains and lieutenants that are collectively bargained must be proportionate to the increases in salaries for troopers and sergeants as a result of the survey described in this section.

(2) By December 1, 2024, as part of the salary survey required in this section, the office of financial management must report to the governor and transportation committees of the legislature on the efficacy of Washington State patrol recruitment and retention efforts. Using the results of the 2016 salary survey as the baseline data, the report must include an analysis of voluntary resignations of state patrol troopers and sergeants and a comparison of state patrol academy class sizes and trooper graduations.

(3) This section expires June 30, 2025.

**WAC 391-55-200 - Interest arbitration—Certification of issues.**

(1) If a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.030(7), 41.56.475, 41.56.492, 41.56.496, 41.56.510, 47.64.300, or 74.39A.270 (2) (c) has not been settled after a reasonable period of mediation, and the mediator is of the opinion that his or her further efforts will not result in an agreement, the following procedure shall be implemented:

(a) The mediator shall notify the parties of his or her intention to recommend that the remaining issues in dispute be submitted to interest arbitration.

(b) Within seven days after being notified by the mediator, each party shall submit to the mediator and serve on the other party a written list (including article and section references to parties' latest collective bargaining agreement, if any) of the issues that the party believes should be advanced to interest arbitration.

(2) The mediator shall review the lists of issues submitted by the parties.

(a) The mediator shall exclude from certification any issues that have not been mediated.

(b) The mediator shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" in interest arbitration under RCW 41.56.465 (1)(b), 41.56.475 (2)(b), or 41.56.492 (2)(b).

(c) The mediator may convene further mediation sessions and take other steps to resolve the dispute.

(3) If the dispute remains unresolved after the completion of the procedures in subsections (1) and (2) of this section, interest arbitration shall be initiated, as follows:

(a) Except as provided in (b) of this subsection, the mediator shall forward his or her recommendation and a list of unresolved issues to the executive director, who shall consider the recommendation of the mediator. The executive director may remand the matter for further mediation. If the executive director finds that the parties remain at impasse, the executive director shall certify the unresolved issues for interest arbitration.

(b) For a bargaining unit covered by RCW 41.56.492, the mediator shall certify the unresolved issues for interest arbitration.

**WAC 391-55-215 - Interest arbitration - Conduct of proceedings - Waiver of objections.**

Proceedings shall be conducted as provided in WAC 391-55-200 through 391-55-255. The neutral chairperson shall interpret and apply all rules relating to the powers and duties of the neutral chairperson. Any party who proceeds with arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to State its objection in writing, shall be deemed to have waived its right to object.

**WAC 391-55-220 - Interest arbitration—Submission of proposals for arbitration.**

At least fourteen days before the date of the hearing, each party shall submit to the members of the panel and to the other party written proposals on all of the issues it intends to submit to arbitration.

Parties shall not be entitled to submit issues, which were not among the issues certified under WAC 391- 55-200.

**WAC 391-55-265 Interest arbitration—Suspension of arbitration pending outcome of unfair labor practice proceedings.** (1) The executive director shall suspend the certification of some or all issues under WAC 391-55-200, as follows:

(a) A party which claims that a proposal being advanced to interest arbitration is not a mandatory subject of collective bargaining must communicate its concerns to the other party during bilateral negotiations and/or mediation. If the party advancing the proposal does not withdraw the proposal or modify it to eliminate the claimed illegality, the objecting party must file and process a complaint charging unfair labor practices under chapter 391-45 WAC prior to the conclusion of the interest arbitration proceedings.

(b) A party which claims that the other party to negotiations subject to interest arbitration has violated the "collective bargaining" obligations imposed by RCW 41.56.030(4) must file and process a complaint charging unfair labor practices under chapter 391-45 WAC prior to the conclusion of the interest arbitration proceedings.

(c) If a preliminary ruling is issued under WAC 391-45-110 that an unfair practice violation could be found on a complaint filed under (a) or (b) of this subsection, a final ruling on the unfair labor practice complaint shall be made before any determination is made in interest arbitration on the disputed issue or issues.

(2) Issues suspended under subsection (1) of this section shall be acted upon after the conclusion of the unfair labor practice proceedings, as follows:

(a) If it is concluded that the suspended issue or issues was/were unlawfully advanced or affected by unlawful conduct, the issue or issues shall be stricken from the certification under WAC 391-55-200, and the party advancing the proposal shall only be permitted to advance such modified proposals as are in compliance with the remedial order in the unfair labor practice proceedings.

(b) If it is concluded that the suspended issue or issues was/were lawfully advanced, the suspension under this section shall be terminated and the issue or issues shall be remanded to the interest arbitration panel for ruling on the merits.

### **ISSUES PRESENTED<sup>13</sup>**

1. Article 5 – Hiring and Appointments -
2. Article 11 - Holidays
3. Article 14 – Shared leave
4. Article 40 - Classification
5. Article 41 – Compensation Appendix – Assignment Pay
6. Article 44 – Compensable Work Injury or illness Leave

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<sup>13</sup> PERC certified seven separate issues by its letter dated September 1, 2020. As noted Article 2.2 was resolved at the hearing and will not be discussed here. The remaining articles in dispute were 5, 11, 14, 40, 41 and 44.



# ISSUE 1 – ARTICLE 5 – HIRING AND APPOINTMENTS

## Language in the Coalition CBA 2019-2021

### ARTICLE 5 HIRING AND APPOINTMENTS

#### 5.1 Filling Positions

The Employer will determine when a position will be filled, the recruitment process that will be utilized, the type of appointment to be used when filling the position, and the skills and abilities necessary to perform the duties of the specific position within a job classification. When recruiting for a permanent bargaining unit appointment, the recruitment announcement will be open for a minimum of seven (7) calendar days.

##### A. IBEW/UA

Recruitment announcements will remain open for a minimum of fourteen (14) calendar days for the following job classifications:

1. Electrical Construction Field Supervisor/Technical Specialist;
2. Electrical Construction Inspector/Electrical Construction Inspector Lead;
3. Electrical Plans Examiner;
4. Compliance Specialty Supervisor;
5. Specialty Compliance Technical Specialist;
6. Construction Compliance Inspector; and
7. Factory and Mobile Home Plans Examiner.

##### B. IBEW

Posted permanent positions may be filled after a minimum of three (3) qualified applicants, if available, have participated in the hiring process.

##### C. IAFF

When position WV98 (working title Assistant Fire Chief) becomes vacant, Fire Captains who apply will be interviewed for the opening. Each Fire Captain interviewed, but not appointed, shall be notified in writing of the reasons why they were not appointed.

#### 5.2 Internal Movement – Permanent Employees

A. Prior to certifying candidates in accordance with Article 4, Filling of Vacancies, an Appointing Authority may grant an administrative transfer, promotion, voluntary demotion or elevation within an agency as long as the permanent employee has the skills and abilities required to perform the duties of the position. Employees desiring a transfer, promotion, voluntary demotion or elevation will initiate a request in writing, to the appropriate appointing authority and to the agency human resources director. Appointing authorities will consider these individuals for an opening.

Candidates interviewed will be notified of the hiring decision. This subsection does not apply to those positions that have a required bid system established in accordance with Article 3, Bid System, unless the position remains vacant after the completion of the bid process.

#### 5.3 Permanent Status

An employee will attain permanent status in a job classification upon his/her successful completion of a probationary, trial service or transition review period.

## 5.4 Types of Appointment

### A. Non-Permanent

1. The Employer may make non-permanent appointments. A nonpermanent appointee must have the skills and abilities required for the position. When the employer converts a non-permanent appointment to a permanent appointment, the employee will serve a probationary or trial service period.
2. An employee with permanent status may accept a non-permanent appointment. At least fourteen (14) calendar days prior to accepting the appointment, the employee must notify his/her current Appointing Authority of the intent to accept a non-permanent appointment. Upon notification of the employee's intent, the employee's permanent agency will notify the employee, in writing, of any return rights to the agency and the duration of those return rights. At a minimum, the agency must provide the employee access to the agency's internal layoff list. After receipt of this notification the employee may elect to accept or turn down the appointment offer.
3. The Employer may convert a non-permanent appointment into a permanent appointment if the Employer used a competitive process to fill the non-permanent appointment or if the non-permanent appointment was filled using a veteran placement program. With the exception of FWOG, before converting a non-permanent appointment into a permanent appointment, Article 3, Bid System, and Article 35, Layoff and Recall, must be followed. For a conversion, the employee will serve a probationary or trial service period.
4. The Employer may end a non-permanent appointment at any time by giving one (1) working day's notice to the employee, however if practicable, the Employer may provide more than one (1) working day's notice. Non-permanent appointments normally will not exceed twenty-four (24) consecutive months in duration.

### B. On-Call Employment

The Employer may fill a position with an on-call appointment where the work is intermittent in nature, is sporadic and it does not fit a particular pattern. The Employer may end on-call employment at any time by giving one (1) days' notice to the employee.

#### WSNA

Registered Nurses employed as on-call employees shall be available for at least four (4) full shifts per month. The availability for these shifts must be submitted to the employer at least one month prior to the schedule being posted. This does not entitle on-call employees to work a minimum number of shifts in any given month.

### C. In-Training Employment

1. The Employer may designate specific positions, groups of positions, or all positions in a job classification or series as in-training. The Employer will document the training program, including a description and length of the program.
2. A candidate who is initially hired into an in-training position must successfully complete the job requirements of the appointment. The Employer may separate from State service, any employee who has completed the probationary period for an in-training appointment but does not successfully complete the subsequent trial service periods required by the in-training program. Employees who are not successful may be separated at any time with three (3) working days' notice from the Employer.

3. An employee with permanent status who accepts an in-training appointment will serve a trial service period or periods, depending on the requirements of the in-training program. The Employer may revert an employee who does not successfully complete the trial service period or periods at any time with three (3) working days' notice. The employee's reversion right will be to the job classification that the employee held permanent status in prior to his/her in-training appointment, in accordance with Subsection 5.5 B of this Article.

4. A trial service period may be required for each level of the in-training appointment, or the entire in-training appointment may be designated as the trial service period. The Employer will determine the length of the trial service period or periods to be served by an employee in an in-training appointment.

5. If a trial service period is required for each level of the in-training appointment, the employee will attain permanent status upon successful completion of the training program at each level.

6. If the entire in-training program—meaning all levels within the in-training appointment—is designated as a trial service period, the employee will attain permanent status upon successful completion of the training requirements for the entire in-training program.

#### D. Project Employment

1. The Employer may appoint employees into project positions for which employment is contingent upon State, federal, local, grant, or other special funding of specific and of time-limited duration. The Employer will notify the employees, in writing, of the expected ending date of the project employment.

2. Employees who have entered into project employment without previously attaining permanent status will serve a probationary period. Employees will gain permanent project status upon successful completion of their probationary period.

Employees with permanent project status will serve a trial service period when they:

a. Promote to another job classification within the project; or

b. Transfer or voluntarily demote within the project to another job classification in which they have not attained permanent status.

3. The Employer may consider project employees with permanent project status for transfer, voluntary demotion, or promotion to non-project positions. Employees will serve a trial service period upon transfer, voluntary demotion, or promotion to a non-project position in a job classification that the employees have not previously attained permanent status in.

4. When the Employer converts a project appointment into a permanent appointment, the employee will serve a probationary or trial service period, unless a permanent project employee has already completed the probationary period for that classification.

5. The layoff and recall rights of project employees will be in accordance with the provisions in Article 35, Layoff and Recall.

#### E. Seasonal Career Employment

1. The Employer may make seasonal career appointments that are cyclical in nature, recur at the same agency at approximately the same time each year, and last for a minimum of five (5) months but are less than twelve (12) months in duration during any consecutive twelve (12) month period.

2. Upon completion of a twelve (12) month probationary period completed in consecutive seasons at the same agency, employees in seasonal career employment will assume the rights of employees with permanent status.

3. The layoff and recall rights of seasonal career employees will be in accordance with the provisions in Article 35, Layoff and Recall.

F. Terminations during probationary periods, non-permanent appointments, or reversions of trial service periods are not subject to the grievance procedure in Article 31.

## 5.5 Review Periods

### A. Probationary Period

1. Every part-time and full-time employee, following his/her initial appointment to a permanent position, will serve a probationary period of twelve (12) consecutive months (except that AIAJ, AWP, CWA, UPW, WSNA, WSPTA and WSPSTA will serve a probationary period of six (6) consecutive months, which may be extended by the Employer for written, performance-based reasons to no more than twelve (12) consecutive months.)

2. The Employer may separate a probationary employee at any time during the probationary period. The employer will provide the employee five (5) working days' notice prior to the effective date of the separation. The day that notification is given is considered the first day of notice. If the Employer fails to provide five (5) working days' notice, the separation will stand and the employee will be entitled to payment of salary for up to five (5) working days, which the employee would have worked had notice been given. Under no circumstances will notice deficiencies result in an employee gaining permanent status. The separation of the probationary employee will not be subject to the grievance procedure in Article 31.

3. The Employer will extend an employee's probationary period, on a day-for-a-day basis, for any day(s) or hours rounded to equivalent days that the employee is on leave without pay, sick leave or shared leave, except for leave taken for military service.

4. An employee who transfers or is promoted prior to completing his/her initial probationary period will serve a new probationary period. The length of the new probationary period may be adjusted by the Appointing Authority for time already served in probationary status. In no case, however, will the total probationary period be less than as defined in Subsection A.1, above.

5. If the Employer converts the status of a non-permanent appointment to a permanent appointment, the incumbent employee will serve a probationary period. However, the Employer may credit time worked in a non-permanent appointment toward completion of a probationary period within the same job classification.

### B. Trial Service Period

1. Except for those employees in an in-training appointment, all other employees with permanent status who are promoted, or who voluntarily accept a transfer or demotion into a job classification for which they have not previously attained permanent status, will serve a trial service period of six (6) consecutive months. The Employer may extend the trial service period to no more than twelve (12) consecutive months, provided the employee is given written, performance-based reasons for the extension. The Employer agrees to notify the employee when it intends to extend the trial service period beyond six (6) months. The employee may choose to notify the Guild.

2. Any employee serving a trial service period will have his/her trial service period extended, on a day-for-day basis, for any day(s) that the employee is on leave without pay or shared leave, except for leave taken for military service.

3. An employee serving a trial service period may voluntarily revert to his/her former position within fifteen (15) days of the appointment, provided that the position has not been filled or an offer has not been made to an applicant. With the Appointing Authority's approval, an employee serving a trial service period may voluntarily revert at any time to a funded permanent position in the same agency that is:

- a. Vacant or filled by a non-permanent employee and is within the employee's previously held job classification.
- b. Vacant or filled by a non-permanent employee at or below the employee's previous salary range.

The reversion option, if any, will be determined by the Employer using the order listed above. In both (a) and (b) above, the Employer will determine the position the employee may revert to and the employee must have the skills and abilities required for the position.

4. With a minimum three (3) days' written notice by the Employer, an employee who does not successfully complete his/her trial service period has the right to revert to a position, if available, in the same agency that is:

- a. Vacant or filled by a non-permanent employee and is within the employee's previously held job classification; or
- b. Vacant or filled by a non-permanent employee at or below the employee's previous salary range.

In both (a) and (b) above, the Employer will determine the position the employee may revert to and the employee must have the skills and abilities required for the position.

5. Any unsuccessful employee who has no reversion options may request that his/her name be placed on the agency's internal layoff list and into the General Government Transition Pool Program for positions in job classifications where he/she had previously attained permanent status.

6. The reversion of employees who are unsuccessful during their trial service period is not subject to the grievance procedure in Article 31.

## **GUILD'S POSITION ON ISSUE #1 – ARTICLE 5 HIRING AND APPOINTMENTS**

The Guild's final proposal with regard to Article 5 is as follows:<sup>14</sup>

### **ARTICLE 5 - HIRING AND APPOINTMENTS**

#### **5.1 Filling Positions**

The Employer will determine when a position will be filled, the recruitment process that will be utilized, the type of appointment to be used when filling the position, and the skills and abilities necessary to perform the duties of the specific position within a job classification. When recruiting for a permanent bargaining unit appointment, the recruitment announcement will be open for a minimum of seven (7) calendar days.

The Guild agreed to delete 5.1 A through C.

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<sup>14</sup> It was clear that there was agreement on many of the proposed changes by the State given the changed nature of the bargaining groups, i.e. from the Coalition to an individual CBA with the Guild. The Guild's proposal was shortened for the sake of clarity and brevity. Specifically both the State and Guild agreed that Article 5.1 A-C, should be deleted. Both agreed that 5.2 and 5.3 should remain. They differed on whether 5.4A should remain; the FWOG desired that it should be deleted; the State wants it kept in. Both agreed that 5.4B should be deleted. The State wants to delete 5.4C; the FWOG wants it to remain. Both agreed that 5.4D & E, project employment and seasonal career employment should be deleted. The State seeks a deletion of the last sentence of 5.5 as inapplicable. The FWOG agreed with that change, but wants to change the probationary period in 5.5 A from 12 to 18 months. The FWOG wants to delete 5.5 A 4 and 5.5B. The State wants to delete parts of 5.5B as set forth above, changing the trial service period from 6 to 12 months and instituting a review after 6 months and otherwise retain the remainder of Article 5.5

## 5.2 Internal Movement – Permanent Employees

A. Prior to certifying candidates in accordance with Article 4, Filling of Vacancies, an Appointing Authority may grant an administrative transfer, promotion, voluntary demotion or elevation within an agency as long as the permanent employee has the skills and abilities required to perform the duties of the position. Employees desiring a transfer, promotion, voluntary demotion or elevation will initiate a request in writing, to the appropriate appointing authority and to the agency human resources director. Appointing authorities will consider these individuals for an opening. Candidates interviewed will be notified of the hiring decision. This subsection does not apply to those positions that have a required bid system established in accordance with Article 3, Bid System, unless the position remains vacant after the completion of the bid process.

## 5.3 Permanent Status

An employee will attain permanent status in a job classification upon his/her successful completion of a probationary, trial service or transition review period.

Guild's position is to delete the entirety of Article 5.4.

## 5.5 Review Periods

### A. Probationary Period

1. Every part-time and full-time employee, following his/her initial ~~permanent~~ employment to a ~~permanent~~ regular position, will serve a probationary period of eighteen (18) consecutive months. Deleted the remainder of 5.5A. (Changes noted from the coalition 2019-21 CBA)

2. The Employer may separate a probationary employee at any time during the probationary period. The employer will provide the employee five (5) working days' notice prior to the effective date of the separation. The day that notification is given is considered the first day of notice. If the Employer fails to provide five (5) working days' notice, the separation will stand and the employee will be entitled to payment of salary for up to five (5) working days, which the employee would have worked had notice been given. Under no circumstances will notice deficiencies result in an employee gaining permanent status. The separation of the probationary employee will not be subject to the grievance procedure in Article 31.

3. The Employer will extend an employee's probationary period, on a day-for-a-day basis, for any day(s) or hours rounded to equivalent days that the employee is on leave without pay, sick leave or shared leave, except for leave taken for military service.

FWOG seeks to delete 5.5A 3 & 4 and 5.5B in its entirety.

## STATE'S POSITION ON ARTICLE 5 - HIRING AND APPOINTMENTS

The State seeks changes in the language of Article 5 as follows:<sup>15</sup>

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<sup>15</sup> As noted, there was agreement on the deletion of many of the red lined and stricken article as it was clear that due to the nature of the bargaining relationship, these provisions were no longer in many case applicable here. See FN above.

## ARTICLE 5 HIRING AND APPOINTMENTS

### 5.1 Filling Positions 3

The Employer will determine when a position will be filled, the recruitment process that will be utilized, the type of appointment to be used when filling the position, and the skills and abilities necessary to perform the duties of the specific position within a job classification. When recruiting for a permanent bargaining unit appointment, the recruitment announcement will be open for a minimum of seven (7) calendar days.

#### ~~A. IBEW/UA-10~~

~~Recruitment announcements will remain open for a minimum of fourteen (14) calendar days for the following job classifications:~~

- ~~1. Electrical Construction Field Supervisor/Technical Specialist;~~
- ~~2. Electrical Construction Inspector/Electrical Construction Inspector Lead;~~
- ~~3. Electrical Plans Examiner;~~
- ~~4. Compliance Specialty Supervisor;~~
- ~~5. Specialty Compliance Technical Specialist;~~
- ~~6. Construction Compliance Inspector; and~~
- ~~7. Factory and Mobile Home Plans Examiner.~~

#### ~~B. IBEW~~

~~Posted permanent positions may be filled after a minimum of three (3) qualified applicants, if available, have participated in the hiring process.~~

#### ~~C. IAFF-1~~

~~When position WV98 (working title Assistant Fire Chief) becomes vacant, Fire Captains who apply will be interviewed for the opening. Each Fire Captain interviewed, but not appointed, shall be notified in writing of the reasons why they were not appointed.~~

### 5.2 Internal Movement – Permanent Employees

A. Prior to certifying candidates in accordance with [Article 4](#), Filling of Vacancies, an Appointing Authority may grant an administrative transfer, 8 promotion, voluntary demotion or elevation within an agency as long as the permanent employee has the skills and abilities required to perform the duties of the position. Employees desiring a transfer, promotion, voluntary demotion or elevation will initiate a request in writing, to the appropriate appointing authority and to the agency human resources director. Appointing authorities will consider these individuals for an opening. Candidates interviewed will be notified of the hiring decision. This subsection does not apply to those positions that have a required bid system established in accordance with [Article 3](#), Bid System, unless the position remains vacant after the completion of the bid process.

### 5.3 Permanent Status

An employee will attain permanent status in a job classification upon his/her successful completion of a probationary, trial service or transition review period.

## 5.4 Types of Appointment

### A. Non-Permanent

1. The Employer may make non-permanent appointments. A non-permanent appointee must have the skills and abilities required for the position. When the employer converts a non-permanent appointment to a permanent appointment, the employee will serve a probationary or trial service period.

2. An employee with permanent status may accept a non-permanent appointment. At least fourteen (14) calendar days prior to accepting the appointment, the employee must notify his/her current Appointing Authority of the intent to accept a non-permanent appointment. Upon notification of the employee's intent, the employee's permanent agency will notify the employee, in writing, of any return rights to the agency and the duration of those return rights. At a minimum, the agency must provide the employee access to the agency's internal layoff list. After receipt of this notification, the employee may elect to accept or turn down the appointment offer.

3. The Employer may convert a non-permanent appointment into a permanent appointment if the Employer used a competitive process to fill the non-permanent appointment or if the non-permanent appointment was filled using a veteran placement program. With the exception of FWOG, before converting a non-permanent appointment into a permanent appointment, [Article 3](#), Bid System, and [Article 35](#), Layoff and Recall, must be followed. For a conversion, the employee will serve a probationary or trial service period.

4. The Employer may end a non-permanent appointment at any time by giving one (1) working days' notice to the employee, however if practicable, the Employer may provide more than one (1) working days' notice. Non-permanent appointments normally will not exceed twenty-four (24) consecutive months in duration.

### ~~B. On-Call Employment~~

~~The Employer may fill a position with an on-call appointment where the work is intermittent in nature, is sporadic and it does not fit a particular pattern. The Employer may end on-call employment at any time by giving one (1) days' notice to the employee.~~

### ~~WSNA~~

~~Registered Nurses employed as on-call employees shall be available for at least four (4) full shifts per month. The availability for these shifts must be submitted to the employer at least one month prior to the schedule being posted. This does not entitle on-call employees to work a minimum number of shifts in any given month.~~

### BC. In-Training Employment

1. The Employer may designate specific positions, groups of positions, or all positions in a job classification or series as in-training. The Employer will document the training program, including a description and length of the program.

2. A candidate who is initially hired into an in-training position must successfully complete the job requirements of the appointment. The Employer may separate from State service, any employee who has completed the probationary period for an in-training appointment but does not successfully complete the subsequent trial service periods required by the in-training program. Employees who are not successful may be separated at any time with three (3) working days' notice from the Employer.



3. An employee with permanent status who accepts an in-training appointment will serve a trial service period or periods, depending on the requirements of the in-training program. The Employer may revert an employee who does not successfully complete the trial service period or periods at any time with three (3) working days' notice. The employee's reversion right will be to the job classification that the employee held permanent status in prior to his/her in-training appointment, in accordance with Subsection 5.5 B of this Article.

A trial service period may be required for each level of the in-4 training appointment, or the entire in-training appointment may be designated as the trial service period. The Employer will determine the length of the trial service period or periods to be served by an employee in an in-training appointment.

5. If a trial service period is required for each level of the in-training appointment, the employee will attain permanent status upon successful completion of the training program at each level.

6. If the entire in-training program—meaning all levels within the in-training appointment—is designated as a trial service period, the employee will attain permanent status upon successful completion of the training requirements for the entire in-training program.

#### D. Project Employment

1. The Employer may appoint employees into project positions for which employment is contingent upon State, federal, local, grant, or other special funding of specific and of time-limited duration. The Employer will notify the employees, in writing, of the expected ending date of the project employment.

2. Employees who have entered into project employment without previously attaining permanent status will serve a probationary period. Employees will gain permanent project status upon successful completion of their probationary period.

Employees with permanent project status will serve a trial service 1 period when they:

- a. Promote to another job classification within the project; or
- b. Transfer or voluntarily demote within the project to another job classification in which they have not attained permanent status.

3. The Employer may consider project employees with permanent project status for transfer, voluntary demotion, or promotion to non-project positions. Employees will serve a trial service period upon transfer, voluntary demotion, or promotion to a non-project position in a job classification that the employees have not previously attained permanent status in.

4. When the Employer converts a project appointment into a permanent appointment, the employee will serve a probationary or trial service period, unless a permanent project employee has already completed the probationary period for that classification.

5. The layoff and recall rights of project employees will be in accordance with the provisions in Article 35, Layoff and Recall.

#### E. Seasonal Career Employment

1. The Employer may make seasonal career appointments that are cyclical in nature, recur at the same agency at approximately the same time each year, and last for a minimum of five (5) months but are less than twelve (12) months in duration during any consecutive twelve (12) month period.

2. Upon completion of a twelve (12) month probationary period completed in consecutive seasons at the same agency, employees in seasonal career employment will assume the rights of employees 1 with permanent status.

3. The layoff and recall rights of seasonal career employees will be in accordance with the provisions in Article 35, Layoff and Recall.

F. Terminations during probationary periods, non-permanent appointments, or reversions of trial service periods are not subject to the grievance procedure in Article 31.

## **5.5 Review Periods**

### **A. Probationary Period**

1. Every part-time and full-time employee, following his/her initial appointment to a permanent position, will serve a probationary period of twelve (12) consecutive months (except that AIAJ, AWP, 12 CWA, UPW, WSNA, WSPTA and WSPSTA will serve a probationary period of six (6) consecutive months, which may be extended by the Employer for written, performance-based reasons to no more than twelve (12) consecutive months.)

2. The Employer may separate a probationary employee at any time during the probationary period. The employer will provide the employee five (5) working days' notice prior to the effective date of the separation. The day that notification is given is considered the first day of notice. If the Employer fails to provide five (5) working days' notice, the separation will stand and the employee will be entitled to payment of salary for up to five (5) working days, which the employee would have worked had notice been given. Under no circumstances will notice deficiencies result in an employee gaining permanent status. The separation of the probationary employee will not be subject to the grievance procedure in Article 31.

3. The Employer will extend an employee's probationary period, on a day-for-a-day basis, for any day(s) or hours rounded to equivalent days that the employee is on leave without pay, sick leave or shared leave, except for leave taken for military service.

4. An employee who transfers or is promoted prior to completing his/her initial probationary period will serve a new probationary period. The length of the new probationary period may be adjusted by the Appointing Authority for time already served in probationary status. In no case, however, will the total probationary period be less than twelve (12) months as defined in Subsection A.1, above.

5. If the Employer converts the status of a non-permanent appointment to a permanent appointment, the incumbent employee will serve a probationary period. However, the Employer may credit time worked in a non-permanent appointment toward completion of a probationary period within the same job classification.

### **B. Trial Service Period**

1. Except for those employees in an in-training appointment, all other employees with permanent status who are promoted, or who voluntarily accept a transfer or demotion into a job classification for which they have not previously attained permanent status, will serve a trial service period of six (6)twelve (12) consecutive months. The Employer will conduct a performance review six (6) months into the trial service period. The Employer may extend the trial service period to no more than twelve (12) consecutive months, provided the employee is given written, performance based reasons for the extension. The Employer agrees to notify the employee when it intends to extend the trial service period beyond six (6) months. The employee may choose to notify the Guild.

2. Any employee serving a trial service period will have his/her trial service period extended, on a day-for-day basis, for any day(s) that the employee is on leave without pay or shared leave, except for 3 leave taken for military service.

3. An employee serving a trial service period may voluntarily revert to his/her former position within fifteen (15) days of the appointment, provided that the position has not been filled or an offer has not been made to an applicant. With the Appointing Authority's approval, an employee serving a trial service period may voluntarily revert at any time to a funded permanent position in the same agency that is:

a. Vacant or filled by a non-permanent employee and is within the employee's previously held job classification.

b. Vacant or filled by a non-permanent employee at or below the employee's previous salary range.

The reversion option, if any, will be determined by the Employer using the order listed above. In both (a) and (b) above, the Employer will determine the position the employee may revert to and the employee must have the skills and abilities required for the position.

4. With a minimum three (3) days' written notice by the Employer, an employee who does not successfully complete his/her trial service period has the right to revert to a position, if available, in the same agency that is:

a. Vacant or filled by a non-permanent employee and is within the employee's previously held job classification; or

b. Vacant or filled by a non-permanent employee at or below the employee's previous salary range.

In both (a) and (b) above, the Employer will determine the position the employee may revert to and the employee must have the skills and abilities required for the position.

5. Any unsuccessful employee who has no reversion options may request that his/her name be placed on the agency's internal layoff list and into the General Government Transition Pool Program for positions in job classifications where he/she had previously attained permanent status.

6. The reversion of employees who are unsuccessful during their trial service period is not subject to the grievance procedure in Article 31.

## **DISCUSSION OF ARTICLE 5 – HIRING AND APPOINTMENT**

**Article 5.4** – the parties disagreed on whether to delete the entire section or to retain the “non-permanent” and “in training employment” sections.

The Guild asserted that the coalition language has no application to law enforcement and tied its position on this section to that set forth in Article 5.5 for a single classification with an 18 month probationary period. These position were thus tied together with Article 41, classification as well, see below.

The evidence did not fully support the changes sought by the Guild in this article. There was insufficient evidence of a compelling need at this time to make these changes and the language would allow employer discretion to designate specific groups of employees as “in-training.” There was no evidence of such employees being hired now but the language would essentially be similar to the “cadet” designation for the WSP, which, as noted many times, was the stipulated comparable. Accordingly, the State’s position will be awarded at this point.

**Article 5.5** - The Guild seeks to revise the probationary period from 12 months to 18 months. The Guild argued that this is preferable since it objected to the possibility that an officer who is moved to a higher classification, for example, Officer 1 to Officer 2, would have to serve a separate probationary period. The concern is that an officer who has to serve a new promotional period may not have rights to just cause protections. That does not appear to be a valid concern upon a promotion. Officers appear to have just cause protection once they have served the initial probationary period.

The State argued that 18 months is prohibited by statute and provided sufficient persuasive evidence that since the higher classed positions have different functions and responsibilities, it is appropriate to have that officer serve a second probationary period in order to assess their ability to perform those roles. The State also pointed out that there is a right of reversion set forth in Article 5 that provides protections if the supervisory staff determines that the officer is not meeting expectations in the higher classification and should be moved back to a lower classification.

The State’s proposal incorporates a six month review of the officer’s performance which would presumably give direction to that officer if things were not going in the right direction and an opportunity to change that direction in the remaining months of the probation. There was also clear evidence from the State’s witnesses that this article and its provision are subject to the grievance procedure. There are thus adequate protections in place in this language for both the employer and the affected employee with the State’s language. The Guild’s language would have an officer serve an 18 month probation only from the start of their employment and no such probation after that.

While in most cases, any officer who is seen as a potential prospect for movement to a higher level is very likely doing an excellent job, there are always issues with actual performance in that higher level position that can only be assessed once someone is there and performing those tasks. As noted, the Guild's concern over a lack of just cause protections do not appear to apply to a promotion once the officer has served their initial probation. It is clear that this provision is subject to challenge through the grievance procedure See also, the reversion provisions in the CBA. There was simply greater merit to the State's position in this regard and will be awarded.

On this record, the State's position was found to have greater merit and is awarded.

### **AWARD ON ARTICLE 5 - ISSUE #1**

The State's position is awarded on both Article 5.4 and 5.5.

## **ISSUE #2 – ARTICLE 11 - HOLIDAYS**

**Language from the Coalition CBA 2019-2021:**

### **ARTICLE 11 HOLIDAYS**

#### **11.1 Paid Holidays**

The following days are legal holidays as designated by State statute:

New Year's Day	January 1
Martin Luther King Jr.'s Birthday	Third Monday in January
Presidents' Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans' Day	November 11
Thanksgiving Day	Fourth Thursday in November
Native American Heritage Day	Friday Following the Fourth Thursday in November
Christmas Day	December 25

If the above legal holidays are amended during the term of this Agreement, the amended legal holidays will apply.

#### **11.2 Holiday Rules**

The following rules apply to all holidays except the personal holiday:

- A. Employees will be paid at a straight-time rate even though they do not work.
- B. In addition to Subsection A above, employees will be paid for the hours actually worked on a holiday at the overtime rate, in accordance with Article 8, Overtime.
- C. For full-time or part-time employees with a Monday-through-Friday work schedule:

1. When a holiday falls on a Saturday, the Friday before will be the holiday.
2. When a holiday falls on a Sunday, the following Monday will be the holiday.

D. For full-time or part-time employees who do not have a Monday-through-Friday work schedule:

1. When a holiday falls on the employee's scheduled workday, that day will be considered the holiday.

2. When a holiday falls on the employee's scheduled day off, the agency will treat the employee's workday before or after as the holiday. An employee may request an alternate day off as his/her holiday as long as the requested day off falls within the same pay period as the holiday. The Employer may approve or disapprove the request.

Fish & Wildlife Enforcement Sergeants and Officers who work one hundred seventy-one (171) hours in a twenty-eight (28) day period:

In the event an employee is assigned to work the weekend prior to a recognized holiday as provided in Subsection 11.1 of this Article, he/she will have the option of working the holiday. Officers and Sergeants will not be required to work weekend days associated with a recognized holiday, which falls on a Monday or a Friday without being assigned to work the holiday. State's Exhibit 1

E. The holiday for night shift employees whose work schedule begins on one calendar day and ends on the next will be determined by the agency. It will start either at:

1. The beginning of the scheduled night shift that begins on the holiday; or
2. The beginning of the shift that precedes the holiday.

The decision will be the same for all employees in a facility unless there is agreement to do otherwise between the agency and one (1) or more affected employees, or with the Union, which will constitute agreement of the employees.

F. Part-time employees who begin employment before and remain employed after the holiday will be compensated in cash or compensatory time for the holiday in an amount proportionate to the time in pay status during the month to that required for full-time employment.

G. A full-time employee who would otherwise be entitled to a holiday but is on leave without pay will receive compensation for the holiday provided he/she has been in pay status for eighty (80) non-overtime or non-standby hours during the month, not counting the holiday. Compensation for holidays for other than full-time employees during leave without pay will be proportionate to the time in pay status required for full-time employment. All employees must be employed before and after the holiday and for a period of at least twelve (12) calendar days during the month in addition to the holiday.

H. IAFF members working twenty-four (24) hour shifts will have the option to work their designated holiday or take the designated holiday off. Only one (1) shift will be designated for each holiday. Employees shall only be deemed as working on the Holiday if the employee work hours constitute a majority of that Holiday. An employee who works less than a majority of their shift on the holiday will have their designated holiday determined by Subsection 11.2.D of this Article.

For example, if an employee is scheduled to start work at 8:00 a.m. on the holiday and scheduled to finish their shift at 8:00 a.m. the following day, they will be treated as working on the holiday. An employee scheduled to start work at 8:00 a.m. on the day before the holiday and scheduled to finish their shift at 8:00 a.m. on the holiday would be given a designated holiday under Subsection 11.2.D of this Article.

### **11.3 Personal Holidays**

An employee may select one (1) workday as a personal holiday during the calendar year if the employee has been or is scheduled to be, continuously employed by the State for more than four (4) months.

A. An employee who is scheduled to work less than six (6) continuous months over a period covering two (2) calendar years will receive only one (1) personal holiday during this period.

B. The Employer will release the employee from work on the day selected as the personal holiday provided:

1. The employee has given at least fourteen (14) calendar days' written notice to the supervisor. However, the employee and supervisor may agree upon less notice, and

2. The number of employees selecting a particular day off does not prevent the agency from providing continued public service.

C. Personal holidays must be taken during the calendar year or the entitlement to the day will lapse, except that the entitlement will carry over to the following year when an otherwise qualified employee has requested a personal holiday and the request has been denied.

D. Agencies may establish qualifying policies for determining which of the requests for a particular date will or will not be granted when the number of requests for a personal holiday would impair operational necessity. Failure to do so cannot be used as the basis for denial of time off.

E. Part-time employees who are employed during the month in which the personal holiday is taken will be compensated for the personal holiday in an amount proportionate to the time in pay status during the month to that required for full-time employment.

F. A personal holiday for full-time employees will be equivalent to their work shift on the day selected for personal holiday absence.

G. Part or all of a personal holiday may be donated as shared leave in accordance with Article 14, Shared Leave. Any portion of a personal holiday that remains will be taken by the employee in one (1) absence, not to exceed the work shift on the day of the absence, subject to the request and approval as described in Subsections B, C and D above.

H. Upon request, an employee will be approved to use part or all of his/her personal holiday for:

1. The care of family members in accordance with the Family Care Act and WAC 296-130;

2. Leave as required by the Military Family Act, RCW 49.77; or

3. Leave as required by the Domestic Violence Leave Act RCW 49.76. State's Exhibit 1

Any portion of a personal holiday that remains will be taken by the employee in one (1) absence, not to exceed the work shift on the day of the absence, subject to request and approval as described in Subsections B, C and D above.

### **11.4 CWA – Observance of Holidays**

A. When operational necessity requires employees to work on any holiday during legislative session, at the option of the employee, they shall be compensated at their applicable straight time rate and another day off, with pay. The substitute day off shall be at a time that is mutually agreeable to both the employee and the employer, provided however, the substitute day will be used by the employee prior to the use of vacation time.

B. Employees terminating their employment with the Department shall be entitled to take any unused holiday or receive equivalent cash compensation.

## GUILD'S POSITION ON HOLIDAYS:<sup>16</sup>

### ARTICLE 11 HOLIDAYS

#### 11.1 Paid Holidays

The following days are legal holidays as designated by State statute:

New Year's Day	January 1
Martin Luther King Jr.'s Birthday	Third Monday in January
Presidents' Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans' Day	November 11
Thanksgiving Day	Fourth Thursday in November
Native American Heritage Day	Friday Following the Fourth Thursday in November
Christmas Day	December 25

If the above legal holidays are amended during the term of this Agreement, the amended legal holidays will apply.

#### 11.2 Holiday Rules

The following rules apply to all holidays except the personal holiday:

- A. Employees will be paid at a straight-time rate even though they do not work.
- B. In addition to Subsection A above, employees will be paid for the hours actually worked on a holiday at the overtime rate, in accordance with [Article 8](#), Overtime.

FWOG wants to delete 11.2 C in its entirety. As noted, the parties are in agreement with this.

- D. FWOG seeks to delete most of 11.2D and change the provisions of 11.2D as follows:

In the event an employee is assigned to work the weekend prior to a recognized holiday as provided in Subsection 11.1 of this Article, one of those days will be designated as the holiday for overtime pay purposes.

FWOG seeks to delete 11.2E

- F. Part-time employees who begin employment before and remain employed after the holiday will be compensated in cash or compensatory time for the holiday in an amount proportionate to the time in pay status during the month to that required for full-time employment.

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<sup>16</sup> Again, in the interest of clarity and brevity, the Guild's position was taken from its written final position. There was apparent agreement on some of the provisions proposed to be deleted by the State.



- G. A full-time employee who would otherwise be entitled to a holiday but is on leave without pay will receive compensation for the holiday provided he/she has been in pay status for eighty (80) non-overtime or non-standby hours during the month, not counting the holiday. Compensation for holidays for other than full-time employees during leave without pay will be proportionate to the time in pay status required for full-time employment. All employees must be employed before and after the holiday and for a period of at least twelve (12) calendar days during the month in addition to the holiday.

FWOG seeks to delete 11.2H in its entirety.

### **11.3 Personal Holidays**

An employee may select one (1) workday as a personal holiday during the calendar year if the employee has been or is scheduled to be, continuously employed by the State for more than four (4) months.

- A. An employee who is scheduled to work less than six (6) continuous months over a period covering two (2) calendar years will receive only one (1) personal holiday during this period.
- B. The Employer will release the employee from work on the day selected as the personal holiday provided:
  - 1. The employee has given at least fourteen (14) calendar days' written notice to the supervisor. However, the employee and supervisor may agree upon less notice, and
  - 2. The number of employees selecting a particular day off does not prevent the agency from providing continued public service.
- C. Personal holidays must be taken during the calendar year or the entitlement to the day will lapse, except that the entitlement will carry over to the following year when an otherwise qualified employee has requested a personal holiday and the request has been denied.
- D. Agencies may establish qualifying policies for determining which of the requests for a particular date will or will not be granted when the number of requests for a personal holiday would impair operational necessity. Failure to do so cannot be used as the basis for denial of time off.
- E. Part-time employees who are employed during the month in which the personal holiday is taken will be compensated for the personal holiday in an amount proportionate to the time in pay status during the month to that required for full-time employment.
- F. A personal holiday for full-time employees will be equivalent to their work shift on the day selected for personal holiday absence.
- G. Part or all of a personal holiday may be donated as shared leave in accordance with [Article 14](#), Shared Leave. Any portion of a personal holiday that remains will be taken by the employee in one (1) absence, not to exceed the work shift on the day of the absence, subject to the request and approval as described in Subsections B, C and D above.
- H. Upon request, an employee will be approved to use part or all of his/her personal holiday for:

1. The care of family members in accordance with the Family Care Act and [WAC 296-130](#);
2. Leave as required by the Military Family Act, [RCW 49.77](#); or
3. Leave as required by the Domestic Violence Leave Act [RCW 49.76](#).

Any portion of a personal holiday that remains will be taken by the employee in one (1) absence, not to exceed the work shift on the day of the absence, subject to request and approval as described in Subsections B, C and D above.

#### **11.4 CWA – Observance of Holidays**

- A. When operational necessity requires employees to work on any holiday during legislative session, at the option of the employee, they shall be compensated at their applicable straight time rate and another day off, with pay. The substitute day off shall be at a time that is mutually agreeable to both the employee and the employer, provided however, the substitute day will be used by the employee prior to the use of vacation time.
- B. Employees terminating their employment with the Department shall be entitled to take any unused holiday or receive equivalent cash compensation.

### **STATE’S FINAL POSITION ON HOLIDAYS:**

### **ARTICLE 11 - HOLIDAYS**

#### **11.1 Paid Holidays**

The following days are legal holidays as designated by State statute:

New Year’s Day	January 1
Martin Luther King Jr.’s Birthday	Third Monday in January
Presidents’ Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans’ Day	November 11
Thanksgiving Day	Fourth Thursday in November
Native American Heritage Day	Friday Following the Fourth Thursday in November
Christmas Day	December 25

If the above legal holidays are amended during the term of this Agreement, the amended legal holidays will apply.

#### **11.2 Holiday Rules**

The following rules apply to all holidays except the personal holiday:

- A. Employees will be paid at a straight-time rate even though they do not work.
- B. In addition to Subsection A above, employees will be paid for the hours actually worked on a holiday at the overtime rate, in accordance with [Article 8](#), Overtime.

~~C. For full-time or part-time employees with a Monday through Friday work schedule:~~

~~1. When a holiday falls on a Saturday, the Friday before will be the holiday.~~

~~2. When a holiday falls on a Sunday, the following Monday will be the holiday.~~

~~D. Holidays will be observed on the actual day. For full-time or part-time employees who do not have a Monday through Friday work schedule:<sup>17</sup>~~

~~1. When a holiday falls on the employee's scheduled workday, that day will be considered the holiday.~~

~~2. When a holiday falls on the employee's scheduled day off, the agency will treat the employee's workday before or after as the holiday. An employee may request an alternate day off as his/her holiday as long as the requested day off falls within the same pay period as the holiday. The Employer may approve or disapprove the request.~~

~~Fish & Wildlife Enforcement Sergeants and Officers who work one hundred seventy-one (171) hours in a twenty-eight (28) day period:~~

~~E. In the event an employee is assigned to work the weekend prior or the weekend after ~~to an attached~~ recognized holiday as provided in Subsection 11.1 of this Article, ~~he/she~~ they will have the option of working the holiday if not already assigned. ~~Officers and Sergeants will not be required to work weekend days associated with a recognized holiday, which falls on a Monday or a Friday without being assigned to work the holiday.~~~~

~~E. The holiday for night shift employees whose work schedule begins on one calendar day and ends on the next will be determined by the agency. It will start either at:~~

~~1. The beginning of the scheduled night shift that begins on the holiday; or~~

~~2. The beginning of the shift that precedes the holiday.~~

~~The decision will be the same for all employees in a facility unless there is agreement to do otherwise between the agency and one (1) or more affected employees, or with the Union, which will constitute agreement of the employees.~~

~~F. Part-time employees who begin employment before and remain employed after the holiday will be compensated in cash or compensatory time for the holiday in an amount proportionate to the time in pay status during the month to that required for full-time employment.~~

G. A full-time employee who would otherwise be entitled to a holiday but is on leave without pay will receive compensation for the holiday provided he/she has been in pay status for eighty (80) non-overtime or non-standby hours during the month, not counting the holiday. Compensation for holidays for other than full-time employees during leave without pay will be proportionate to the time in pay status required for full-time employment. All employees must be employed before and after the holiday and for a period of at least twelve (12) calendar days during the month in addition to the holiday.

~~H. IAFF members working twenty-four (24) hour shifts will have the option to work their designated holiday or take the designated holiday off. Only one (1) shift will be designated for each holiday. Employees shall only be deemed as working on the Holiday if the employee work hours constitute a majority of that Holiday. An employee who works less than a majority of their shift on the holiday will have their designated holiday determined by Subsection 11.2.D of this Article.~~

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<sup>17</sup> It appeared from the numbering that "D" should perhaps be designated as "C." Likewise, it appeared that "E" should be "D."

~~For example, if an employee is scheduled to start work at 8:00 a.m. on the holiday and scheduled to finish their shift at 8:00 a.m. the following day, they will be treated as working on the holiday. An employee scheduled to start work at 8:00 a.m. on the day before the holiday and scheduled to finish their shift at 8:00 a.m. on the holiday would be given a designated holiday under Subsection 11.2.D of this Article.~~

### 11.3 Personal Holidays

An employee may select one (1) workday as a personal holiday during the calendar year if the employee has been or is scheduled to be, continuously employed by the State for more than four (4) months.

~~A. An employee who is scheduled to work less than six (6) continuous months over a period covering two (2) calendar years will receive only one (1) personal holiday during this period.~~

FWOG seeks to retain the language of 11.3 and 11.4 in their entirety.

B. The Employer will release the employee from work on the day selected as the personal holiday provided:

1. The employee has given at least fourteen (14) calendar days' written notice to the supervisor. However, the employee and supervisor may agree upon less notice, and

2. The number of employees selecting a particular day off does not prevent the Employer agency from providing continued public service.

C. Personal holidays must be taken during the calendar year or the entitlement to the day will lapse, except that the entitlement will carry over to the following year when an otherwise qualified employee has requested a personal holiday and the request has been denied.

D. Agencies The Employer may establish qualifying policies for determining which of the requests for a particular date will or will not be granted when the number of requests for a personal holiday would impair operational necessity. Failure to do so cannot be used as the basis for denial of time off.

~~E. Part-time employees who are employed during the month in which the personal holiday is taken will be compensated for the personal holiday in an amount proportionate to the time in pay status during the month to that required for full-time employment.~~

F. A personal holiday for ~~full-time~~ employees will be equivalent to eight (8) hours ~~their work shift on the day selected for personal holiday absence.~~

G. Part or all of a personal holiday may be donated as shared leave in accordance with Article 14, Shared Leave. Any portion of a personal holiday that remains will be taken by the employee in one (1) absence, not to exceed the work shift on the day of the absence, subject to the request and approval as described in Subsections B, C and D above.

H. Upon request, an employee will be approved to use part or all of their ~~his/her~~ personal holiday for:

1. The care of family members in accordance with the Family Care Act and WAC 296-130;
2. Leave as required by the Military Family Act, RCW 49.77; or
3. Leave as required by the Domestic Violence Leave Act RCW 49.76. State's Exhibit 1

Any portion of a personal holiday that remains will be taken by the employee in one (1) absence, not to exceed the work shift on the day of the absence, subject to request and approval as described in Subsections B, C and D above.

#### **11.4 CWA—Observance of Holidays**

~~A. When operational necessity requires employees to work on any holiday during legislative session, at the option of the employee, they shall be compensated at their applicable straight time rate and another day off, with pay. The substitute day off shall be at a time that is mutually agreeable to both the employee and the employer, provided however, the substitute day will be used by the employee prior to the use of vacation time.~~

~~B. Employees terminating their employment with the Department shall be entitled to take any unused holiday or receive equivalent cash compensation.~~

#### **DISCUSSION ON ISSUE #2 - HOLIDAYS.**

**Article 11.2.D** - Here the Guild's position had greater merit and served to clarify when and under what circumstances premium pay is due when officers work on or around holidays.

The State claimed that this could and might cause either increased costs and/or create administrative difficulties in scheduling. However that evidence was unclear and did not provide an adequate basis to say conclusively that it would do either of those.

It was unclear if the WSP has this in the new CBA between the State and the WSP so there was little to go on to determine if this is consistent with that contract or not.<sup>18</sup> As discussed herein, there remained a dispute about whether the WSP contract was the comparator for wage and economic issues or whether that stipulation was broader than that. Irrespective of how that dispute is determined, it was clear that the notion of holidays can be a unique benefit to this unit and does not necessarily have to be a match with the WSP contract.

The Guild pointed out that officers receive holiday premium in the current contract and wish to continue that. The issue is not the scope of premiums paid, but rather in how an officer becomes eligible for that pay. Working on the holiday is not enough. To earn time and a half pay on a holiday, an officer must work all three holiday weekend days.

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<sup>18</sup> On the 5<sup>th</sup> day of hearing, the parties submitted the TA'd WSP contract but it did not contain any specific language regarding holidays, other than a reference to holiday credits at Article 13.5.

The Guild's proposal was not seen as overreaching and it offered what was determined to be a reasonable and evidence based compromise: To earn holiday pay, officers would have to work one of the holidays, but not both. While it would add some additional cost to the contract given the changed nature of the premium pay for the holidays the proposed change was not determined to be an undue burden on management's ability to schedule for holiday weekends. President Jones' testimony was both persuasive and determinative on this question.

**Article 11.2.F** – The Guild seeks to retain the current contract language while the State seeks to delete the entire section. The Guild acknowledged that there are no part time employees currently but that there could be and that there is nothing in the agency policy nor state law that prohibits the use of part-time employees. The Guild simply seeks to retain the current CBA language in the event there are future part-time employees and that this language clarifies their rights to premium pay under the terms of that section.

The State seeks to delete the section in its entirety but was unable to provide sufficient evidence of a compelling need to remove the language. The evidence showed that this language has been in the coalition CBA for some time and that even though there are currently no part-time employees in this agency, there is nothing to prevent that from happening in the future. On this record, the Guild's position is awarded and the language should be retained.

**Article 11.3.A** – The Guild seeks to retain the current language of the CBA while the State again seeks to delete the entire section. There was insufficient evidence to establish a compelling need for the deletion of the language. The language allows an employee who is scheduled to work less than six continuous months over a period covering two calendar years will receive only one personal holiday during this period. The change sought here by the State appears to be tied to the State's desire to delete the reference to part-time employment, discussed above.

There was very little discussion of this section at the hearing, but overall, there was insufficient evidence of a compelling need to change it and as the Guild noted, if there ever were an employee who fell into this category, this would help clarify their rights to personal holidays. Accordingly, the language should be retained.

**Article 11.3.E** – The State seeks to delete the entire section while the Guild seeks to retain current CBA language. For the reasons stated above regarding part-time employment, the Guild’s position is awarded here as well. There was insufficient evidence of a compelling need at this time to delete the language.

**Article 11.3.F** – Here the State seeks a change that it asserted clarifies that personal holidays are equal to eight hours. The Guild seeks to retain current CBA language and argue that the change sought by the State would remove current benefits from the contract.

Here, the State’s position was determined to have greater merit and indeed clarifies that the personal holiday is equivalent to eight hours. There was insufficient evidence to show that this change would remove any benefits from the contract or would have an adverse impact on the rights of the employees. Here, the State’s position is awarded and the language should be amended as the State asserted.

#### **AWARD ON – ISSUE #2 – HOLIDAYS**

The Guild’s position on holiday pay Article 11.2.D is awarded.

The Guild’s position on holiday pay Article 11.2.F is awarded.

The Guild’s position on holiday pay Article 11.3.A is awarded.

The Guild’s position on holiday pay Article 11.3.E is awarded.

The State’s position on holiday pay Article 11.3.F is awarded.<sup>19</sup>

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<sup>19</sup> With regard to Article 11.4 the Guild acknowledged that the language is inapplicable and should be deleted.

# ISSUE # 3 – ARTICLE 14 – SHARED LEAVE

## LANGUAGE FROM THE COALITION CBA 2019-2021

### ARTICLE 14 - SHARED LEAVE

14.1 A. State employees may donate vacation leave, sick leave, or personal holidays to a fellow State employee who is:

1. Called to service in the uniformed services;
2. Responding to a State of emergency anywhere within the United States declared by the federal or any State government;
3. A victim of domestic violence, sexual assault, or stalking;
4. Suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition.
5. Bonding with their newborn, adoptive or foster child;
6. Sick or temporarily disabled because of pregnancy and/or childbirth.

B. An employee is eligible to request participation in the shared leave program when the employee is entitled to accrue vacation leave, sick leave, or a personal holiday.

C. For purposes of the State leave sharing program, the following definitions apply:

1. “Employee” means any employee who is entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained.

2. Employee's “relative” is limited to the employee's spouse, State registered domestic partner as defined by RCW 26.60.020 and 26.60.030, child, stepchild, grandchild, grandparent, sibling, parent or stepparent.

3. “Household members” are defined as persons who reside in the same home who have reciprocal duties to and do provide financial support for one another. This term will include foster children and legal wards even if they do not live in the household. The term does not include persons sharing the same general house, when the living style is primarily that of a dormitory or commune.

4. “Severe” or “extraordinary” condition is defined as serious or extreme and/or life threatening.

5. “Service in the uniformed services” means the performance of duty on a voluntary or involuntary basis in a uniformed service under

competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including State-ordered active duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

6. “Uniformed services” means the armed forces, the army national guard, and the air national guard of any State, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or State active duty, the commissioned corps of the public health service, the coast guard, and any other category of persons designated by the President of the United States in time of war or national emergency.



7. “Domestic violence” means physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, between family or household members as defined in RCW 26.50.010; sexual assault of one family or household member by another family or household member; or stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

8. “Sexual assault” has the same meaning as in RCW 70.125.030.

9. “Stalking” has the same meaning as in RCW 9A.46.110.

10. “Victim” means a person that domestic violence, sexual assault, or stalking has been committed against as defined in this Section.

11. Parental leave means leave to bond and care for a newborn child after birth or to bond and care for a child after placement for adoption or foster care for a period of up to sixteen (16) weeks after the birth or placement.

12. Pregnancy disability means a pregnancy related medical condition or miscarriage.

14.2 An employee may be eligible to receive shared leave under the following conditions:

A. The employee's agency Head or designee determines that the employee meets the criteria described in this Section.

B. For work-related illness or injury, the employee has diligently pursued and been found to be ineligible for benefits under RCW 51.32 if the employee qualifies under Section 14.3 of this Article.

C. The employee has abided by agency policies regarding the use of sick leave if the employee qualifies under Section 14.3 A.1 or Section 14.3 A. 4 of this Article.

D. The employee has abided by agency policies regarding the use of vacation leave and paid military leave if the employee qualifies under Subsection 14.3 A.2 of this Article.

E. A State of emergency has been declared anywhere within the United States by the federal government or any State government if the employee qualifies under Subsection 14.3 A.3 of this Article.

F. Donated leave may be transferred from employees within the same agency, or with the approval of the heads or designees of both State agencies, higher education institutions, and school districts/educational service districts, to an employee of another State agency, higher education institution, or school district/educational district.

G. The employee has abided by agency policy regarding the use of sick leave and vacation leave if the employee qualifies under 14.3.A.5.

14.3 An employee may donate vacation leave, sick leave, or personal holiday to another employee only under the following conditions:

A. The receiving employee either:

1. Suffers from or has a relative or household member suffering from an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature; or

2. Has been called to service in the uniformed services; or

3. Has the needed skills to assist in responding to an emergency or its aftermath and volunteers his/her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services; or

4. Is a victim of domestic violence, sexual assault, or stalking.

5. Is taking parental or pregnancy disability leave.

B. The illness, injury, impairment, condition, call to service, or emergency volunteer service, consequence of domestic violence, sexual assault or stalking, or parental or pregnancy disability leave, or is likely to cause, the receiving employee to:

1. Go on leave without pay status; or

2. Terminate State employment.

C. The receiving employee's absence and the use of shared leave are justified.

D. The receiving employee has depleted or will shortly deplete their:

1. Vacation leave, sick leave, and personal holiday reserves if the employee qualifies under Section 14.3 of this Article; or

2. Vacation leave and paid military leave allowed under RCW 38.40.060 if the employee qualifies under Section 14.3 of this Article;

3. Vacation leave if the employee qualifies under Subsection 14.3 A.3 of this Article;

4. Personal holiday, vacation leave and sick leave if the employee qualifies under Subsection 14.3.A.5 above. However, the employee is not required to deplete all of their vacation and sick leave and can maintain up to forty (40) hours of each of vacation and sick leave.

E. The agency Head or designee permits the leave to be shared with an eligible employee.

F. The donating employee may donate any amount of vacation leave, provided the donation does not cause the employee's vacation leave balance to fall below eighty (80) hours. For part-time employees, requirements for annual leave balances will be prorated.

G. Employees may not donate excess vacation leave that the donor would not be able to take due to an approaching anniversary date.

H. The donating employee may donate any specified amount of sick leave provided the donation does not cause the employee's sick leave balance to fall below one hundred seventy-six (176) hours after the transfer. For purposes of sick leave donation, a day equals the donor's monthly sick leave accrual.

I. The donating employee may donate all or part of a personal holiday. Any portion of a personal holiday that is not used will be returned to the donating employee.

14.4 The agency Head will determine the amount of donated leave an employee may receive and may only authorize an employee to use up to a maximum of five hundred twenty-two (522) days of shared leave during total State employment. The Employer may authorize leave in excess of five hundred twenty-two (522) days in extraordinary circumstances for an employee qualifying for the program because they are suffering from an illness, injury, impairment or physical or mental condition which is of an extraordinary or severe nature. A non-permanent or on-call employee who is eligible to use accrued leave or personal holiday may not use shared leave beyond the termination date specified in the non-permanent or on-call employee's appointment letter.

14.5 The agency Head or designee will require the employee to submit, prior to approval or disapproval;

A. A medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition when the employee is qualified under Section 14.3 A.1 of this Article;

B. A copy of the military orders verifying the employee's required absence when the employee is qualified for shared leave under Section 14.3 A.2 of this Article;

C. Proof of acceptance of an employee's offer to volunteer for either a governmental agency or a nonprofit organization during a declared State of emergency when the employee is qualified for shared leave under Section 14.2 A.3 of this Article;

D. Verification of the employee's status as a victim of domestic violence, sexual assault or stalking when the employee is qualified for shared leave under Section 14.3 A.4 of this Article; or

E. Verification of the birth, adoption or foster care placement of a child and/or a medical certificate from a licensed physician or health care practitioner verifying pregnancy disability under Subsection 14.3.A.5 of this Article.

14.6 Any donated leave may only be used by the recipient for the purposes specified in this Section.

14.7 The receiving employee will be paid their regular rate of pay; therefore, one (1) hour of shared leave may cover more or less than one (1) hour of the recipient's salary. The calculation of the recipient's leave value will be in accordance with Office of Financial Management policies, regulations, and procedures. The dollar value of the leave is converted from the donor to the recipient. The leave received will be coded as shared leave and be maintained separately from all other leave balances.

14.8 A. All forms of paid leave available for use by the recipient must be used prior to using shared leave when qualified under Section 14.3 A.1.

B. All forms of paid leave, except sick leave, available for use by the recipient must be used prior to using shared leave when qualified under Section 14.3 A.2 or 14.3 A.3, or 14.3 A.4.

C. For shared leave qualified under subsection 14.3.A.5 of this Article, the employee is not required to deplete all of their vacation leave and sick leave and can maintain up to forty (40) hours of each of vacation and sick leave.

14.9 Any shared leave no longer needed or will not be needed at any future time in connection with the original injury or illness or for any other qualifying condition by the recipient, as determined by the agency Head or designee will be returned to the donor(s).

Unused leave may not be returned until one of the following occurs:

A. The agency Head or designee receives a doctor's Statement verifying the need for shared leave is resolved, or;

B. The employee is released to full-time employment; has not received additional medical treatment for the current condition or any other qualifying condition for at least six (6) months; and the employee's doctor has declined, in writing, the employee's request for a Statement indicating the employee's condition has been resolved.

The shared leave remaining will be divided among the donors on a prorated basis based on the original donated value and returned at its original donor value and reinstated to each donor's appropriate leave balance. The return will be prorated back based on the donor's original donation.

14.10 If an employee has a need to use shared leave due to the same condition listed in the previously approved request, the agency head or designee must approve a new shared leave request for the employee.

14.11 All donated leave must be given voluntarily. No employee will be coerced, threatened, intimidated, or financially induced into donating leave for purposes of this program.

14.12 The agency will maintain records which contain sufficient information to provide for legislative review.

14.13 An employee who uses leave that is transferred under this Section will not be required to repay the value of the leave used.

#### **GUILD'S PROPOSAL FOR ARTICLE 14 – SHARED LEAVE**

The Guild proposed no changes in the language of Article 14. In the interest of brevity, that language will not be repeated here. The Guild however asserted that there is no compelling reason to change the language as the State seeks, see below.

#### **STATE'S PROPOSAL FOR ARTICLE 14 – SHARED LEAVE.**

The State seeks changes in the following provisions of Article 14:

##### **Article 14.1 C 11:**

11. Parental leave means leave to bond and care for a newborn child after birth or to bond and care for a child after placement for adoption or foster care ~~for a period of up to sixteen (16) weeks after the birth or placement.~~ Parental leave must be used within sixteen (16) weeks immediately after birth or placement unless the birth parent suffers from a pregnancy disability. When the birth parent suffers from a pregnancy disability, the period of sixteen (16) weeks for parental leave begins immediately after the pregnancy disability has ended provided the parental leave is used within the first year of the child's life.

Delete Article 14.2 B, which read in the coalition CBA as follows:

- ~~14.2 B For work related illness or injury, the employee has diligently pursued and been found to be ineligible for benefits under RCW 51.32 if the employee qualifies under Section 14.3 of this Article. (The State would subsequently remember the following provisions of Article 14.2.)~~

Change Article 14.3 D 1 as follows:

- D. The receiving employee has depleted or will shortly deplete their:
  1. Vacation leave, sick leave, and personal holiday reserves if the 20 employee qualifies under Section 14.3 of this Article. The employee is not required to deplete all of their accrued vacation and sick leave and can maintain up to forty hours of vacation leave and forty hours of sick leave; ~~or~~
  2. Vacation leave and paid military leave allowed under RCW 38.40.060 if the employee qualifies under Section 14.3 of this Article. The employee is not required to deplete all of their accrued vacation leave and paid military leave allowed under RCW 38.40.060 and can maintain up to forty hours of vacation leave and 5 forty hours of military leave;
  3. Vacation leave if the employee qualifies under subsection 14.3.A.3 of this Article. The employee is not required to deplete all of their accrued vacation leave.

The State seeks these changes in Article 14.8:

- 14.8 A. An employee receiving industrial replacement benefits may not receive greater than twenty-five percent (25%) of their base salary from the receipt of shared leave. ~~All forms of paid leave available for use by the recipient must be used prior to using shared leave when qualified under Section 14.3 19 A.1.~~
- B. Shared leave may be used intermittently or on nonconsecutive days so long as the leave has not been returned under Section 14.9 of this Article. ~~All forms of paid leave, except sick leave, available for use by the recipient must be used prior to using shared leave when qualified under Section 14.3 24 A.2 or 14.3 A.3, or 14.3 A.4.~~
- ~~C. For shared leave qualified under subsection 14.3.A.5 of this Article, the employee is not required to deplete all of their vacation leave and sick leave 2 and can maintain up to forty (40) hours of each of vacation and sick leave.~~

### DISCUSSION OF ISSUES #3 – ARTICLE 14 – SHARED LEAVE

The State seeks a number of substantive changes in the language of Article 14 as noted above, while the Guild seeks to have no changes from the present coalition language.

**Article 14.1.C.11** – The State seeks a change that it contended would clarify the date on which parental leave must be used and requires that parental leave must be used within sixteen weeks after the birth or placement of the child. There is also a provision that if the birth parent suffers from a pregnancy related disability, the sixteen weeks begins after the disability has ended but must be used within the first year of the child’s life.

The Guild asserted that this change does not appear to be necessary but acknowledged that it may well be a clarification of existing language. The Guild seeks to retain existing language from the coalition CBA.

There was not much evidence on this issue presented by either party. On this record, despite the paucity of such evidence, the language proposed by the State did appear to clarify the existing language and did not appear to remove any benefits from the existing contract. Accordingly, the state’s proposal on article 14.1.C.11 regarding parental leave is awarded.

**Article 14.2.B** - The State seeks the deletion of this provision. The Guild seeks to retain it in its current form.

The overall evidence did not establish that there was a compelling need to delete the language. There was no evidence that this provision has created a cost issue or an administrative burden on the agency or the affected employees. Accordingly, the Guild' position is awarded.

**Article 14.3.D (1) (2) (3)**– The State seeks to amend this provision to essentially provide that employees are not required to deplete all of their current leaves as set forth in those various provisions before being eligible for shared leave.

The Guild asserted that the proposed language in Articles 14.2.B and 14.3.D appear contradictory. The Guild further asserted that the State has thus far refused to agree to the Guild's workers compensation time off proposal and that doing so might mitigate the State's requested changes. See discussion of Article 44.1 below; where the Guild argued that the CBA should be amended to provide for top off pay equal to the LEOFF II supplement and which would align the "top off" pay provisions with other local law enforcement agencies.

This as a thorny issue to be sure but given the overall record, it was determined that the state's position on this issue should be awarded. The changes appear to clarify when and under what circumstances shared leave is applicable and does not appear to remove any existing benefits from the employees. Accordingly the State's position on this section is awarded.

### **AWARD ON ISSUE #3 ARTICLE 14 – SHARED LEAVE**

The State's proposal on Article 14.1.C.11 is awarded.

The Guild's position regarding Article 14.2.B is awarded.

The State's proposal on Article 14.3.D is awarded.

### **ISSUE #4 – ARTICLE 40 CLASSIFICATION**

#### **LANGUAGE FROM THE COALITION CBA 2019-2021**

#### **ARTICLE 40 CLASSIFICATION**

##### **40.1 Classification Plan Revisions**

A. The Employer will provide to the Union, in writing, any proposed changes to the classification plan including descriptions for newly created classifications. agency initiated requests will be provided to the Union. The parties may then meet to discuss the assignment of new bargaining unit classes or the reassignment of existing bargaining unit classes to pay ranges.

B. The Employer will assign newly created positions to the appropriate classification within the classification plan.

#### 40.2 Position Review

##### Employee Initiated Review:

An individual employee who believes that the duties of his/her position have changed, or that his/her position is improperly classified may request a review according to the following procedure:

A. The employee and/or the employee's immediate supervisor will complete and sign the appropriate form.

B. The supervisor will then send the completed form to the agency's Human Resources Office. The agency's Human Resources Office will review the completed form. A decision regarding appropriate classification will then be made by the agency.

C. In the event the employee disagrees with the reallocation decision of the agency, he/she may appeal the decision to the OFM State Human Resources Director within thirty (30) calendar days of being provided the results of a position review or the notice of reallocation. The OFM State Human Resources Director or designee will then make a written determination which will be provided to the employee.

D. The employee or the employer may appeal the determination of the OFM State Human Resources Director or designee to the Washington Personnel Resources Board within thirty (30) calendar days of being provided the written decision of the OFM State Human Resources Director or designee. The appropriate board will render a decision which will be final and binding.

E. The effective date of a reallocation resulting from an employee request for a position review is the date the request was filed with the agency.

#### 40.3 Effect of Reallocation

##### A. Reallocation to a Class with a Higher Salary Range Maximum

1. If the employee has performed the higher level duties for at least twelve (12) months and meets the skills and abilities required of the position, the employee will remain in the position and retain existing appointment status.

2. If the reallocation is the result of a change in the duties of the position and the employee has not performed the higher level duties for at least twelve (12) months, the Employer must give the employee the opportunity to compete for the position if he/she possesses the required skills and abilities. If the employee is not selected for the position, or does not have the required skills and abilities, the layoff procedure specified in Article 35, Layoff and Recall, of this Agreement applies. If the employee is appointed, he/she must serve a trial service period.

##### B. Reallocation to a Class with an Equal Salary Range Maximum

1. If the employee meets the skills and abilities requirements of the position, the employee remains in the position and retains existing appointment status.

2. If the employee does not meet the skills and abilities requirements of the position, the layoff procedure specified in Article 35 of this Agreement applies.

##### C. Reallocation to a Class with a Lower Salary Range Maximum

1. If the employee meets the skills and abilities requirements of the position and chooses to remain in the reallocated position, the employee retains the existing appointment status and has the right to be placed on the Employer's internal layoff list for the classification occupied prior to the reallocation.

2. If the employee chooses to vacate the position or does not meet the skills and abilities requirements of the position, the layoff procedure specified in Article 35 of this Agreement applies.

#### 40.4 Salary Impact of Reallocation

An employee whose position is reallocated will have his/her salary determined as follows:

##### A. Reallocation to a Class with a Higher Salary Range Maximum

Upon appointment to the higher class, the employee's base salary will be increased to a step of the range for the new class that is nearest to five percent (5%) higher than the amount of the pre-promotional step. At the time of the reallocation, the agency head or designee may authorize an increase of the base salary up to a total of ten percent (10%). The base salary not to exceed the top of the range.

##### B. Reallocation to a Class with an Equal Salary Range Maximum

The employee retains his/her previous base salary.

##### C. Reallocation to a Class with a Lower Salary Range Maximum

The employee will be paid an amount equal to his/her current salary until the new salary range equals the employee's pay at the time of reallocation.

40.5 Decisions regarding appropriate classification will go through the appeal process described in this Article and are not subject to the grievance and arbitration procedure specified in Article 31.

### **GUILD'S POSITION WITH REGARD TO ISSUE #4 – ARTICLE 40 CLASSIFICATION**

The Guild seeks the deletion of the entire article.

### **STATE'S POSITION WITH RESPECT TO ARTICLE 40 – CLASSIFICATION.**

The State seeks to have the entire article remain with a few changes as follows:

#### **Article 40.2 - Position Review**

- B. The supervisor will then send the completed form to the ~~agency's~~ Human Resources Office. The ~~agency's~~ Human Resources Office will review the completed form. A decision regarding appropriate classification will then be made by the Employer ~~agency~~.

### **DISCUSSION OF ISSUE #4 – ARTICLE 40 - CLASSIFICATION**

The difference here is stark – the Guild seeks to delete the entire article, while the State seeks to keep it with only some very minor non-substantive changes, as set forth above. The Guild's position is based on the assertion that “a cop is a cop” and that while a classification system might make sense in a civilian bargaining unit, it does not here.



This was a somewhat curious position in that the testimony from many of the Guild’ witnesses was that the Fish and Wildlife officer position is a unique one within the law enforcement community and involves very different statutes and rules to enforce and a very different law enforcement environment. There was no evidence of how this language has created problems for the officers or management and on this record, there was no showing of why it should be completely removed from the existing relationship between these parties.

Again, a change of this nature from language that has apparently been in the party’s labor agreement, albeit in the coalition format – is generally one that requires evidence of a compelling need for such a change. Without that presented here it was determined to be more appropriate to have the language remain. This is always something the parties can negotiate for themselves at a later date in subsequent contracts if there are problems or issues that arise.

#### **AWARD ON ISSUE #4 – ARTICLE 40 - CLASSIFICATION**

State’s position is awarded. Language to remain in the new CBA with the changes outlined on the State’s final submission.

#### **ISSUE #5 – ARTICLE 41 - COMPENSATION**

##### **LANGUAGE FROM THE COALITION CBA 2019-2021**

##### **ARTICLE 41 - COMPENSATION**

##### **41.1 General Service Pay Range Assignments**

A. Effective July 1, 2019, each classification represented by the Union will continue to be assigned to the same salary range of the “General Service Salary Schedule Effective January 1, 2019, through June 30, 2019,” as it was assigned on June 30, 2019, except for the classification in Appendix C and Compensation Appendix K.

B. Effective July 1, 2019, each employee will continue to be assigned to the same range and step of the 2019 General Service Salary Schedule that the employee was assigned to on June 30, 2019, except for the classification in Appendix C and Compensation Appendix K.

C. Effective July 1, 2019, all ranges and steps of the General Service Salary Schedule will be increased by three percent (3%) as shown in Compensation Appendix A. This salary increase is based on the General Service Salary Schedule in effect on June 30, 2019.

D. Effective July 1, 2020, all salary ranges and steps of the General Service Salary Schedule will be increased by three percent (3%) as shown in Compensation Appendix E. This salary increase is based on the General Service Salary Schedule in effect on June 30, 2020.

E. Fourteen Dollars (\$14) per Hour Minimum Wage

After 41.1(C) above, effective July 1, 2019, impacted job classifications will be increased to a higher range due to compression or inversion related to the increased minimum wage. Compensation Appendix K identifies the impacted job classifications and the salary range for which they will be assigned. Employees will be assigned to a step in their new range that is nearest to their new salary as of July 1, 2019.

F. Employees who are paid above the maximum for their range on the effective date of the increases described in Subsections C and D, above, will not receive the specified increase to their current pay unless the new range encompasses their current rate of pay.

G. Longevity Increase

All employees will progress to Step M six (6) years after being assigned to Step L in their permanent salary range. The Employer may increase an employee's step to Step M to address issues related to recruitment, retention or other business needs.

H. Minimum Wages Determined by Local Ordinances

Any employee who has a permanent assigned duty station within a local jurisdiction which has passed an ordinance establishing a minimum wage higher than the minimum wage established in this collective bargaining agreement, will be paid no less than the minimum wage directed by the local ordinance. The Employer will first consider the hourly wage of the employee's base salary plus the King County Premium pay (if applicable). If, after this consideration, the employee's salary is still below the local ordinance minimum wage the employee will be placed on a step in the assigned salary range that is equal to or higher than the wage requirement of the local ordinance.

#### **41.2 "GS1" Pay Range Assignments**

A. Effective July 1, 2019, each classification represented by the Union and listed in Appendix J will continue to be assigned to the same salary range of the "GS1" Salary Schedule that it was assigned on June 30, 2019, except for classifications in Appendix C.

B. Effective July 1, 2019, each employee will continue to be assigned to the same range and step of the "GS1" Salary Schedule that the employee was assigned on June 30, 2019 except for classifications in Appendix C.

C. Effective July 1, 2019, all ranges and steps of the "GS1" Salary Schedule will be increased by three percent (3%) as shown in Compensation Appendix B. This salary increase is based on the "GS1" Salary Schedule in effect on June 30, 2019.

D. Effective July 1, 2020, all salary ranges and steps of the "GS1" Salary Schedule will be increased by three percent (3%) as shown in Compensation Appendix F. This salary increase is based on the "GS1" Salary Schedule in effect on June 30, 2020.

E. Employees who are paid above the maximum for their range on the effective date of the increases described in Subsection C and D, above will not receive the specified increase to their current pay unless the new range encompasses their current rate of pay.

F. Longevity Increase

All employees will progress to Step M six (6) years after being assigned to Step L in their permanent salary range. The Employer may increase an employee's step to step M to address issues related to recruitment, retention or other business needs.

### **41.3 "N1" Pay Range Assignments**

A. Effective July 1, 2019, each employee will continue to be assigned to the same range and step of the "N1" Range Salary Schedule that the employee was assigned on June 30, 2019, except for classifications in Appendix C.

Compensation Appendix J identifies the impacted job classifications and the salary range for which it is assigned

B. Effective July 1, 2019, all ranges and steps of the "N1" Range Salary Schedule will be increased by three percent (3%), as shown in Compensation Appendix C.

C. Effective July 1, 2020, all salary ranges and steps of the "N1" Salary Schedule will be increased by three percent (3%), as shown in Compensation Appendix G.

D. Employees who are paid above the maximum for their range on the effective date of the increases described in Subsection B and C above will not receive the specified increase to their current pay unless the new range encompasses their current rate of pay.

E. Step U will be designated as twenty-six (26) years of experience and employees will advance to Step U in accordance with Section 41.8, Periodic Increases.

### **41.4 "SP" Pay Range Assignments**

A. Effective July 1, 2019, each classification represented by the Union will continue to be assigned to the same salary range of the "SP" Range Salary Schedule – Effective January 1, 2019, through June 30, 2019, as it was assigned on June 30, 2019, except for classifications in Appendix C.

B. Effective July 1, 2019, each employee will continue to be assigned to the same range and step of the "SP" Range Salary Schedule that the employee was assigned on June 30, 2019, except for classifications in Appendix C.

C. Effective July 1, 2019, all salary ranges and steps of the "SP" Range Salary Schedule will be increased by three percent (3%) as shown in Compensation Appendix D.

D. Effective July 1, 2020, all salary ranges and steps of the "SP" Range Salary Schedule will be increased by three percent (3%), as shown in Compensation Appendix H.

E. Employees who are paid above the maximum for their range on the effective date of the increases described in Subsections D and H above will not receive the specified increase to their current pay unless the new range encompasses their current rate of pay.

#### **E. Longevity Increase**

All employees will progress to Step M six (6) years after being assigned to Step L in their permanent salary range. The Employer may increase an employee's step to Step M to address issues related to recruitment, retention or other business needs.

### **41.5 Recruitment or Retention – Compression or Inversion – Higher Level Duties and Responsibilities – Inequities**

Effective July 1, 2019, targeted job classifications will be assigned to a higher salary range due to documented recruitment or retention difficulties, compression or inversion, higher level duties and responsibilities or inequities. Appendix C identifies the impacted job classifications and the salary range for which it will be assigned.

#### **41.6 Pay for Performing the Duties of a Higher Classification**

A. Employees who are temporarily assigned the full scope of duties and responsibilities for more than thirty (30) calendar days to a higher level classification whose range is less than six (6) ranges higher than the range of the former class will be notified in writing and will be advanced to a step of the range for the new class that is nearest to five percent (5%) higher than the amount of the pre-promotional step. The increase will become effective on the first day the employee was performing the higher level duties.

B. Employees who are temporarily assigned the full scope of duties and responsibilities for more than thirty (30) calendar days to a higher level classification whose range is six (6) or more ranges higher than the range of the former class will be notified in writing and will be advanced to a step of the range for the new class that is nearest to ten percent (10%) higher than the amount of the pre-promotional step. The increase will become effective on the first day the employee was performing the higher level duties.

#### **41.7 Establishing Salaries for New Employees and New Classifications**

A. The Employer will assign newly hired employees to the appropriate range and step of the appropriate Salary Schedules.

B. The salary of employees in classes requiring licensure as a registered nurse will be governed by the "N1" Range Salary Schedule.

1. An employee's experience as a Registered Nurse (RN), Physician's Assistant-certified (PA-C)/Advanced Registered Nurse Practitioner (ARNP) and/or Licensed Practical Nurse (LPN), calculated as follows, will determine the placement of an employee on the proper step within an "N1" range:

a. RN, and PA-C/ARNP experience will be credited year for year.

b. Up to ten (10) years LPN experience will be credited at the rate of two (2) years LPN experience equals one (1) year of RN or ARNP experience, for a maximum credit of five (5) years.

C. In the event the Employer creates new classifications during the term of this Agreement, the Union may exercise its right to bargain assignment of new bargaining unit classes or the reassignment of existing bargaining unit classes to pay ranges if a change in pay is proposed.

#### **41.8 Periodic Increases**

An employee's periodic increment date (PID) will be set and remain the same for any period of continuous service in accordance with the following:

A. Employees will receive a two (2) step increase to base salary annually, on their periodic increment date, until they reach the top step of the pay range.

B. Employees who are hired, at the minimum step of their pay range will receive a two (2) step increase to base salary following completion of six (6) months of continuous service and the date they receive that increase will be the employee's periodic increment date. Thereafter, employees will receive a two (2) step increase annually, on their periodic increment date, until they reach the top of the pay range.

C. Employees who are hired, above the minimum step of the pay range will receive a two (2) step increase to base salary following completion of twelve (12) months of continuous service and the date they receive that increase will be the employee's periodic increment date. Thereafter, employees will receive a two (2) step increase annually, on their periodic increment date, until they reach the top of the pay range.

D. Employees governed by the “N1” range salary schedule that have reached Step K, will receive a one (1) step increase based on years of experience up to the maximum of the range.

E. Employees who are appointed to another position with a different salary range maximum will retain their periodic increment date and will receive step increases in accordance with Subsection A, B and C above.

F. Seasonal career/cyclic employees periodic increment dates will be adjusted for time not worked.

#### **41.9 Salary Assignment Upon Promotion**

A. Employees promoted to a position in a class whose range is less than six (6) ranges higher than the range of the former class will be advanced to a step of the range for the new class that is nearest to five percent (5%) higher than the amount of the pre-promotional step. The Appointing Authority may approve an increase beyond this minimum requirement, not to exceed the maximum of the salary range.

B. Employees promoted to a position in a class whose range is six (6) or more ranges higher than the range of the former class will be advanced to a step of the range for the new class that is nearest to ten percent (10%) higher than the amount of the pre-promotional step. The Appointing Authority may approve an increase beyond this minimum requirement, not to exceed the maximum of the salary range.

#### **C. Geographic Adjustments**

The appointing authority may authorize more than the step increases specified in Subsections A and B, above, when an employee’s promotion requires a change of residence to another geographic area to be within a reasonable commuting distance of the new place of work. Such an increase may not result in a salary greater than the range maximum.

#### **D. Promotions for Registered Nurses**

1. Promotional increases for classes requiring licensure as a registered nurse or Physician’s Assistant-certified (PA-c)/Advanced Register Nurse Practitioner (ARNP) (“N1” ranges) are calculated in the manner described below.

2. An employee who is promoted into or between classes that have pay range “N1” will advance to the step in the new range, as shown in the “N1” Range Salary Schedule, as described in Section 41.2, which represents the greater of a, b or c below.

a. Placement on the step which coincides with the employee's total length of experience as a Registered Nurse (RN), Physician’s Assistant-certified (PA-c)/Advanced Registered Nurse Practitioner (ARNP), and/or Licensed Practical Nurse (LPN). Experience will be credited as follows:

i. RN and PA-C/ARNP experience will be credited year for year.

ii. Up to ten (10) years LPN experience will be credited at the rate of two (2) years LPN experience equals one (1) year of RN or PA-C/ARNP experience, for a maximum credit of five (5) years; Or

b. Placement on the step of the new range that is nearest to a minimum of five percent (5%) higher than the amount of the pre-promotional step. The appointing authority may authorize more than a five percent (5%) increase, but the amount must be on a step within the salary range for the class; Or

c. The appointing authority will advance an employee who is promoted under any one (1) or more of the following conditions to the step of the range for the new class that is nearest to a minimum of ten percent (10%) higher than the amount of the pre-promotional step. The appointing authority may authorize more than a ten percent (10%) increase, but the amount must be on a step within the salary range for the class.

i. When the employee is promoted to a class whose base range is six (6) or more ranges higher than the base range of the employee's former class.

ii. When the employee is promoted over an intervening class in the same class series.

iii. When the employee is promoted from one class series to a higher class in a different series and over an intervening class in the new series, which would have represented a promotion.

iv. When an employee's promotion requires a change of residence to another geographic area to be within a reasonable commuting distance of the new place of work.

#### **41.10 Salary Adjustments**

The Employer may adjust an employee's base salary within their salary range to address issues that are related to recruitment, retention, or other business-related reasons. Such an increase may not result in a salary increase greater than Step M of the range.

#### **41.11 Demotion**

An employee who voluntarily demotes to another position with a lower salary range will be placed in the new range at a salary equal to his/her previous base salary. If the previous base salary exceeds the new range, the employee's base salary will be set equal to the new range maximum.

#### **41.12 Transfer**

A transfer is defined as an employee-initiated move of an employee from a position to another position within or between agencies in the same class (regardless of assigned range), or a different class with the same salary range. Transferred employees will retain their current base salary. If the previous base salary exceeds the new range, the employee's base salary will be set to the new range maximum.

#### **41.13 Reassignment**

Reassignment is defined as an agency-initiated move of an employee within the agency from one position to another in the same class or a different class with the same salary range maximum. Upon reassignment, an employee retains his/her current base salary.

#### **41.14 Reversion**

Reversion is defined as voluntary or involuntary movement of an employee during the trial service period to the class the employee most recently held permanent status in, to a class in the same or lower salary range, or separation placement onto the Employer's internal layoff list. Upon reversion, the base salary the employee was receiving prior to promotion will be reinstated.

#### **41.15 Elevation**

Elevation is defined as restoring an employee to the higher classification, with permanent status, which was held prior to being granted a demotion or to a class that is between the current class and the class from which the employee was demoted. Upon elevation, an employee's salary will be determined in the same manner that is provided for promotion in Subsection 41.8, above.

#### **41.16 Part-Time Employment**

Monthly compensation for part-time employment will be pro-rated based on the ratio of hours worked to hours required for full-time employment. In the alternative, part-time employees may elect to be paid the appropriate hourly rate for all hours worked.

#### **41.17 Callback**

##### **A. Work Preceding or Following a Scheduled Work Shift**

Overtime-eligible employees will be notified prior to their scheduled quitting time either to return to work after departing the worksite or to change the starting time of their next scheduled work shift.

1. Lack of such notice for such work will be considered callback and will result in a penalty of three (3) hours of pay at the basic salary in addition to all other compensation due. This penalty will apply to each call.

2. The Employer may cancel a callback notification to work extra hours at any time but cancellation will not waive the penalty cited in this Subsection.

3. These provisions will not apply to the mid-shift interval in a split shift and an employee called back while in standby status.

##### **B. Work on Scheduled Days Off or Holidays**

The Employer may assign employees to work on a day off or holiday. Overtime-eligible employees will be notified of such assignments at least prior to the employees' normal quitting times on their second workday preceding the day off or holiday (except Sunday when it is within the assigned work shift).

1. If the Employer does not give such notice, affected employees will receive a penalty payment of three (3) hours pay at the basic salary in addition to all other compensation due them.

2. The Employer may cancel work assigned on a day off or holiday. However, if the Employer does not notify affected employees of such cancellation at least prior to their normal quitting times on their second workday preceding the day off or holiday work assignment, affected employees will receive a penalty payment of three (3) hours pay at the basic salary.

These provisions will apply to employees on paid leave status.

C. An employee who is receiving standby pay is not entitled to callback penalty pay if required to return to work after departing the worksite or is directed to report to duty prior to the starting time of his/her next scheduled work shift.

#### **41.18 Shift Premium (Except FWOG and Teamsters Local 760)**

##### **A. For purposes of this Section, the following definitions apply:**

1. Evening shift is a work shift of eight (8) or more hours which ends at or after 10:00 p.m.

2. Night shift is a work shift of eight (8) or more hours which begins by 3:00 a.m.

B. A basic shift premium of one dollar (\$1.00) per hour will be paid to full-time employees under the following circumstances:

1. Regularly scheduled day shift employees whose regular or temporary scheduled work shift includes hours after 6:00 p.m. and before 6:00 a.m. where no overtime, extra duty pay, schedule change pay, or callback compensation is received. Shift premium is paid only for those hours actually worked after 6:00 p.m. and before 6:00 a.m.

2. Regularly scheduled evening and night shift employees are entitled to shift premium for all hours worked.

3. A regularly scheduled day shift employee who is temporarily assigned a full evening or night shift where no overtime, extra duty pay, schedule change pay, or callback compensation is received. Shift premium is paid only for all evening or night shift hours worked in this circumstance.

4. Employees regularly scheduled to work at least one (1), but not all, evening and/or night shifts are entitled to shift premium for those shifts. Additionally, these employees are entitled to shift premium for all hours adjoining that evening or night shift which are worked.

5. Those employees who work evening and night shift, who are in travel status, will be provided a meal per diem equal to that per diem allotted to day shift workers while in travel status as authorized by OFM regulation.

D. Part-time and on-call employees will be entitled to basic shift premium under the following circumstances:

1. For all assigned hours of work after 6:00 p.m. and before 6:00 a.m., as defined in Subsection 41.18 B.

2. For assigned full evening or night shifts, as defined in Subsection 41.18 C.

E. In cases where shift premium hours are regularly scheduled over a year, agencies may pay shift premium at a monthly rate which is equal for all months of the year. Monthly rates will be calculated by dividing twelve (12) into the amount of shift premium an employee would earn in a year if the hourly rules in Subsection B of this Section were applied.

F. When an employee is compensated for working overtime during hours for which shift premium is authorized in this Section, the overtime rate shall be calculated using the "regular rate."

G. Employees eligible for shift premium for their regularly scheduled shifts will receive the same proportion of shift premium for respective periods of authorized paid leave and for holidays not worked which fall within their regularly scheduled shift.

#### **41.19 Shift Premium for Registered Nurses and Related Classes**

Registered Nurses 1-4 and related job classes requiring licensure as a registered nurse will receive one dollar and fifty cents (\$1.50) per hour shift differential for evening shift and night shift work.

#### **41.20 Supplemental Shift Premium for Nurses**

For the classes of registered nurse 1-4 and related job classes requiring licensure as a registered nurse, supplemental shift premium will be paid in the amounts and under the conditions described below. Employees may qualify for one (1) or both of these supplemental shift premiums.

A. One dollar (\$1.00) per hour during any hours assigned to work or while on paid leave for night shift.

B. Three dollars (\$3.00) per hour during any hours worked or while on paid leave from Friday midnight to Sunday midnight.

C. Supplemental shift premiums are payable regardless of employment status and/or whether the work was prescheduled.

D. Supplemental shift premiums are not payable during hours other than those specified.



#### **41.21 Standby**

A. An overtime-eligible employee is in standby status while waiting to be engaged to work by the Employer and both of the following conditions exist:

1. The employee is required to be present at a specified location or is immediately available to be contacted. The location may be the employee's home or other specific location, but not a work site away from home. When the standby location is the employee's home, and the home is on the same State property where the employee works, the home is not considered a work site; and

2. The agency requires the employee to be prepared to report immediately for work if the need arises, although the need might not arise.

B. Standby status will not be concurrent with work time.

C. When the nature of a work assignment confines an employee during off duty hours and that confinement is a normal condition of work in the employee's position, standby compensation is not required merely because the employee is confined.

D. Overtime-eligible employees on standby status will be compensated at a rate of seven percent (7%) of their hourly base salary for time spent in standby status.

E. Clinical Pharmacists, who are assigned to standby status, will be compensated at the rate of seven percent (7%) of their hourly base salary for time spent in assigned standby status. Standby status will not be concurrent with work time. Actual hours worked during standby status will be compensated at the pharmacist's straight time rate.

F. Overtime-exempt employees, with the exception of those identified in Subsection 7.2 D and Subsection 41.21 E, will be compensated twenty-five dollars (\$25.00) for each day or portion thereof spent in assigned standby status. A day is defined as a twenty-four (24) hour period beginning on the first hour an employee is assigned standby status.

#### **41.22 Relocation Compensation**

A. The Employer may authorize lump sum relocation compensation, within existing budgetary resources, under the following conditions:

1. When it is reasonably necessary that a person make a domiciliary move in accepting a reassignment or appointment; or

2. It is necessary to successfully recruit or retain a qualified candidate or employee who will have to make a domiciliary move in order to accept the position.

B. If the employee receiving the relocation payment terminates or causes termination of his/her employment with the State within one (1) year of the date of employment, the State will be entitled to reimbursement for the moving costs which have been paid and may withhold such sum as necessary from any amounts due the employee. Termination as a result of layoff or disability separation will not require the employee to repay the relocation compensation.

#### **41.23 Salary Overpayment Recovery**

All recovery under this Section shall be limited to a maximum of six (6) months from the date of notification to the employee of the error.

A. When an agency has determined that an employee has been overpaid wages, the agency will provide written notice to the employee, which will include the following items:

1. The amount of the overpayment;

2. The basis for the claim; and

3. The rights of the employee under the terms of this Agreement.

**B. Method of Payback**

The employee must choose one (1) of the following options for paying back the overpayment:

1. Voluntary wage deduction;
2. Cash; or
3. Check.

The employee will have the option to repay the overpayment over a period of time equal to the number of pay periods during which the overpayment was made, unless a longer period is agreed to by the employee and the agency.

C. If the employee fails to choose one (1) of the three (3) options described above, within the timeframe specified in the agency's written notice of overpayment, the agency will deduct the overpayment owed from the employee's wages. This overpayment recovery will take place over a period of time equal to the number of pay periods during which the overpayment was made.

D. Any overpayment amount still outstanding at separation of employment will be deducted from their final pay.

**E. Appeal Rights**

Any dispute concerning the occurrence or amount of the overpayment will be resolved through the grievance procedure in Article 31 of this Agreement.

**41.24 Assignment Pay Provisions**

Assignment pay is a premium added to base salary and is intended to be used only as long as the skills, duties, or circumstances it is based on are in effect.

A. The Employer may grant assignment pay to a position to recognize specialized skill, assigned duties, and/or unique circumstances that exceed the ordinary. The Employer determines which positions qualify for the premium.

B. Classes approved for assignment pay are identified in Compensation Appendix I.

C. All Assignment Pay Rates and Special Pay Ranges and Notes are attached as Compensation Appendices I and J to this Agreement.

**41.25 Medical/Dental Expense Account**

The Employer agrees to allow insurance eligible employees, covered by this Agreement, to participate in a medical and dental expense reimbursement program to cover co-payments, deductibles and other medical and dental expenses, if employees have such costs, or expenses for services not covered by health or dental insurance on a pretax basis as permitted by federal tax laws or regulations.

**41.26 Dependent Care Salary Reduction Plan**

The Employer agrees to maintain the current dependent care salary reduction plan that allows eligible employees, covered by this Agreement, the option to participate in a dependent care reimbursement program for work-related dependent care expenses on a pretax basis as permitted by federal tax law or regulation.

#### **41.27 Pretax Health Care Premiums**

The Employer agrees to provide eligible employees with the option to pay the employee portion of health premiums on a pretax basis as permitted by federal tax law or regulation.

#### **41.28 Voluntary Separation Incentive – Voluntary Retirement Incentives**

Agencies will have the discretion to participate in a Voluntary Separation Incentive Program or a Voluntary Retirement Incentive Program, if such program is provided for in the 2019-2021 operating budget. Such participation must be in accordance with the program guidelines. Program incentives or offering of such incentives are not subject to the grievance procedure.

#### **41.29 Emergency/Disaster Operations Compensation**

All employees performing emergency/disaster duties when working full-time under a phase II or higher activation level designated by the State Emergency Operating Center will be compensated as follows:

A. Employees will be paid at one and one-half (1-1/2) times the sum of their regular hourly rate for those hours worked in excess of forty (40) hours in a workweek as a result of full-time work in support of a significant emergency, declared disaster, or Emergency Management Assistance Compact (EMAC) or other Mutual Aid activations/deployments as determined by the agency head or designee. During federally declared disasters overtime compensation will be limited to cash payments.

B. For those hours worked during the activation, one dollar (\$1.00) is added to an employee's regular rate in lieu of any other forms of additional compensation including, but not limited to, callback, standby, shift differential, split shift differential, assignment pay, and/or schedule change.

C. Unless otherwise noted in writing, employees will retain the assigned workweek while supporting emergency/disaster operations. However, employees' assigned work hours may be different from their regularly assigned work hours.

D. These provisions are limited to qualifying work performed in the Washington Emergency Operations Center, in a Joint Field Office, and work in direct support of EMAC or other Mutual Aid activations/deployments.

#### **41.30 Board Certification Payment – UPW and AWP**

Payment for current board certification ten thousand dollars (\$10,000), to be added to base rate and paid out in twelve (12) equal monthly installments each fiscal year and will be prorated based on one (1.0) Full-Time Equivalent.

For Physician 3 or Psychiatrist, the board certification must be in an area relevant to patient care and come from an accredited program by the American Board of Medical Specialties, the American Board of Psychiatry and Neurology and/or the American Osteopathic Board in one of the following areas: Neurology & Psychiatry, Child Psychiatry, Forensic Psychiatry, Geriatric Psychiatry, Internal Medicine, Pathology, or Family Medicine.

For Clinical Pharmacist, the board certification must be in an area relevant to patient care and come from an accredited program by the Board of Pharmacy Specialties in the area of Psychiatric Pharmacy, Infectious Diseases, Pharmacotherapy or Ambulatory Care, or the Commission for Certification in Geriatric Pharmacy, or the National Certification Board for Diabetes Educators.

### 41.31 Wildlife Service Dog (WSD) and Equestrian Maintenance

The handler may log one hour of WSD maintenance or Equestrian maintenance for the care and maintenance of the assigned dog or horse(s) for each duty day worked by the handler within the twenty-eight (28) day one hundred seventy-one (171) hour cycle. Additionally, the employer agrees to compensate WSD and Equestrian handlers twenty-five (\$25.00) per approved SDO identified in the twenty-eight (28) day detachment plan(s), not to exceed eight (8) per twenty-eight (28) day cycle.

### 41.32 Special Commitment Center (DSHS)

Employees assigned to work on McNeil Island at the Special Commitment Center will receive ten dollars (\$10.00) premium pay for each day they are physically working on the Island. Days in a paid status not working on the Island will not qualify for this premium pay.

### 41.33 King County Premium Pay

Employees assigned to a permanent duty station in King County will receive five (5) percent Premium Pay calculated from their base salary. When an employee is no longer permanently assigned to a King County duty station they will not be eligible for this premium pay.

## GUILD'S POSITION WITH RESPECT TO ISSUE #5 – ARTICLE 41 - COMPENSATION

### ARTICLE 41 - COMPENSATION

#### 41.1 General Service Pay Range Assignments

A. Effective July 1, 2019 2021, ~~each classification represented by the Union will continue to be assigned to the same salary range of the "General Service Salary Schedule Effective January 1, 2019, through June 30, 2019," as it was assigned on June 30, 2019, except for the classification in Appendix C and Compensation Appendix K.~~ Revised pay steps (see 41.2) shall be increased across the board by seven and two tenths percent (7.2%).

B. ~~Effective July 1, 2019, each employee will continue to be assigned to the same range and step of the 2019 General Service Salary Schedule that the employee was assigned to on June 30, 2019, except for the classification in Appendix C and Compensation Appendix K.~~

C. ~~Effective July 1, 2019, all ranges and steps of the General Service Salary Schedule will be increased by three percent (3%) as shown in Compensation Appendix A. This salary increase is based on the General Service Salary Schedule in effect on June 30, 2019.~~

D. Effective July 1, 2020 2022, ~~all salary ranges and steps of the General Service Salary Schedule will be increased by three seven and two tenths percent (3%)—(7.2%) as shown in Compensation Appendix E. This salary increase is based on the General Service Salary Schedule in effect on June 30, 2020.~~

#### E. ~~Fourteen Dollars (\$14) per Hour Minimum Wage~~

~~After 41.1(C) above, effective July 1, 2019, impacted job classifications will be increased to a higher range due to compression or inversion related to the increased minimum wage. Compensation Appendix K identifies the impacted job classifications and the salary range for which they will be assigned. Employees will be assigned to a step in their new range that is nearest to their new salary as of July 1, 2019.~~

F. ~~Employees who are paid above the maximum for their range on the effective date of the increases described in Subsections C and D, above, will not receive the specified increase to their current pay unless the new range encompasses their current rate of pay.~~

## G. Longevity Increase

~~All employees will progress to Step M six (6) years after being assigned to Step L in their permanent salary range. The Employer may increase an employee's step to Step M to address issues related to recruitment, retention or other business needs.~~

Longevity shall be recognized according to the following schedule:

Years of Service %	Longevity Increase
5	3%
10	2%
15	2%
20	2%
25	1%

## H. Minimum Wages Determined by Local Ordinances

~~Any employee who has a permanent assigned duty station within a local jurisdiction which has passed an ordinance establishing a minimum wage higher than the minimum wage established in this collective bargaining agreement, will be paid no less than the minimum wage directed by the local ordinance. The Employer will first consider the hourly wage of the employee's base salary plus the King County Premium pay (if applicable). If, after this consideration, the employee's salary is still below the local ordinance minimum wage the employee will be placed on a step in the assigned salary range that is equal to or higher than the wage requirement of the local ordinance.~~

### 41.2 ~~"GS1" Pay Range Assignments~~ Wage Schedule

~~A. Effective July 1, 2019 2021, each classification represented by the Union and listed in Appendix J will continue to be assigned to the same salary range of the "GS1" Salary Schedule that it was assigned on June 30, 2019, except for classifications in Appendix C.~~ pay classifications and steps shall be compressed as follows:

The existing steps shall be reallocated combining Officer 1 and 2. A single Classification shall have an academy wage step followed by a 6 step pay system with a starting wage, a six month step and four annual steps.

#### TABLE 1

Effective July 1, 2021 the Fish & Wildlife Enforcement Guild Classifications shall be paid as follows:

#### TABLE 2

Effective July 1, 2022 the Fish & Wildlife Enforcement Guild Classifications shall be paid as follows

(See Guild's final position for the actual tables. Both tables reflect the proposed 7/.2% increase in base wages as well as step increases and longevity.

#### Longevity

[Moved from Appendix I]] Law enforcement employees that are assigned a 171-hour, 28-day work period will receive their base salary plus ten percent (10%). This pay is in addition to the base salary pay listed in tables 1 and 2 above.

~~B. Effective July 1, 2019, each employee will continue to be assigned to the same range and step of the “GS1” Salary Schedule that the employee was assigned on June 30, 2019 except for classifications in Appendix C.~~

~~C. Effective July 1, 2019, all ranges and steps of the “GS1” Salary Schedule will be increased by three percent (3%) as shown in Compensation Appendix B. This salary increase is based on the “GS1” Salary Schedule in effect on June 30, 2019.~~

~~D. Effective July 1, 2020, all salary ranges and steps of the “GS1” Salary Schedule will be increased by three percent (3%) as shown in Compensation Appendix F. This salary increase is based on the “GS1” Salary Schedule in effect on June 30, 2020.~~

~~E. Employees who are paid above the maximum for their range on the effective date of the increases described in Subsection C and D, above will not receive the specified increase to their current pay unless the new range encompasses their current rate of pay.~~

~~F. Longevity Increase % of Base 67% of base 74% of Base 79% of Base 84% of Base 89% of Base 94% of Base~~

~~Base % step increase 6.00% 6.00% 6.00% 5.99% 6.00% 3.00% 2.00% 2.00% 2.00% 1.00%~~

~~Steps Recruit/Academy After Academy /Start 6 mo. after start 18 mo. 30 mo. 42 mo. 54 mo. 5 years 10 years 15 years 20 years 25 years~~

~~F&W Off 5144 5746 6091 6456 6843 7254 7689 7920 8078 8240 8405 8489~~

~~F&W Off 3 X 6039 6401 6785 7192 7624 8082 8325 8491 8661 8834 8922~~

~~F&W Det X 6504 6895 7308 7747 8211 8704 8965 9145 9327 9514 9609~~

~~7/1/2022 wages —7.2% wage increase Longevity~~

~~All employees will progress to Step M six (6) years after being assigned to Step L in their permanent salary range. The Employer may increase an employee’s step to step M to address issues related to recruitment, retention or other business needs.~~

### **41.3 “N1” Pay Range Assignments**

~~A. Effective July 1, 2019, each employee will continue to be assigned to the same range and step of the “N1” Range Salary Schedule that the employee was assigned on June 30, 2019, except for classifications in Appendix C.~~

~~Compensation Appendix J identifies the impacted job classifications and the salary range for which it is assigned B. Effective July 1, 2019, all ranges and steps of the “N1” Range Salary Schedule will be increased by three percent (3%), as shown in Compensation Appendix C.~~

~~C. Effective July 1, 2020, all salary ranges and steps of the “N1” Salary Schedule will be increased by three percent (3%), as shown in Compensation Appendix G.~~

~~D. Employees who are paid above the maximum for their range on the effective date of the increases described in Subsection B and C above will not receive the specified increase to their current pay unless the new range encompasses their current rate of pay.~~

~~E. Step U will be designated as twenty-six (26) years of experience and employees will advance to Step U in accordance with Section 41.8, Periodic Increases.~~

#### **41.4 “SP” Pay Range Assignments**

~~A. Effective July 1, 2019, each classification represented by the Union will continue to be assigned to the same salary range of the “SP” Range Salary Schedule—Effective January 1, 2019, through June 30, 2019, as it was assigned on June 30, 2019, except for classifications in Appendix C.~~

~~B. Effective July 1, 2019, each employee will continue to be assigned to the same range and step of the “SP” Range Salary Schedule that the employee was assigned on June 30, 2019, except for classifications in Appendix C.~~

~~C. Effective July 1, 2019, all salary ranges and steps of the “SP” Range Salary Schedule will be increased by three percent (3%) as shown in Compensation Appendix D.~~

~~D. Effective July 1, 2020, all salary ranges and steps of the “SP” Range Salary Schedule will be increased by three percent (3%), as shown in Compensation Appendix H.~~

~~E. Employees who are paid above the maximum for their range on the effective date of the increases described in Subsections D and H above will not receive the specified increase to their current pay unless the new range encompasses their current rate of pay.~~

##### ~~E. Longevity Increase~~

~~All employees will progress to Step M six (6) years after being assigned to Step L in their permanent salary range. The Employer may increase an employee’s step to Step M to address issues related to recruitment, retention or other business needs.~~

#### ~~41.5 Recruitment or Retention—Compression or Inversion—Higher Level Duties and Responsibilities—Inequities~~

~~Effective July 1, 2019, targeted job classifications will be assigned to a higher salary range due to documented recruitment or retention difficulties, compression or inversion, higher level duties and responsibilities or inequities. Appendix C identifies the impacted job classifications and the salary range for which it will be assigned.~~

#### **41.6 Pay for Performing the Duties of a Higher Classification**

A. Employees who are temporarily assigned the full scope of duties and responsibilities for more than ~~thirty (30) calendar~~ five (5) days ~~to a higher level classification whose range is less than six (6) ranges higher than the range of the former class will be notified in writing and will be advanced to a step of the range for the new class that is nearest to five percent (5%) higher than the amount of the pre-promotional step.~~ of supervisor will be paid at the entry supervisor pay, or five percent (5%), whichever is greater. The increase will become effective on the first day the employee was performing the higher level duties.

~~B. Employees who are temporarily assigned the full scope of duties and responsibilities for more than thirty (30) calendar days to a higher level classification whose range is six (6) or more ranges higher than the range of the former class will be notified in writing and will be advanced to a step of the range for the new class that is nearest to ten percent (10%) higher than the amount of the pre-promotional step. The increase will become effective on the first day the employee was performing the higher level duties.~~

#### **41.7 Establishing Salaries for New Employees and New Classifications**

A. The Employer will assign newly hired employees to the appropriate range and step of the appropriate Salary Schedules that corresponds to their law enforcement experience.

~~B. The salary of employees in classes requiring licensure as a registered nurse will be governed by the “N1” Range Salary Schedule.~~

~~1. An employee's experience as a Registered Nurse (RN), Physicians Assistant-certified (PA-C)/Advanced Registered Nurse Practitioner (ARNP) and/or Licensed Practical Nurse (LPN), calculated as follows, will determine the placement of an employee on the proper step within an "N1" range:~~

~~a. RN, and PA-C/ARNP experience will be credited year for year.~~

~~b. Up to ten (10) years LPN experience will be credited at the rate of two (2) years LPN experience equals one (1) year of RN or ARNP experience, for a maximum credit of five (5) years.~~

~~C. In the event the Employer creates new classifications during the term of this Agreement, the Union may exercise its right to bargain assignment of new bargaining unit classes or the reassignment of existing bargaining unit classes to pay ranges if a change in pay is proposed.~~

#### **41.8 Periodic Increases**

~~An employee's periodic increment date (PID) will be set and remain the same for any period of continuous service in accordance with the following:~~

~~A. Employees will receive a two (2) step increase to base salary annually, on their periodic increment date, until they reach the top step of the pay range.~~

Effective July 1, 2021, all salary ranges and steps of the New Salary Schedule for Fish & Wildlife Enforcement Officers (Exhibit A Table B) shall be increased by seven and two tenths percent (7.2%), as shown in Table 1.

~~B. Employees who are hired, at the minimum step of their pay range will receive a two (2) step increase to base salary following completion of six (6) months of continuous service and the date they receive that increase will be the employee's periodic increment date. Thereafter, employees will receive a two (2) step increase annually, on their periodic increment date, until they reach the top of the pay range.~~

Effective July 1, 2022, all salary ranges and steps of the 2021 Salary Schedule for Fish & Wildlife Enforcement Officers that was in effect on June 30, 2021, shall be increased by seven and two tenths percent (7.2%), as shown in Table 2.

~~C. Employees who are hired, above the minimum step of the pay range will receive a two (2) step increase to base salary following completion of twelve (12) months of continuous service and the date they receive that increase will be the employee's periodic increment date. Thereafter, employees will receive a two (2) step increase annually, on their periodic increment date, until they reach the top of the pay range.~~

Wage progression shall be as follows: Officers attending the Academy shall be paid at the Recruit/Academy pay step. Upon completion of the Academy, Officers will advance to the first step of the pay scale and then receive a six percent (6%) progression adjustment in six (6) months and annually thereafter, in accordance with the Officer 2021 Salary Schedule as shown in Table 1 and 2022 Salary Schedule as shown in Table 2, until they reach their fifth (5th) year of commissioned service, at which time they will become eligible for longevity premium increases. Other Guild Classifications shall maintain existing differential with Officers.

~~D. Employees governed by the "N1" range salary schedule that have reached Step K, will receive a one (1) step increase based on years of experience up to the maximum of the range.~~

~~E. Employees who are appointed to another position with a different salary range maximum will retain their periodic increment date and will receive step increases in accordance with Subsection A, B and C above.~~



~~F. Seasonal career/cyclic employees periodic increment dates will be adjusted for time not worked.~~

#### **41.9 Salary Assignment Upon Promotion**

~~A. Employees promoted to a position in a class whose range is less than six (6) ranges higher than the range of the former class will be advanced to a step of the range for the new class that is nearest to five percent (5%) higher than the amount of the prepromotional step. The Appointing Authority may approve an increase beyond this minimum requirement, not to exceed the maximum of the salary range.~~

~~B. Employees promoted to a position in a class whose range is six (6) or more ranges higher than the range of the former class will be advanced to a step of the range for the new class that is nearest to ten percent (10%) higher than the amount of the prepromotional step. The Appointing Authority may approve an increase beyond this minimum requirement, not to exceed the maximum of the salary range.~~

#### ~~C. Geographic Adjustments~~

~~The appointing authority may authorize more than the step increases specified in Subsections A and B, above, when an employee's promotion requires a change of residence to another geographic area to be within a reasonable commuting distance of the new place of work. Such an increase may not result in a salary greater than the range maximum.~~

#### ~~D. Promotions for Registered Nurses~~

~~1. Promotional increases for classes requiring licensure as a registered nurse or Physician's Assistant certified (PA-c)/Advanced Registered Nurse Practitioner (ARNP) ("N1" ranges) are calculated in the manner described below.~~

~~2. An employee who is promoted into or between classes that have pay range "N1" will advance to the step in the new range, as shown in the "N1" Range Salary Schedule, as described in Section 41.2, which represents the greater of a, b or c below.~~

~~a. Placement on the step which coincides with the employee's total length of experience as a Registered Nurse (RN), Physician's Assistant certified (PA-c)/Advanced Registered Nurse Practitioner (ARNP), and/or Licensed Practical Nurse (LPN). Experience will be credited as follows:~~

~~i. RN and PA-C/ARNP experience will be credited year for year.~~

~~ii. Up to ten (10) years LPN experience will be credited at the rate of two (2) years LPN experience equals one (1) year of RN or PA-C/ARNP experience, for a maximum credit of five (5) years; or~~

~~b. Placement on the step of the new range that is nearest to a minimum of five percent (5%) higher than the amount of the pre-promotional step. The appointing authority may authorize more than a five percent (5%) increase, but the amount must be on a step within the salary range for the class; or~~

~~c. The appointing authority will advance an employee who is promoted under any one (1) or more of the following conditions to the step of the range for the new class that is nearest to a minimum of ten percent (10%) higher than the amount of the pre-promotional step. The appointing authority may authorize more than a ten percent (10%) increase, but the amount must be on a step within the salary range for the class.~~

~~i. When the employee is promoted to a class whose base range is six (6) or more ranges higher than the base range of the employee's former class.~~

~~ii. When the employee is promoted over an intervening class in the same class series.~~

- ~~iii. When the employee is promoted from one class series to a higher class in a different series and over an intervening class in the new series, which would have represented a promotion.~~
- ~~iv. When an employee's promotion requires a change of residence to another geographic area to be within a reasonable commuting distance of the new place of work.~~

#### ~~41.10 Salary Adjustments~~

~~The Employer may adjust an employee's base salary within their salary range to address issues that are related to recruitment, retention, or other business-related reasons. Such an increase may not result in a salary increase greater than Step M of the range. An employee who voluntarily demotes to another position with a lower salary range will be placed in the new range at a salary equal to his/her previous base salary. If the previous base salary exceeds the new range, the employee's base salary will be set equal to the new range maximum.~~

#### ~~41.12 Transfer~~

~~A transfer is defined as an employee-initiated move of an employee from a position to another position within or between agencies in the same class (regardless of assigned range), or a different class with the same salary range. Transferred employees will retain their current base salary. If the previous base salary exceeds the new range, the employee's base salary will be set to the new range maximum.~~

#### ~~41.13 Reassignment~~

~~Reassignment is defined as an agency-initiated move of an employee within the agency from one position to another in the same class or a different class with the same salary range maximum. Upon reassignment, an employee retains his/her current base salary.~~

#### **41.14 Reversion**

Reversion is defined as voluntary or involuntary movement of an employee during the trial service period to the class the employee most recently held permanent status in, to a class in the same or lower salary range, or separation placement onto the Employer's internal layoff list. Upon reversion, the base salary the employee was receiving prior to promotion will be reinstated.

#### **41.15 Elevation**

Elevation is defined as restoring an employee to the higher classification, with permanent status, which was held prior to being granted a demotion or to a class that is between the current class and the class from which the employee was demoted. Upon elevation, an employee's salary will be determined in the same manner that is provided for promotion in Subsection 41.8, above.

#### **41.16 Part-Time Employment**

Monthly compensation for part-time employment will be pro-rated based on the ratio of hours worked to hours required for full-time employment. In the alternative, part-time employees may elect to be paid the appropriate hourly rate for all hours worked.

#### **41.17 Callback**

##### A. Work Preceding or Following a Scheduled Work Shift

Overtime-eligible employees will be notified prior to their scheduled quitting time either to return to work after departing the worksite or to change the starting time of their next scheduled work shift.

1. Lack of such notice for such work will be considered callback and will result in a penalty of three (3) hours of pay at the basic salary in addition to all other compensation due. This penalty will apply to each call.

2. The Employer may cancel a callback notification to work extra hours at any time but cancellation will not waive the penalty cited in this Subsection.

3. These provisions will not apply to the mid-shift interval in a split shift and an employee called back while in standby status.

#### B. Work on Scheduled Days Off or Holidays

The Employer may assign employees to work on a day off or holiday. Overtime eligible employees will be notified of such assignments at least prior to the employees' normal quitting times on their second workday preceding the day off or holiday (except Sunday when it is within the assigned work shift).

1. If the Employer does not give such notice, affected employees will receive a penalty payment of three (3) hours pay at the basic salary in addition to all other compensation due them.

2. The Employer may cancel work assigned on a day off or holiday. However, if the Employer does not notify affected employees of such cancellation at least prior to their normal quitting times on their second workday preceding the day off or holiday work assignment, affected employees will receive a penalty payment of three (3) hours pay at the basic salary.

These provisions will apply to employees on paid leave status.

C. An employee who is receiving standby pay is not entitled to callback penalty pay if required to return to work after departing the worksite or is directed to report to duty prior to the starting time of his/her next scheduled work shift.

#### ~~41.18 Shift Premium (Except FWOG and Teamsters Local 760)~~

~~A. For purposes of this Section, the following definitions apply:~~

~~1. Evening shift is a work shift of eight (8) or more hours which ends at or after 10:00 p.m.~~

~~2. Night shift is a work shift of eight (8) or more hours which begins by 3:00 a.m.~~

~~B. A basic shift premium of one dollar (\$1.00) per hour will be paid to full-time employees under the following circumstances:~~

~~1. Regularly scheduled day shift employees whose regular or temporary scheduled work shift includes hours after 6:00 p.m. and before 6:00 a.m. where no overtime, extra duty pay, schedule change pay, or callback compensation is received. Shift premium is paid only for those hours actually worked after 6:00 p.m. and before 6:00 a.m.~~

~~2. Regularly scheduled evening and night shift employees are entitled to shift premium for all hours worked.~~

~~3. A regularly scheduled day shift employee who is temporarily assigned a full evening or night shift where no overtime, extra duty pay, schedule change pay, or callback compensation is received. Shift premium is paid only for all evening or night shift hours worked in this circumstance.~~

~~4. Employees regularly scheduled to work at least one (1), but not all, evening and/or night shifts are entitled to shift premium for those shifts. Additionally, these employees are entitled to shift premium for all hours adjoining that evening or night shift which are worked.~~

~~5. Those employees who work evening and night shift, who are in travel status, will be provided a meal per diem equal to that per diem allotted to day shift workers while in travel status as authorized by OFM regulation.~~

~~D. Part-time and on-call employees will be entitled to basic shift premium under the following circumstances:~~

~~1. For all assigned hours of work after 6:00 p.m. and before 6:00 a.m., as defined in Subsection 41.18 B.~~

~~2. For assigned full evening or night shifts, as defined in Subsection 41.18 C.~~

~~E. In cases where shift premium hours are regularly scheduled over a year, agencies may pay shift premium at a monthly rate which is equal for all months of the year. Monthly rates will be calculated by dividing twelve (12) into the amount of shift premium an employee would earn in a year if the hourly rules in Subsection B of this Section were applied.~~

~~F. When an employee is compensated for working overtime during hours for which shift premium is authorized in this Section, the overtime rate shall be calculated using the "regular rate."~~

~~G. Employees eligible for shift premium for their regularly scheduled shifts will receive the same proportion of shift premium for respective periods of authorized paid leave and for holidays not worked which fall within their regularly scheduled shift.~~

#### ~~41.19 Shift Premium for Registered Nurses and Related Classes~~

~~Registered Nurses 1-4 and related job classes requiring licensure as a registered nurse will receive one dollar and fifty cents (\$1.50) per hour shift differential for evening shift and night shift work.~~

#### ~~41.20 Supplemental Shift Premium for Nurses~~

~~For the classes of registered nurse 1-4 and related job classes requiring licensure as a registered nurse, supplemental shift premium will be paid in the amounts and under the conditions described below. Employees may qualify for one (1) or both of these supplemental shift premiums.~~

~~A. One dollar (\$1.00) per hour during any hours assigned to work or while on paid leave for night shift.~~

~~B. Three dollars (\$3.00) per hour during any hours worked or while on paid leave from Friday midnight to Sunday midnight.~~

~~C. Supplemental shift premiums are payable regardless of employment status and/or whether the work was prescheduled.~~

~~D. Supplemental shift premiums are not payable during hours other than those specified.~~

#### ~~41.21 Standby~~

~~A. An overtime-eligible employee is in standby status while waiting to be engaged to work by the Employer and both of the following conditions exist:~~

~~1. The employee is required to be present at a specified location or is immediately available to be contacted. The location may be the employee's home or other specific location, but not a work site away from home. When the standby location is the employee's home, and the home is on the same State property where the employee works, the home is not considered a work site; and~~

~~2. The agency requires the employee to be prepared to report immediately for work if the need arises, although the need might not arise.~~

~~B. Standby status will not be concurrent with work time.~~

~~C. When the nature of a work assignment confines an employee during off duty hours and that confinement is a normal condition of work in the employee's position, standby compensation is not required merely because the employee is confined.~~

~~D. Overtime-eligible employees on standby status will be compensated at a rate of seven percent (7%) of their hourly base salary for time spent in standby status.~~

~~E. Clinical Pharmacists, who are assigned to standby status, will be compensated at the rate of seven percent (7%) of their hourly base salary for time spent in assigned standby status. Standby status will not be concurrent with work time. Actual hours worked during standby status will be compensated at the pharmacist's straight time rate.~~

~~F. Overtime-exempt employees, with the exception of those identified in Subsection 7.2 D and Subsection 41.21 E, will be compensated twenty-five dollars (\$25.00) for each day or portion thereof spent in assigned standby status. A day is defined as a twenty-four (24) hour period beginning on the first hour an employee is assigned standby status.~~

#### **41.22 Relocation Compensation**

A. The Employer may authorize lump sum relocation compensation, within existing budgetary resources, under the following conditions:

1. When it is reasonably necessary that a person make a domiciliary move in accepting a reassignment or appointment; or

2. It is necessary to successfully recruit or retain a qualified candidate or employee who will have to make a domiciliary move in order to accept the position.

B. If the employee receiving the relocation payment terminates or causes termination of his/her employment with the State within one (1) year of the date of employment, the State will be entitled to reimbursement for the moving costs which have been paid and may withhold such sum as necessary from any amounts due the employee. Termination as a result of layoff or disability separation will not require the employee to repay the relocation compensation.

#### **41.23 Salary Overpayment Recovery**

All recovery under this Section shall be limited to a maximum of six (6) months from the date of notification to the employee of the error.

A. When an agency has determined that an employee has been overpaid wages, the agency will provide written notice to the employee, which will include the following items:

1. The amount of the overpayment;
2. The basis for the claim; and
3. The rights of the employee under the terms of this Agreement.

B. Method of Payback

The employee must choose one (1) of the following options for paying back the overpayment:

1. Voluntary wage deduction;
2. Cash; or
3. Check.

The employee will have the option to repay the overpayment over a period of time equal to the number of pay periods during which the overpayment was made, unless a longer period is agreed to by the employee and the agency.

C. If the employee fails to choose one (1) of the three (3) options described above, within the timeframe specified in the agency's written notice of overpayment, the agency will deduct the overpayment owed from the employee's wages. This overpayment recovery will take place over a period of time equal to the number of pay periods during which the overpayment was made. D. Any overpayment amount still outstanding at separation of employment will be deducted from their final pay.

#### E. Appeal Rights

Any dispute concerning the occurrence or amount of the overpayment will be resolved through the grievance procedure in Article 31 of this Agreement.

### **41.24 Assignment Pay Provisions**

Assignment pay is a premium added to base salary and is intended to be used only as long as the skills, duties, or circumstances it is based on are in effect.

A. The Employer may grant assignment pay to a position to recognize specialized skill, assigned duties, and/or unique circumstances that exceed the ordinary. The Employer determines which positions qualify for the premium.

~~B. Classes approved for assignment pay are identified in Compensation Appendix I.~~

~~C. All Assignment Pay Rates and Special Pay Ranges and Notes are attached as Compensation Appendices I and J to this Agreement~~

[New Subsection] Premium pay at the amount indicated shall be given for each specialty positions shown below:

Instructor Pay (Defensive Tactics, Firearms, EVOG) 3%

Wildlife Service Dog or Equestrian Handlers 3%

Divers 3%

Field Training Officers 5%

### **41.25 Medical/Dental Expense Account**

The Employer agrees to allow insurance eligible employees, covered by this Agreement, to participate in a medical and dental expense reimbursement program to cover copayments, deductibles and other medical and dental expenses, if employees have such costs, or expenses for services not covered by health or dental insurance on a pretax basis as permitted by federal tax laws or regulations.

### **41.26 Dependent Care Salary Reduction Plan**

The Employer agrees to maintain the current dependent care salary reduction plan that allows eligible employees, covered by this Agreement, the option to participate in a dependent care reimbursement program for work-related dependent care expenses on a pretax basis as permitted by federal tax law or regulation.

### **41.27 Pretax Health Care Premiums**

The Employer agrees to provide eligible employees with the option to pay the employee portion of health premiums on a pretax basis as permitted by federal tax law or regulation.

#### **41.28 Voluntary Separation Incentive – Voluntary Retirement Incentives**

Agencies will have the discretion to participate in a Voluntary Separation Incentive Program or a Voluntary Retirement Incentive Program, if such program is provided for in the 2019-2021 operating budget. Such participation must be in accordance with the program guidelines. Program incentives or offering of such incentives are not subject to the grievance procedure.

#### **41.29 Emergency/Disaster Operations Compensation**

All employees performing emergency/disaster duties when working full-time under a phase II or higher activation level designated by the State Emergency Operating Center will be compensated as follows:

A. Employees will be paid at one and one-half (1-1/2) times the sum of their regular hourly rate for those hours worked in excess of forty (40) hours in a workweek as a result of full-time work in support of a significant emergency, declared disaster, or Emergency Management Assistance Compact (EMAC) or other Mutual Aid activations/deployments as determined by the agency head or designee. During federally declared disasters overtime compensation will be limited to cash payments.

B. For those hours worked during the activation, one dollar (\$1.00) is added to an employee's regular rate in lieu of any other forms of additional compensation including, but not limited to, callback, standby, shift differential, split shift differential, assignment pay, and/or schedule change.

C. Unless otherwise noted in writing, employees will retain the assigned workweek while supporting emergency/disaster operations. However, employees' assigned work hours may be different from their regularly assigned work hours.

D. These provisions are limited to qualifying work performed in the Washington Emergency Operations Center, in a Joint Field Office, and work in direct support of EMAC or other Mutual Aid activations/deployments.

#### **41.30 Board Certification Payment – UPW and AWP**

Payment for current board certification ten thousand dollars (\$10,000), to be added to base rate and paid out in twelve (12) equal monthly installments each fiscal year and will be prorated based on one (1.0) Full-Time Equivalent. For Physician 3 or Psychiatrist, the board certification must be in an area relevant to patient care and come from an accredited program by the American Board of Medical Specialties, the American Board of Psychiatry and Neurology and/or the American Osteopathic Board in one of the following areas: Neurology & Psychiatry, Child Psychiatry, Forensic Psychiatry, Geriatric Psychiatry, Internal Medicine, Pathology, or Family Medicine. For Clinical Pharmacist, the board certification must be in an area relevant to patient care and come from an accredited program by the Board of Pharmacy Specialties in the area of Psychiatric Pharmacy, Infectious Diseases, Pharmacotherapy or Ambulatory Care, or the Commission for Certification in Geriatric Pharmacy, or the National Certification Board for Diabetes Educators.

#### **41.31 Wildlife Service Dog (WSD) and Equestrian Maintenance**

The handler may log one hour of WSD maintenance or Equestrian maintenance for the care and maintenance of the assigned dog or horse(s) for each duty day worked by the handler within the twenty-eight (28) day one hundred seventy-one (171) hour cycle. Additionally, the employer agrees to compensate WSD and Equestrian handlers twenty-five (\$25.00) per approved SDO identified in the twenty-eight (28) day detachment plan(s), not to exceed eight (8) per twenty-eight (28) day cycle.

### **41.32 Special Commitment Center (DSHS)**

~~Employees assigned to work on McNeil Island at the Special Commitment Center will receive ten dollars (\$10.00) premium pay for each day they are physically working on the Island. Days in a paid status not working on the Island will not qualify for this premium pay.~~

### **41.33 ~~King County~~ Geographic Premium Pay**

Employees assigned to a permanent duty station in ~~King County~~ high cost of living counties will receive ~~five (5) percent~~ Premium Pay calculated from their base salary as follows:

<u>King County</u>	<u>10%</u>
<u>Snohomish County</u>	<u>5%</u>
<u>Pierce County</u>	<u>3%</u>

When an employee is no longer permanently assigned to a King County duty station other than the above they will not be eligible for this premium pay.

### **[New Section] Education Pay**

A. The following monthly education incentive pay will be paid to each employee upon completing the listed degree and providing proof of completion to the agency.

Associate Degree Two percent (2%)

Bachelor Degree Four percent (4%)

B. The above percentages will be based upon the employee's base rate of pay.

C. An employee will be entitled to one (1) education incentive pay only.

D. Degrees must be from an accredited institution of higher education.

## **STATE'S POSITION WITH RESPECT TO ISSUE #5 – ARTICLE 41 - COMPENSATION**

### **ARTICLE 41 - COMPENSATION**

Effective July 1, 2021, the provisions of Article 41.B (Longevity Increase) and Article 41.4 A-D (Periodic Increases) are suspended July 1, 2021 through June 30, 5 2023. The period of time between July 1, 2021 and June 30, 2023 shall not be counted towards any subsequent progression or longevity increase.

#### **41.1 General Service Pay Range Assignments**

~~A. — Effective July 1, 2019, each classification represented by the Union will continue to be assigned to the same salary range of the “General Service Salary Schedule Effective January 1, 2019, through June 30, 2019,” as it was assigned on June 30, 2019 except for the classification in Appendix C and Compensation Appendix K.~~

~~B. Effective July 1, 2019, each employee will continue to be assigned to the same range and step of the 2021 General Service Salary Schedule that the employee was assigned to on June 30, 2019, except for the classification in Appendix C and Compensation Appendix K.~~

CA. The range and steps of the General Service Salary Schedule assigned to the 19 classifications represented by the Union will be as shown in Compensation 20 Appendix A, effective July 1, 2021 through June 30, 2023. Effective July 21 1, 2019, all ranges and steps of the General Service Salary Schedule will be increased by three percent (3%) as shown in Compensation Appendix A. This salary decrease is based on the General Service Salary Schedule in effect on June 30, 2019.



~~D. Effective July 1, 2020, all salary ranges and steps of the General Service Salary Schedule will be increased by three percent (3%) as shown in Compensation Appendix E. This salary increase is based on the General Service Salary Schedule in effect on June 30, 2020.~~

~~E. Fourteen Dollars (\$14) per Hour Minimum Wage After 41.1(C) above, effective July 1, 2019, impacted job classifications will be increased to a higher range due to compression or inversion related to the increased minimum wage. Compensation Appendix K identifies the impacted job classifications and the salary range for which they will be assigned. Employees will be assigned to a step in their new range that is nearest to their new salary as of July 1, 2019.~~

~~F. Employees who are paid above the maximum for their range on the effective date of the increases described in Subsections C and D, above, will not receive the specified increase to their current pay unless the new range encompasses their current rate of pay.~~

#### ~~BD.~~ Longevity Increase

All employees will progress to Step M six (6) years after being assigned to Step L in their permanent salary range. The Employer may increase an employee's step to Step M to address issues related to recruitment, retention or other business needs.

#### ~~H.~~ Minimum Wages Determined by Local Ordinances

~~Any employee who has a permanent assigned duty station within a local jurisdiction which has passed an ordinance establishing a minimum wage higher than the minimum wage established in this collective bargaining agreement, will be paid no less than the minimum wage directed by the local ordinance. The Employer will first consider the hourly wage of the employee's base salary plus the King County Premium pay (if applicable). If, after this consideration, the employee's salary is still below the local ordinance minimum wage the employee will be placed on a step in the assigned salary range that is equal to or higher than the wage requirement of the local ordinance.~~

### **~~41.2 "GS1" Pay Range Assignments~~**

~~A. Effective July 1, 2019, each classification represented by the Union and listed in Appendix J will continue to be assigned to the same salary range of the "GS1" Salary Schedule that it was assigned on June 30, 2019, except for classifications in Appendix C.~~

~~B. Effective July 1, 2019, each employee will continue to be assigned to the same range and step of the "GS1" Salary Schedule that the employee was assigned on June 30, 2019 except for classifications in Appendix C.~~

~~C. Effective July 1, 2019, all ranges and steps of the "GS1" Salary Schedule will be increased by three percent (3%) as shown in Compensation Appendix B. This salary increase is based on the "GS1" Salary Schedule in effect on June 30, 2019.~~

~~D. Effective July 1, 2020, all salary ranges and steps of the "GS1" Salary Schedule will be increased by three percent (3%) as shown in Compensation Appendix F. This salary increase is based on the "GS1" Salary Schedule in effect on June 30, 2020.~~

~~E. Employees who are paid above the maximum for their range on the effective date of the increases described in Subsection C and D, above will not receive the specified increase to their current pay unless the new range encompasses their current rate of pay.~~

#### ~~F.~~ Longevity Increase

~~All employees will progress to Step M six (6) years after being assigned to Step L in their permanent salary range. The Employer may increase an employee's step to step M to address issues related to recruitment, retention or other business needs.~~

### **41.3 “N1” Pay Range Assignments**

~~A. Effective July 1, 2019, each employee will continue to be assigned to the same range and step of the “N1” Range Salary Schedule that the employee was assigned on June 30, 2019, except for classifications in Appendix C. Compensation Appendix J identifies the impacted job classifications and the salary range for which it is assigned.~~

~~B. Effective July 1, 2019, all ranges and steps of the “N1” Range Salary Schedule will be increased by three percent (3%), as shown in Compensation Appendix C.~~

~~C. Effective July 1, 2020, all salary ranges and steps of the “N1” Salary Schedule will be increased by three percent (3%), as shown in Compensation Appendix G.~~

~~D. Employees who are paid above the maximum for their range on the effective date of the increases described in Subsection B and C above will not receive the specified increase to their current pay unless the new range encompasses their current rate of pay.~~

~~E. Step U will be designated as twenty-six (26) years of experience and employees will advance to Step U in accordance with Section 41.8, Periodic Increases.~~

### **41.4 “SP” Pay Range Assignments**

~~A. Effective July 1, 2019, each classification represented by the Union will continue to be assigned to the same salary range of the “SP” Range Salary Schedule—Effective January 1, 2019, through June 30, 2019, as it was assigned on June 30, 2019, except for classifications in Appendix C.~~

~~B. Effective July 1, 2019, each employee will continue to be assigned to the same range and step of the “SP” Range Salary Schedule that the employee was assigned on June 30, 2019, except for classifications in Appendix C.~~

~~C. Effective July 1, 2019, all salary ranges and steps of the “SP” Range Salary Schedule will be increased by three percent (3%) as shown in Compensation Appendix D.~~

~~D. Effective July 1, 2020, all salary ranges and steps of the “SP” Range Salary Schedule will be increased by three percent (3%), as shown in Compensation Appendix H.~~

~~E. Employees who are paid above the maximum for their range on the effective date of the increases described in Subsections D and H above will not receive the specified increase to their current pay unless the new range encompasses their current rate of pay.~~

#### **E. Longevity Increase**

~~All employees will progress to Step M six (6) years after being assigned to Step L in their permanent salary range. The Employer may increase an employee’s step to Step M to address issues related to recruitment, retention or other business needs.~~

### **41.5 Recruitment or Retention—Compression or Inversion—Higher Level Duties and Responsibilities—Inequities**

~~Effective July 1, 2019, targeted job classifications will be assigned to a higher salary range due to documented recruitment or retention difficulties, compression or inversion, higher level duties and responsibilities or inequities. Appendix C identifies the impacted job classifications and the salary range for which it will be assigned.~~

## 41.2 Pay for Performing the Duties of a Higher Classification

A. Employees who are temporarily assigned the full scope of duties and responsibilities for more than thirty (30) calendar days to a higher level classification whose range is less than six (6) ranges higher than the range of the former class will be notified in writing and will be advanced to a step of the range for the new class that is nearest to five percent (5%) higher than the amount of the pre-promotional step. The increase will become effective on the first day the employee was performing the higher level duties.

B. Employees who are temporarily assigned the full scope of duties and responsibilities for more than thirty (30) calendar days to a higher level classification whose range is six (6) or more ranges higher than the range of the former class will be notified in writing and will be advanced to a step of the range for the new class that is nearest to ten percent (10%) higher than the amount of the pre-promotional step. The increase will become effective on the first day the employee was performing the higher level duties.

## 41.3 Establishing Salaries for New Employees and New Classifications

A. The Employer will assign newly hired employees to the appropriate range and step of the appropriate Salary Schedules.

~~B. The salary of employees in classes requiring licensure as a registered nurse will be governed by the "N1" Range Salary Schedule.~~

~~An employee's experience as a Registered Nurse (RN), Physician's Assistant certified (PA-C)/Advanced Registered Nurse Practitioner (ARNP) and/or Licensed Practical Nurse (LPN), calculated as follows, will determine the placement of an employee on the proper step within an "N1" range:~~

~~a. RN and PA-C/ARNP experience will be credited year for year.~~

~~b. Up to ten (10) years LPN experience will be credited at the rate of two (2) years LPN experience equals one (1) year of RN or ARNP experience, for a maximum credit of five (5) years.~~

BE. In the event the Employer creates new classifications during the term of this Agreement, the Union may exercise its right to bargain assignment of new bargaining unit classes or the reassignment of existing bargaining unit classes to pay ranges if a change in pay is proposed.

## 41.4 Periodic Increases

An employee's periodic increment date (PID) will be set and remain the same for any period of continuous service in accordance with the following:

A. Employees will receive a two (2) step increase to base salary annually, on their periodic increment date, until they reach the top step of the pay range.

B. Employees who are hired, at the minimum step of their pay range will receive a two (2) step increase to base salary following completion of six (6) months of continuous service and the date they receive that increase will be the employee's periodic increment date. Thereafter, employees will receive a two (2) step increase annually, on their periodic increment date, until they reach the top of the pay range.

C. Employees who are hired, above the minimum step of the pay range will receive a two (2) step increase to base salary following completion of twelve (12) months of continuous service and the date they receive that increase will be the employee's periodic increment date. Thereafter, employees will receive a two (2) step increase annually, on their periodic increment date, until they reach the top of the pay range.

~~Employees governed by the “N1” range salary schedule that have reached Step K, will receive a one (1) step increase based on years of experience up to the maximum of the range.~~

D. Employees who are appointed to another position with a different salary range maximum will retain their periodic increment date and will receive step increases in accordance with Subsection A, B and C above.

~~F. Seasonal career/cyclic employees periodic increment dates will be adjusted for time not worked.~~

#### 41.5 Salary Assignment Upon Promotion

A. Employees promoted to a position in a class whose range is less than six (6) ranges higher than the range of the former class will be advanced to a step of the range for the new class that is nearest to five percent (5%) higher than the amount of the pre-promotional step. The Appointing Authority may approve an increase beyond this minimum requirement, not to exceed the maximum of the salary range.

B. Employees promoted to a position in a class whose range is six (6) or more ranges higher than the range of the former class will be advanced to a step

of the range for the new class that is nearest to ten percent (10%) higher than the amount of the pre-promotional step. The Appointing Authority may approve an increase beyond this minimum requirement, not to exceed the maximum of the salary range.

#### C. Geographic Adjustments

The appointing authority may authorize more than the step increases specified in Subsections A and B, above, when an employee’s promotion requires a change of residence to another geographic area to be within a reasonable commuting distance of the new place of work. Such an increase may not result in a salary greater than the range maximum.

#### ~~D. Promotions for Registered Nurses~~

~~1. Promotional increases for classes requiring licensure as a registered nurse or Physician’s Assistant certified (PA-c)/Advanced Register Nurse Practitioner (ARNP) (“N1” ranges) are calculated in the manner described below.~~

~~2. An employee who is promoted into or between classes that have pay range “N1” will advance to the step in the new range, as shown in the “N1” Range Salary Schedule, as described in Section 41.2, which represents the greater of a, b or c below. a. Placement on the step which coincides with the employee’s total length of experience as a Registered Nurse (RN), Physician’s Assistant-certified (PA-c)/Advanced Registered Nurse Practitioner (ARNP), and/or Licensed Practical Nurse (LPN). Experience will be credited as follows:~~

~~i. RN and PA-C/ARNP experience will be credited year for year.~~

~~ii. Up to ten (10) years LPN experience will be credited at the rate of two (2) years LPN experience equals one (1) year of RN or PA-C/ARNP experience, for a maximum credit of five (5) years; Or~~

~~b. Placement on the step of the new range that is nearest to a minimum of five percent (5%) higher than the amount of the pre-promotional step. The appointing authority may authorize more than a five percent (5%) increase, but the amount must be on a step within the salary range for the class; Or~~

~~e. The appointing authority will advance an employee who is promoted under any one (1) or more of the following conditions to the step of the range for the new class that is nearest to a minimum of ten percent (10%) higher than the amount of the pre-promotional step. The appointing authority may authorize more than a ten percent (10%) increase, but the amount must be on a step within the salary range for the class.~~

~~i. When the employee is promoted to a class whose base range is six (6) or more ranges higher than the base range of the employee's former class.~~

~~ii. When the employee is promoted over an intervening class in the same class series.~~

~~iii. When the employee is promoted from one class series to a higher class in a different series and over an intervening class in the new series, which would have represented a promotion.~~

~~iv. When an employee's promotion requires a change of residence to another geographic area to be within a reasonable commuting distance of the new place of work.~~

#### **41.6 Salary Adjustments**

The Employer may adjust an employee's base salary within their salary range to address issues that are related to recruitment, retention, or other business-related reasons. Such an increase may not result in a salary increase greater than Step M of the range.

#### **41.7 Demotion**

An employee who voluntarily demotes to another position with a lower salary range will be placed in the new range at a salary equal to his/her previous base salary. If the previous base salary exceeds the new range, the employee's base salary will be set equal to the new range maximum.

#### **41.8 Transfer**

A transfer is defined as an employee-initiated move of an employee from a position to another position within or between agencies in the same class (regardless of assigned range), or a different class with the same salary range. Transferred employees will retain their current base salary. If the previous base salary exceeds the new range, the employee's base salary will be set to the new range maximum.

#### **41.9 Reassignment**

Reassignment is defined as an agency-initiated move of an employee within the agency from one position to another in the same class or a different class with the same salary range maximum. Upon reassignment, an employee retains his/her current base salary.

#### **41.10 Reversion**

Reversion is defined as voluntary or involuntary movement of an employee during the trial service period to the class the employee most recently held permanent status in, to a class in the same or lower salary range, or separation placement onto the Employer's internal layoff list. Upon reversion, the base salary the employee was receiving prior to promotion will be reinstated.

#### **41.11 Elevation**

Elevation is defined as restoring an employee to the higher classification, with permanent status, which was held prior to being granted a demotion or to a class that is between the current class and the class from which the employee was demoted. Upon elevation, an employee's salary will be determined in the same manner that is provided for promotion in Subsection 41.8, above.

## 41.16 Part-Time Employment

Monthly compensation for part-time employment will be pro-rated based on the ratio of hours worked to hours required for full-time employment. In the alternative, part-time employees may elect to be paid the appropriate hourly rate for all hours worked.

## 41.17 Callback

### ~~A. Work Preceding or Following a Scheduled Work Shift~~

~~Overtime-eligible employees will be notified prior to their scheduled quitting time either to return to work after departing the worksite or to change the starting time of their next scheduled work shift.~~

~~1. Lack of such notice for such work will be considered callback and will result in a penalty of three (3) hours of pay at the basic salary in addition to all other compensation due. This penalty will apply to each call.~~

~~2. The Employer may cancel a callback notification to work extra hours at any time but cancellation will not waive the penalty cited in this Subsection.~~

~~3. These provisions will not apply to the mid-shift interval in a split shift and an employee called back while in standby status.~~

### **B. Work on Scheduled Days Off or Holidays**

The Employer may assign employees to work on a day off or holiday. Overtime-eligible employees will be notified of such assignments at least prior to the employees' normal quitting times on their second workday preceding the day off or holiday (except Sunday when it is within the assigned work shift).

1. If the Employer does not give such notice, affected employees will receive a penalty payment of three (3) hours pay at the basic salary in addition to all other compensation due them.

2. The Employer may cancel work assigned on a day off or holiday. However, if the Employer does not notify affected employees of such cancellation at least prior to their normal quitting times on their second workday preceding the day off or holiday work assignment, affected employees will receive a penalty payment of three (3) hours pay at the basic salary.

These provisions will apply to employees on paid leave status.

~~C. An employee who is receiving standby pay is not entitled to call back penalty pay if required to return to work after departing the worksite or is directed to report to duty prior to the starting time of his/her next scheduled work shift.~~

## ~~41.18 Shift Premium (Except FWOG and Teamsters Local 760)~~

### ~~A. For purposes of this Section, the following definitions apply:~~

~~1. Evening shift is a work shift of eight (8) or more hours which ends at or after 10:00 p.m.~~

~~2. Night shift is a work shift of eight (8) or more hours which begins by 3:00 a.m.~~

~~B. A basic shift premium of one dollar (\$1.00) per hour will be paid to full time employees under the following circumstances:~~

~~1. Regularly scheduled day shift employees whose regular or temporary scheduled work shift includes hours after 6:00 p.m. and before 6:00 a.m. where no overtime, extra duty pay, schedule change pay, or callback compensation is received. Shift premium is paid only for those hours actually worked after 6:00 p.m. and before 6:00 a.m.~~

~~2. Regularly scheduled evening and night shift employees are entitled to shift premium for all hours worked.~~

~~3. A regularly scheduled day shift employee who is temporarily assigned a full evening or night shift where no overtime, extra duty pay, schedule change pay, or callback compensation is received. Shift premium is paid only for all evening or night shift hours worked in this circumstance.~~

~~4. Employees regularly scheduled to work at least one (1), but not all, evening and/or night shifts are entitled to shift premium for those shifts. Additionally, these employees are entitled to shift premium for all hours adjoining that evening or night shift which are worked.~~

~~5. Those employees who work evening and night shift, who are in travel status, will be provided a meal per diem equal to that per diem allotted to day shift workers while in travel status as authorized by OFM regulation.~~

~~D. Part time and on-call employees will be entitled to basic shift premium under the following circumstances:~~

~~1. For all assigned hours of work after 6:00 p.m. and before 6:00 a.m., as defined in Subsection 41.18 B.~~

~~2. For assigned full evening or night shifts, as defined in Subsection 41.18 C.~~

~~E. In cases where shift premium hours are regularly scheduled over a year, agencies may pay shift premium at a monthly rate which is equal for all months of the year. Monthly rates will be calculated by dividing twelve (12) into the amount of shift premium an employee would earn in a year if the hourly rules in Subsection B of this Section were applied.~~

~~F. When an employee is compensated for working overtime during hours for which shift premium is authorized in this Section, the overtime rate shall be calculated using the "regular rate."~~

~~G. Employees eligible for shift premium for their regularly scheduled shifts will receive the same proportion of shift premium for respective periods of authorized paid leave and for holidays not worked which fall within their regularly scheduled shift.~~

#### ~~41.19 Shift Premium for Registered Nurses and Related Classes~~

~~Registered Nurses 1-4 and related job classes requiring licensure as a registered nurse will receive one dollar and fifty cents (\$1.50) per hour shift differential for evening shift and night shift work.~~

#### ~~41.20 Supplemental Shift Premium for Nurses~~

~~For the classes of registered nurse 1-4 and related job classes requiring licensure as a registered nurse, supplemental shift premium will be paid in the amounts and under the conditions described below. Employees may qualify for one (1) or both of these supplemental shift premiums.~~

~~A. One dollar (\$1.00) per hour during any hours assigned to work or while on paid leave for night shift.~~

~~B. Three dollars (\$3.00) per hour during any hours worked or while on paid leave from Friday midnight to Sunday midnight.~~



~~C. Supplemental shift premiums are payable regardless of employment status and/or whether the work was prescheduled.~~

~~D. Supplemental shift premiums are not payable during hours other than those specified.~~

#### **41.21 Standby**

~~A. An overtime eligible employee is in standby status while waiting to be engaged to work by the Employer and both of the following conditions exist:~~

~~1. The employee is required to be present at a specified location or is immediately available to be contacted. The location may be the employee's home or other specific location, but not a work site away from home. When the standby location is the employee's home, and the home is on the same State property where the employee works, the home is not considered a work site; and~~

~~2. The agency requires the employee to be prepared to report immediately for work if the need arises, although the need might not arise.~~

~~B. Standby status will not be concurrent with work time.~~

~~C. When the nature of a work assignment confines an employee during off duty hours and that confinement is a normal condition of work in the employee's position, standby compensation is not required merely because the employee is confined.~~

~~D. Overtime eligible employees on standby status will be compensated at a rate of seven percent (7%) of their hourly base salary for time spent in standby status.~~

~~E. Clinical Pharmacists, who are assigned to standby status, will be compensated at the rate of seven percent (7%) of their hourly base salary for time spent in assigned standby status. Standby status will not be concurrent with work time. Actual hours worked during standby status will be compensated at the pharmacist's straight time rate.~~

~~F. Overtime exempt employees, with the exception of those identified in Subsection 7.2 D and Subsection 41.21 E, will be compensated twenty five dollars (\$25.00) for each day or portion thereof spent in assigned standby status. A day is defined as a twenty four (24) hour period beginning on the first hour an employee is assigned standby status.~~

#### **41.12 Relocation Compensation**

A. The Employer may authorize lump sum relocation compensation, within existing budgetary resources, under the following conditions:

1. When it is reasonably necessary that a person make a domiciliary move in accepting a reassignment or appointment; or

2. It is necessary to successfully recruit or retain a qualified candidate or employee who will have to make a domiciliary move in order to accept the position.

B. If the employee receiving the relocation payment terminates or causes termination of his/her employment with the State within one (1) year of the date of employment, the State will be entitled to reimbursement for the moving costs which have been paid and may withhold such sum as necessary from any amounts due the employee. Termination as a result of layoff or disability separation will not require the employee to repay the relocation compensation.

#### **41.13 Salary Overpayment Recovery**

All recovery under this Section shall be limited to a maximum of six (6) months from the date of notification to the employee of the error.



A. When an agency has determined that an employee has been overpaid wages, the agency will provide written notice to the employee, which will include the following items:

1. The amount of the overpayment;
2. The basis for the claim; and
3. The rights of the employee under the terms of this Agreement.

B. Method of Payback

The employee must choose one (1) of the following options for paying back the overpayment:

1. Voluntary wage deduction;
2. Cash; or
3. Check.

The employee will have the option to repay the overpayment over a period of time equal to the number of pay periods during which the overpayment was made, unless a longer period is agreed to by the employee and the agency.

C. If the employee fails to choose one (1) of the three (3) options described above, within the timeframe specified in the agency's written notice of overpayment, the agency will deduct the overpayment owed from the employee's wages. This overpayment recovery will take place over a period of time equal to the number of pay periods during which the overpayment was made.

D. Any overpayment amount still outstanding at separation of employment will be deducted from their final pay.

E. Appeal Rights

Any dispute concerning the occurrence or amount of the overpayment will be resolved through the grievance procedure in Article 31 of this Agreement.

#### **41.14 Assignment Pay Provisions**

Assignment pay is a premium added to base salary and is intended to be used only as long as the skills, duties, or circumstances it is based on are in effect.

A. The Employer may grant assignment pay to a position to recognize specialized skill, assigned duties, and/or unique circumstances that exceed the ordinary. The Employer determines which positions qualify for the premium.

B. Classes approved for assignment pay are identified in Compensation Appendix I.

C. All Assignment Pay Rates and Special Pay Ranges and Notes are attached as Compensation Appendices I and J to this Agreement.

#### **~~41.25 Medical/Dental Expense Account~~**

~~The Employer agrees to allow insurance eligible employees, covered by this Agreement, to participate in a medical and dental expense reimbursement program to cover co-payments, deductibles and other medical and dental expenses, if employees have such costs, or expenses for services not covered by health or dental insurance on a pretax basis as permitted by federal tax laws or regulations.~~

#### **~~41.26 Dependent Care Salary Reduction Plan~~**

~~The Employer agrees to maintain the current dependent care salary reduction plan that allows eligible employees, covered by this Agreement, the option to participate in a dependent care reimbursement program for work-related dependent care expenses on a pretax basis as permitted by federal tax law or regulation.~~

#### **~~41.27 Pretax Health Care Premiums~~**

~~The Employer agrees to provide eligible employees with the option to pay the employee portion of health premiums on a pretax basis as permitted by federal tax law or regulation.~~

#### **~~41.28 Voluntary Separation Incentive—Voluntary Retirement Incentives~~**

~~Agencies will have the discretion to participate in a Voluntary Separation Incentive Program or a Voluntary Retirement Incentive Program, if such program is provided for in the 2019-2021 operating budget. Such participation must be in accordance with the program guidelines. Program incentives or offering of such incentives are not subject to the grievance procedure.~~

#### **~~41.29 Emergency/Disaster Operations Compensation~~**

~~All employees performing emergency/disaster duties when working full-time under a phase II or higher activation level designated by the State Emergency Operating Center will be compensated as follows:~~

~~A. Employees will be paid at one and one-half (1-1/2) times the sum of their regular hourly rate for those hours worked in excess of forty (40) hours in a workweek as a result of full-time work in support of a significant emergency, declared disaster, or Emergency Management Assistance Compact (EMAC) or other Mutual Aid activations/deployments as determined by the agency head or designee. During federally declared disasters overtime compensation will be limited to cash payments.~~

~~B. For those hours worked during the activation, one dollar (\$1.00) is added to an employee's regular rate in lieu of any other forms of additional compensation including, but not limited to, callback, standby, shift differential, split shift differential, assignment pay, and/or schedule change.~~

~~C. Unless otherwise noted in writing, employees will retain the assigned workweek while supporting emergency/disaster operations. However, employees' assigned work hours may be different from their regularly assigned work hours.~~

~~D. These provisions are limited to qualifying work performed in the Washington Emergency Operations Center, in a Joint Field Office, and work in direct support of EMAC or other Mutual Aid activations/deployments.~~

#### **~~41.30 Board Certification Payment—UPW and AWP~~**

~~Payment for current board certification ten thousand dollars (\$10,000), to be added to base rate and paid out in twelve (12) equal monthly installments each fiscal year and will be prorated based on one (1.0) Full-Time Equivalent. For Physician 3 or Psychiatrist, the board certification must be in an area relevant to patient care and come from an accredited program by the American Board of Medical Specialties, the American Board of Psychiatry and Neurology and/or the American Osteopathic Board in one of the following areas: Neurology & Psychiatry, Child Psychiatry, Forensic Psychiatry, Geriatric Psychiatry, Internal Medicine, Pathology, or Family Medicine.~~

~~For Clinical Pharmacist, the board certification must be in an area relevant to patient care and come from an accredited program by the Board of Pharmacy Specialties in the area of Psychiatric Pharmacy, Infectious Diseases, Pharmacotherapy or Ambulatory Care, or the Commission for Certification in Geriatric Pharmacy, or the National Certification Board for Diabetes Educators.~~

#### **41.15 Wildlife Service Dog (WSD) and Equestrian Maintenance**

The handler may log one hour of WSD maintenance or Equestrian maintenance for the care and maintenance of the assigned dog or horse(s) for each duty day worked by the handler within the twenty-eight (28) day one hundred seventy-one (171) hour cycle. Additionally, the employer agrees to compensate WSD and Equestrian handlers twenty-five (\$25.00) per approved SDO identified in the twenty-eight (28) day detachment plan(s), not to exceed eight (8) per twenty-eight (28) day cycle.

#### **~~41.32 Special Commitment Center (DSHS)~~**

~~Employees assigned to work on McNeil Island at the Special Commitment Center will receive ten dollars (\$10.00) premium pay for each day they are physically working on the Island. Days in a paid status not working on the Island will not qualify for this premium pay.~~

#### **41.16 King County Premium Pay**

Employees assigned to a permanent duty station in King County will receive five (5) percent Premium Pay calculated from their base salary. When an employee is no longer permanently assigned to a King County duty station they will not be eligible for this premium pay.

### **DISCUSSION OF ISSUE #5 – ARTICLE 41 COMPENSATION**

#### **THE WAGE GAP WITH RESPECT TO THE WSP AND THIS UNIT**

One of, if not the, main basis for the Guild’s proposal on wages is the gap between the line officers and the WSP, as well as other law enforcement officers around the State of Washington. See, pages 5600 to 5638 in the second submission received on September 14, 2020. It was also clear that the testimony before the legislature showed that the Guild and management officers of the agency were there together seeking the passage of HF 5481 to gain both the ability to negotiate directly and to gain interest arbitration as a benefit and to “level the playing field” as the Guild President stated. That goal, while noble indeed, does not mandate that the increase be granted, especially in light of the stipulated comparable jurisdiction here.

These documents clearly showed that there has been an historical gap that goes back approximately a decade between the WSP and the Fish and Wildlife officers. This was discussed at some length above but the simple answer is that these parties stipulated that the comparable jurisdiction was the WSP. References to other units were therefore given little or no evidentiary weight. To do otherwise would be inappropriate and might well result in the basis for invalidating the award itself. It is not for an interest arbitrator to simply disregard the agreed upon and stipulated facts in terms of the comparable jurisdiction.

Further, irrespective of the evidence of the historical gap in wages at virtually every level, an award of 7.2% in both years would be inappropriate and completely out of line with the WSP TA as well as the other jurisdiction in and around the State – even if one does consider those.

Having said that however it is important to note that the totality of the evidence was that WSP agreed to a 0% increase in 2021 and a wage re-opener in 2022. Based on the evidence, despite the claims by the Guild here, the only approached wage award for 2021 is 0%. That is based on the stipulation of the comparable jurisdiction.

It would also be appropriate too to award the same wage reopener in 2022 just as the WSP agreed to. However, the freeze on steps would be inappropriate as well. While interest arbitration cannot always be used to alter historical patterns, on this record, to freeze the steps given the clear record of the continuing gap. The State's claim to freeze the steps was not supported by sufficient evidence of a compelling need and would in fact be a wage reduction and a somewhat radical change to the wage progression that has been in place for many years, including the 2019-2021 CBA.

Accordingly the award on basic wages is for a 0% increase in 2021, similar to that which was agreed to by WSP;<sup>20</sup> a wage reopener in 2022 and for the steps as set forth in 2019-2021 coalition agreement to continue and not be frozen as the State suggests and proposed.

### **GENERAL WAGE INCREASE**

As discussed herein, the Guild presented voluminous documentary evidence and days of testimony regarding the wage gap between Fish and Wildlife officers and the WSP. They also presented a large number of exhibits showing that over time Fish and Wildlife has lagged behind other law enforcement agencies throughout the State of Washington as well and that while WSP is near the top of pay in the State, it's officers are very near the bottom – akin to very small cities with populations of well under 10,000.00.

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<sup>20</sup> The State provided the TA'd agreement between the State of Washington and the WSPTA. The wage reopener language should thus be similar to that agreed to by those parties by TA and their Article 28.1 dated 7-31-2020.

Without going into any more detail than has already been done, it was clear that the comparable for economic issues, at the very least, was the WSP. Given that clear stipulation and the constraints placed on the interest arbitration process by that, it was clear that the award should follow that agreed to by WSP.

While this language need not mirror exactly; a stipulated comparable is a stipulated comparable – with all that entails, warts and all.

Here, the evidence showed that WSP agreed to a 0% increase in the first year of their 2-year CBA and a 0% for the second year, but with a wage reopener agreement for the second year.

Frankly, to award a 7.2% increase and then another 7.2% increase in the second year here would be so far above anything agreed to or awarded throughout the State as to be an aberration and unwarranted.

For all the reasons already stated, the appropriate award must therefore be the same as the WSP – 0% in year one and a wage reopener to be consistent with what was agreed to by the State and the WSP Troopers Association. That re-opener language was provided on this record and the parties should simply incorporate that into the 2021-2023 CBA.

#### **STEP INCREASE FREEZE**

A different analysis was rendered when reviewing the proposed step increase freeze as proposed by the State.

There was evidence that the WSP may have also frozen their steps for the first year of the contract with a similar type of reopener language see TA'd agreement submitted by the State on September 15, 2020 at Article 28.1.

Irrespective of that, there was compelling evidence that over time there as in fact been an ever increasing gap in wages between the Fish and Wildlife officers and the State Patrol troopers. There were historical reasons for that discussed by both parties. The State attempted to minimize the extent of that gap but on this record it was clear that the gap is significant, despite the two agencies having statewide enforcement duties.

Here, the Guild's proposal had far greater merit and while the gap cannot be erased, there was compelling evidence that it needs to be narrowed over time. Allowing these officers to get their appropriate steps as set forth in the exhibits and documentary evidence would serve that purpose, at least in part.

I was mindful of the fact that this would result in more cost for this contract than the State wants, but it was also clear that these steps have been in place for many years and that the officers have come to rely on them as they move through them toward retirement.

Accordingly the State's proposal to freeze the steps in place for the Fish and Wildlife officers cannot be awarded.

#### **ARTICLE 41.1.G - LONGEVITY INCREASE**

The Guild proposes a significant change in the longevity article as set forth above. The Guild relied on its argument regarding recruitment and retention for that assertion and position and argued that longevity steps reduce retention problems since employees seek to stay in order to get their longevity steps. *State Department of Corrections v. Teamsters 117* (Lankford, 2016) (128405-I-16-2016). It is essentially a "bonus" for officers who choose to remain with a department instead of leaving. See, *City of Omak (Police)* (Reeves, 2003) (17809-I-03). Having senior officers to assist, mentor and train younger less experienced officers is a benefits to all concerned, including the public.

The Guild proposes a 3% at 5 years, 2% additional increase at years 10 and 15 and 20 years of service and then a 1% increase at 25 years. The basis is that more experienced officers can train younger officers and provides very valuable mentoring and training to better serve the public and meet the mission and goals of the agency. This is certainly true and there was evidence that more experienced officers are a uniquely valuable asset to the State and to the agency.

The question though is whether there is a compelling reason on this record to warrant the insertion of an entirely new longevity system as proposed by the Guild. There was evidence to show that there are substantial numbers of senior officers with the agency and that the longevity article and system is not somehow standing in the way of their desire to remain with the department. While it was clear that longer term service officers are valuable in many ways, there was insufficient evidence to warrant inclusion of the entirely new longevity schedule proposed by the Guild.

Thus, on this record, the Guild's request did not find sufficient evidentiary support and must be denied at this time. However, the State's position to freeze all longevity steps as currently in the coalition CBA is denied.

#### **ARTICLE 41.2 –**

The Guild seeks a new article as set forth in its final positions, Table 1 and Table 2. The State seeks to delete the entire existing article.

The Guild took the position that the language should be amended to implement pay classification and step compression, combine Officer 1 and 2 classifications and create a recruit/academy step. The Guild also proposes moving the 10% pay increase for working the 171-hour schedule from Appendix I to 41.2.

This issue appears to be tied to the claimed wage increases as well as the change in the step schedule discussed above. There was insufficient evidence to warrant combining Fish and Wildlife officer 1 and 2 classifications.

There was, on the other hand, sufficient evidence to show that there remains a valid reason based on training and experience to leave those two classifications in place at this time. In order to become a Fish and Wildlife officer 2 one must complete certain training and education in order to qualify for that position. Combining them seemed to be inconsistent with the overriding notion that these officers must have the special training to perform the difficult and challenging duties they perform. Combining the two classifications would likely have the impact of diluting that otherwise important goal.

#### **ARTICLE 41.6 – PAY FOR PERFORMING THE DUTIES OF A HIGHER CLASSIFICATION**

The Guild proposes a change in the existing language to require pay for performing the duties of a higher classification from 30 days to 5. It would also change the pay from 5% to 10% or the rate of the supervisor, whichever is higher.

The State proposed no change in the existing language and clarified at the hearing that the 30 days referenced in the language starts from the first day the duties in the higher classification start.

On this record, there was insufficient evidence to support the Guild's proposed change at this time. The Guild argued that the increased pay commences on the first day the officer is assigned to higher level duties but only if the assignment is for more than 30 days.

That may be the case, but there was simply insufficient evidence to warrant the change as requested at this point. Accordingly, the State's position on this unique issue is awarded.

#### **ARTICLE 41.7 – ESTABLISHING SALARIES FOR NEW EMPLOYEES AND NEW CLASSIFICATION OF RANGE AND STEP.**

The Guild proposed new language that would require the employer to assign newly hired employees to the appropriate range and step of the appropriate salary schedule that correspond to their law enforcement experience. The Guild asserted that this would more accurately reflect the true value of a newly hired officer who has additional training and experience.



The State seeks no change from existing language and argued that the Guild's proposal would impede the managerial prerogative to assign newly hired officers where they are most appropriately placed.

On this record the State's position had greater merit. The proposed language uses very subjective terminology that would almost invite disputes regarding that the term "appropriate" would mean and how the newly hired individual's experience factored into that. Accordingly, the State's position is awarded.

#### **ARTICLE 41.8 A, B – PERIODIC INCREASES**

This issue has been discussed above. The Guild seeks a 7.2% increase in both of the two years of the contract. As discussed above, that was not awarded.

#### **ARTICLE 41.8 C - PERIODIC INCREASES**

This too was discussed above as well. The State's proposal is for current language, but that it be suspended for the 2021-2023 contract term. As discussed, the step system in place from the 2019-2021 coalition agreement was awarded to remain in place for the 2021-2023 term.

#### **ARTICLE 41.8.E – PERIODIC INCREASES**

This too has been addressed in prior discussions on the step increases. The State seeks to keep existing language but suspend any step increases for the life of the new CBA as discussed above. The Guild seeks to delete the entire section and substitute it with the proposed language set forth above.

The award is to retain the current language as follows: Employees who are appointed to another position with a different salary range maximum will retain their periodic increment date and will receive step increases in accordance with Subsection A, B and C above and to retain the step increases as previously discussed.

#### **ARTICLE 41.9 – SALARY ASSIGNMENT UPON PROMOTION**

The State seeks the deletion of this entire provision. The Guild seeks to delete the article as well, as set forth above, but to substitute its proposed revised step and longevity system for this article.

The Guild asserted that this language does not apply to this bargaining unit. On this record it was unclear as to how it would not apply. If indeed it does not then the parties appear to agree that it should be deleted, but that the impact of that must be consistent with the remainder of the other matters awarded herein.

#### **ARTICLE 41.10 – SALARY ADJUSTMENTS**

Current coalition language allows for an adjustment to address recruitment and retention issues and grants to the employer the discretion to do so. The State seeks to retain current language.

The Guild seeks to delete the entire section as inapplicable. The Guild's position though is premised on the adoption of its revised step and pay system under the longevity article.

Given the awards above, the State's position must be adopted.

#### **ARTICLE 41.11 - DEMOTION**

Based on the submissions by the Guild dated September 15, 2020, the parties are in agreement to retain the current contract language in the new CBA.

#### **ARTICLE 41.12 - TRANSFER**

The State seeks to retain current CBA language and argued that this clarifies the rights of employees upon a transfer to another position within the agency or to another agency. The Guild seeks to delete the entire section as inapplicable coalition language that is simply out of date now.

There was again very little evidence presented one way or the other on this question but there was no evidence that this section has created a problem or that it either removes or diminishes any employee rights or creates a problem for administrative. Based on the overall record, this language should remain. The State's position is awarded.

### **ARTICLE 41.13 - REASSIGNMENT**

Similarly, the State seeks to retain current language and the Guild argued that this language is inapplicable. There was no evidence that this section has created a problem or that it either removes or diminishes any employee rights or creates a problem for administration. Based on the overall record, this language should remain. The State's position is awarded.

### **ARTICLE 41.17 - CALLBACK**

The Guild seeks to retain current language. The State seeks to delete language that applies to shift employees. The State made it clear though that call back pay applies only if the officer is called back on their day off or a holiday, just as the language of Article 41.17 B provides. The State also seeks to delete the language of Article 41.17A pertaining to shifts. The State acknowledged that there is call back pay in the proposal but only for those days when the officer is called back on their day off.

The Guild's position here has merit and showed that the current coalition language protects officers from last minute schedule changes. While a last minute schedule change can be ordered by management, the current provision would leave in place the obligation to pay call back time and provide certain protections on notice to the affected officers.

Moreover, there was insufficient evidence of a compelling need to change this provision nor any evidence that it is administratively burdensome or unworkable. WSP has a call back provision in it, but it is considerably different than the language in the current CBA and was not considered as a comparable provision. Accordingly, on this record, the Guild's position is awarded.

### **ARTICLE 41.18 – SHIFT PREMIUM**

The submissions by the parties was a bit unclear on this point. The actual final positions appeared to be consistent and that both parties sought the deletion of this article as inapplicable. The summary charts though submitted by the Guild and the State during the hearing appeared to differ slightly in that the State appeared to seek to retain the language except for inapplicable coalition language. The language of the article appears to be inapplicable and should be deleted.

## **ARTICLE 41.24 – ASSIGNMENT PAY PROVISIONS**

The State seeks to retain the existing language, renumbered as Article 41.14 with no changes. Premium pay for those specialties would remain as stated in current language of Appendix I, i.e. \$10.00 per hour while performing duties for specialties; and one hour of overtime per shift worked as an FTO work. The State also objected to the inclusion of the new language for specialty assignments sought by the Guild for Instructors for Defensive Tactics/Firearms/EVOC, Wildlife Service Dog or Equestrian Handlers, Divers and FTO's.

The Guild seeks to retain the language of Article 41.24A, delete the language of Article 41.24 B and C as inapplicable if the request to delete Appendix I is granted. The Guild also seeks to add new language to Article 41.24 but add the following premium pay for certain specialty assignments:

Premium pay at the amount indicated shall be given for each specialty positions shown below:

Instructor Pay (Defensive Tactics, Firearms, EVOC) 3%

Wildlife Service Dog or Equestrian Handlers 3%

Divers 3%

Field Training Officers 5%

The Guild submitted considerable evidence regarding the specialty positions and showed that indeed these jobs require special skill and training. In addition, those employees who work with animals often house them at their residences due to the need to access them quickly in emergencies and other matters.

This was frankly a difficult call in that while it was clear that these officers spend considerable time and have in some cases extraordinary skill and experience in their jobs, the added costs sought by the Guild at this point cannot be fully justified on the record presented. It was noted that the TA between the State and WSP contains a canine handler provision but is considerably different than that proposed by the Guild here.

As discussed more below, the language of Appendix I was not awarded to be deleted and the award on this article is to retain current language and pay for the specialty positions.

## ARTICLES 41.25-28

The State argued that these provisions relate to health care, insurance and retirement benefits and that any award would be outside of the arbitrator's authority to issue an award. It would thus be an illegal award and unenforceable. The State cited 41.56.516 and 41.280.030 for that proposition.

The Guild took a very different position as one can imagine and argued that these provision do not in fact relate to any of those issues and that they deal with tax treatment for those benefits. It was clear that the provisions in dispute were in the previous coalition CBA.

It did not escape notice that these provision were in the prior CBA. If they were not proper subjects for bargaining, it is unlikely they would have been in the Coalition CBA in the first place, but they were. There was no evidence that these were considered illegal subjects of bargaining nor that the provisions in the prior CBA were placed there contrary to law. It was further clear that the Guild's position that these sections pertained to tax liability. There was persuasive evidence that these provisions indeed pertained to tax issues and did not touch on the substantive issues of health insurance or retirement benefits.

Article 41.25 discusses a reimbursement program which appears to be covered by 41.80.020. 41.26 discusses pre-tax treatment of certain expenses. It does not deal directly with insurance benefits per se but whether they can be paid for by the employee in a certain manner. Likewise, 41.27 contains a similar topic. 41.28 does not deal directly with the retirement amount of the benefits but rather allows an agency the discretion to participate in a voluntary retirement incentive program. The agency can make the decision to do so or not. If the agency feels that it can do so because this provision is beyond its statutory authority do so it can opt out.

The Guild cited WAC 381-55-265 and argued that if the State had wanted to file an unfair labor practice it should and could have done so prior to the hearing and did not. That question is a matter to be decided by PERC, and perhaps the Courts, if there was an assertion that the Guild was raising issues that were not appropriate for bargaining. At this point, that issue cannot be determined in this setting.

The remaining question is whether they should be deleted from the CBA at this juncture. On this record there was persuasive evidence that these should remain in the CBA give their limited application to tax issues only.

### **REOPENER**

It was clear on this record that the WSP has a reopener in its 2021-2023 contract. This will be awarded here as well. While there was an agreement in the WSP CBA to hold wages at a 0% increase, there was also an agreement to reopen the negotiations for the 2022-2023 year. This is eminently reasonable given the vagaries of trying to predict the State's economic situation, the issues of retention in the future and other economic and societal factors that may well impact a number of factors at play here. Accordingly, the award is for a reopener of the CBA on all wage and salary issues

### **41.33 GEOGRAPHIC PREMIUM PAY - REGIONAL PAY ISSUE**

Current coalition language grants a 5% premium for those officers who reside in King County – near Seattle. The Guild seeks to increase that to 10% for King County and to add a pay increase of 5% for Snohomish and 3% for Pierce counties.

The Guild argued that due to increased costs of living in those high demand and high cost areas, the premium pay should be expanded to keep pace with inflation factors and the high cost of living. The documents showed that the cost of living in these areas is approximately 9% higher than the national average. Mostly though the higher costs are related to housing cost.

The State objected to that as unwarranted and an increase in costs without adequate foundation.

Here, the evidence did not establish a sufficient basis for inclusion of the two additional counties in this article nor for the increase in the King County percentage. Further, there is no corresponding provision in the WSP contract. This is thus a matter for future negotiation and it may well result in the inclusion of additional counties and/or an increase in the premium pay for King County as well. There was simply insufficient evidence to support the Guild's request at this juncture. Accordingly the State's position is awarded that the coalition language be retained with no changes.

## EDUCATION PROPOSAL [NEW SECTION]

The Guild has proposed a new section to be added to the CBA as follows:

### [New Section] Education Pay

A. The following monthly education incentive pay will be paid to each employee upon completing the listed degree and providing proof of completion to the agency.

Associate Degree Two percent (2%)

Bachelor Degree Four percent (4%)

B. The above percentages will be based upon the employee's base rate of pay.

C. An employee will be entitled to one (1) education incentive pay only.

D. Degrees must be from an accredited institution of higher education.

The clear evidence showed that WSP has an educational incentive and that their pay increases as their educational level increases. See, e.g. page 2000 of the Guild's proposal, which shows that WSP troopers with higher level of education, receive greater pay. There was clear evidence that this would increase the cost of the contract.

There was some evidence that education may not result in greater competence but overall, the evidence showed that greater education does result in a greater and deeper understanding of the science and rationale behind the regulations applicable to the Fish and Wildlife officer's job as well as the ability to appropriately interact with members of the public and communicate effectively. This was shown to be the case with regard to some of the special assignments that Fish and Wildlife officers hold as well as Field Training.

There was sufficient evidence that that with greater education incorporates a greater level of ability and competence. While the Guild's President did not necessarily agree that greater education results in "better" or more competent officers others gave credible and persuasive testimony that it indeed does.

The WSP has an education incentive in their contract as reflected in the multitude of charts setting forth the pay scale for WSP officers.

Given that and the testimony regarding how such additional education really results in more competent or qualified officers, there was a sufficient evidence of compelling need for this new benefit.

It was certainly noted that the Guild's case centered on the gap between Fish and Wildlife officer pay and that of the WSP and that it was clear from the evidence that the gap is growing with each passing year. It was also clear that the WSP has an educational incentive program in its CBA and that it continued through the new CBA. While interest arbitrators must be cautious about adding new benefits to a labor contract; it was apparent first that this is in effect a "new" contract in that it is not a coalition bargaining. Second the incentive is ion the WSP contact and the WSP is the stipulated comparable. It is thus appropriate to add that to both make this contract more inline with the WSP contract and to keep the wage gap from getting even larger over time.

The question on this unique issue is whether the new education article should be inserted into the CBA by interest arbitration in the face of the evidence presented. It is always a difficult decision as bargaining is generally always the best process for insertion of such new language. Here though, given the legislative history and the purpose behind the new statute and the compelling testimony regarding education, the Guild' position with regard to education incentive will be awarded.

Accordingly, the Guild's request for a new article on education pay is awarded.

## **AWARD ON ISSUE 5 – ARTICLE 41 - COMPENSATION**

### **ARTICLE 41.1.A & C- GENERAL WAGE INCREASES FOR YEAR ONE AND YEAR TWO OF THE NEW CBA –**

The wage award is for a 0% increase in the first year of the new CBA and a 0% general wage increase in the second year of the new CBA subject to and with the same wage reopener language that is in the WSP CBA.

**ARTICLE 41.1.B STEP INCREASES** – as discussed above, no freeze on steps is awarded. The Steps and ranges change is to remain as in the coalition CBA through the 2021-2023 CBA.

### **ARTICLE 41.1.G - LONGEVITY INCREASE**

The Guild's request did not find sufficient evidentiary support and must be denied at this time. However, the State's position to freeze all longevity steps as currently in the coalition CBA is denied.



**ARTICLE 41.2 – WAGE SCHEDULE**

The Guild’s proposal to combine Fish and Wildlife officer 1 and 2 classifications is not awarded at this time for the reasons set forth above.

**ARTICLE 41.6 – PAY FOR PERFORMING THE DUTIES OF A HIGHER CLASSIFICATION**

The State’s position on this unique issue is awarded.

**ARTICLE 41.7 – ESTABLISHING SALARIES FOR NEW EMPLOYEES AND NEW CLASSIFICATION OF RANGE AND STEP.**

The State’s position is awarded.

**ARTICLE 41.8 A AND B – PERIODIC INCREASES**

As discussed above, the State’s position is awarded. 0% increase in year one and a 0% increase in year two, subject to the wage re-opener language.

**ARTICLE 41.8 C – PERIODIC INCREASES**

As discussed, the step system in place from the 2019-2021 coalition agreement was awarded to remain in place for the 2021-2023 term.

**ARTICLE 41.8.E – PERIODIC INCREASES**

The award is to retain the current language as follows: Employees who are appointed to another position with a different salary range maximum will retain their periodic increment date and will receive step increases in accordance with Subsection A, B and C above and to retain the step increases as previously discussed.

**ARTICLE 41.9 – SALARY ASSIGNMENT UPON PROMOTION**

The award on this article is to delete the language of Article 41.9 in the current coalition CBA, consistent with the above discussion.

**ARTICLE 41.10 – SALARY ADJUSTMENTS**

The State’s position is be adopted

**ARTICLE 41.11 - DEMOTION**

Based on the submissions by the Guild dated September 15, 2020, the parties are in agreement to retain the current contract language in the new CBA.

**ARTICLE 41.12 – TRANSFER**

The State’s position is awarded.

**ARTICLE 41.13 - REASSIGNMENT**

The State’s position is awarded.

**ARTICLE 41.17 - CALLBACK**

The Guild’s position is awarded.

**ARTICLE 41.18 – SHIFT PREMIUM**

For the reason set forth above, this provision should be deleted in its entirety as inapplicable to the current CBA.

**ARTICLE 41.24 – ASSIGNMENT PAY PROVISIONS**

The award on this article is to retain current language and pay for the specialty positions

## **ARTICLES 41.25, 26, .27 AND .28**

The Guild's proposal that they remain in the CBA is awarded.

### **41.33 GEOGRAPHIC PREMIUM PAY**

The State; position is awarded that the coalition language be retained with no changes.

### **EDUCATION PAY – NEW ARTICLE**

The Guild's proposal is awarded as follows:

A. The following monthly education incentive pay will be paid to each employee upon completing the listed degree and providing proof of completion to the agency.

Associate Degree Two percent (2%)

Bachelor Degree Four percent (4%)

B. The above percentages will be based upon the employee's base rate of pay.

C. An employee will be entitled to one (1) education incentive pay only.

D. Degrees must be from an accredited institution of higher education.

## **ISSUE #6 – ARTICLE 44 – WORK RELATED INJURY OR ILLNESS**

### **LANGUAGE OF THE COALITION CBA 2019-2021**

### **ARTICLE 44 WORK-RELATED INJURY OR ILLNESS**

#### **44.1 Compensable Work-Related Injury or Illness Leave**

An employee who sustains a work-related illness or injury that is compensable under the State workers' compensation law may select time-loss compensation exclusively or leave payments in addition to time-loss compensation. Employees who take vacation leave, sick leave or compensatory time during a period in which they receive time-loss compensation will receive full vacation leave, sick leave or compensatory time pay in addition to any time-loss payments, unless the employee is receiving assault benefit compensation equal to full pay.

#### **44.2 Assault Benefits**

The Employer will follow the provisions of RCW 72.01.045 and agency policy with respect to employees of the Departments of Social and Health Services and Veterans Affairs who are victims of assault by residents or patients. The Employer will follow the provisions of RCW 72.09.240 and agency policy with respect to employees of the Departments of Corrections who are victims of assault by offenders.

#### **44.3 – General Provisions**

Employees will not be required to use Family and Medical Leave for work-related illness or injuries covered by workers' compensation or assault benefits. Notwithstanding Section 18.1, the Employer may separate an employee in accordance with Article 33, Reasonable Accommodation and Disability Separation.

#### **44.4 Return to Work (Excluding Department of Fish and Wildlife – Enforcement)**

The Employer will follow the provisions of WAC 357-19-525 through 535 and agency policy related to a return-to-work program.

#### **44.5 Return to Work for Department of Fish and Wildlife – Enforcement Only and Liquor and Cannabis Board Lieutenants.**

A. If an Officer, Detective, Sergeant, or LCB Lieutenant becomes temporarily disabled, he or she may be eligible to return to work in a modified duty assignment. The assignment may permit the Officer, Detective, or Sergeant to work within the program in a modified capacity at the current rate of salary.

B. Opportunity for modified duty assignments are limited and are subject to approval and conditioning by the Chief or designee. Possible assignments will be based upon program needs and the employee's limitation(s). Assignments may be denied when an employee is deemed not capable of fulfilling all of the requirements of the modified duty assignment, or if the Chief or designee determines that there is insufficient need for the assignment. The Chief or designee's decision is final and is not subject to Article 31, Grievance Procedure.

C. Modified duty assignments must be presented to the Chief by the Captain or designee within seven (7) days of written submission and will only be considered when the request is accompanied by a medical release to work and description of limitations as determined by a licensed physician. If an assignment is available, a written description of the assignment will be provided to the requesting employee and to his/her chain of command and will require a physician's approval that the employee is able to perform the modified duties.

D. Modified duty assignments do not affect the essential job functions defined by the agency for the classifications covered by this Agreement. Employees in modified duty assignments may not exercise the authority of their commission, wear agency uniforms, or drive marked patrol vehicles unless authorized by the Chief or designee.

#### **E. Non Work-Related Injury or Illness:**

Nothing in this article precludes an employee who becomes temporarily disabled due to a non work-related illness or injury from requesting to return to work in a modified duty assignment. The cost of the medical evaluations and recommendations will be the employee's responsibility. The opportunity for modified duty assignments are limited and are subject to Coalition 2019-21 approval and conditioning by the Chief or designee. The Chief's decision is final and is not subject to Article 31, Grievance Procedure.

### **GUILD'S POSITION WITH REGARD TO ISSUE #6 – ARTICLE 44 – WORK RELATED INJURY OR ILLNESS**

#### **ARTICLE 44 - WORK-RELATED INJURY OR ILLNESS**

##### **44.1 Compensable Work-Related Injury or Illness Leave**

An employee who sustains a work-related illness or injury that is compensable under the State workers' compensation law may select time-loss compensation exclusively or leave payments in addition to time-loss compensation. Employees who take vacation leave, sick leave or compensatory time during a period in which they receive time-loss compensation will receive full vacation leave, sick leave or compensatory time pay in addition to any time-loss payments, unless the employee is receiving assault benefit compensation equal to full pay. In addition, members shall receive workers compensation top off pay the equivalent of LEOFF II supplement payments.

## **44.2 Assault Benefits**

The Employer will follow the provisions of RCW 72.01.045 and agency policy with respect to employees of the Departments of Social and Health Services and Veterans Affairs who are victims of assault by residents or patients. The Employer will follow the provisions of RCW 72.09.240 and agency policy with respect to employees of the Departments of Corrections who are victims of assault by offenders.

## **44.3 General Provisions**

Employees will not be required to use Family and Medical Leave for work-related illness or injuries covered by workers' compensation or assault benefits. Notwithstanding Section 18.1, the Employer may separate an employee in accordance with Article 33, Reasonable Accommodation and Disability Separation. 44.4 Return to Work (Excluding Department of Fish and Wildlife – Enforcement). The Employer will follow the provisions of WAC 357-19-525 through 535 and agency policy related to a return-to-work program.

## **44.5 Return to Work for Department of Fish and Wildlife – Enforcement Only and Liquor and Cannabis Board Lieutenants.**

A. If an Officer, Detective, Sergeant, or LCB Lieutenant becomes temporarily disabled, he or she may be eligible to return to work in a modified duty assignment. The assignment may permit the Officer, Detective, or Sergeant to work within the program in a modified capacity at the current rate of salary.

B. Opportunity for modified duty assignments are limited and are subject to approval and conditioning by the Chief or designee. Possible assignments will be based upon program needs and the employee's limitation(s). Assignments may be denied when an employee is deemed not capable of fulfilling all of the requirements of the modified duty assignment, or if the Chief or designee determines that there is insufficient need for the assignment. The Chief or designee's decision is final and is not subject to Article 31, Grievance Procedure.

C. Modified duty assignments must be presented to the Chief by the Captain or designee within seven (7) days of written submission and will only be considered when the request is accompanied by a medical release to work and description of limitations as determined by a licensed physician. If an assignment is available, a written description of the assignment will be provided to the requesting employee and to his/her chain of command and will require a physician's approval that the employee is able to perform the modified duties.

D. Modified duty assignments do not affect the essential job functions defined by the agency for the classifications covered by this Agreement. Employees in modified duty assignments may not exercise the authority of their commission, wear agency uniforms, or drive marked patrol vehicles unless authorized by the Chief or designee.

### **E. Non Work-Related Injury or Illness:**

Nothing in this article precludes an employee who becomes temporarily disabled due to a non work-related illness or injury from requesting to return to work in a modified duty assignment. The cost of the medical evaluations and recommendations will be the employee's responsibility. The opportunity for modified duty assignments are limited and are subject to approval and conditioning by the Chief or designee. The Chief's decision is final and is not subject to Article 31, Grievance Procedure.

## STATE'S POSITION WITH RESPECT TO ISSUE #6 – ARTICLE 44 – WORK RELATED INJURY AND ILLNESS

### ARTICLE 44 - WORK-RELATED INJURY OR ILLNESS

#### 44.1 Compensable Work-Related Injury or Illness Leave

An employee who sustains a work-related illness or injury that is compensable under the State workers' compensation law may select time-loss compensation exclusively or leave payments in addition to time-loss compensation. Employees who take vacation leave, sick leave or compensatory time during a period in which they receive time-loss compensation will receive full vacation leave, sick leave or compensatory time pay in addition to any time-loss payments, unless the employee is receiving assault benefit compensation equal to full pay.

#### 44.2 Assault Benefits

The Employer will follow the provisions of RCW 72.01.045 and agency policy with respect to employees of the Departments of Social and Health Services and Veterans Affairs who are victims of assault by residents or patients. The Employer will follow the provisions of RCW 72.09.240 and agency policy with respect to employees of the Departments of Corrections who are victims of assault by offenders.

#### 44.3 General Provisions

Employees will not be required to use Family and Medical Leave for work-related illness or injuries covered by workers' compensation or assault benefits. Notwithstanding Section 18.1, the Employer may separate an employee in accordance with Article 33, Reasonable Accommodation and Disability Separation.

#### ~~44.4 Return to Work (Excluding Department of Fish and Wildlife Enforcement)~~

~~The Employer will follow the provisions of WAC 357-19-525 through 535 and agency policy related to a return-to-work program.~~

#### ~~44.5 Return to Work for Department of Fish and Wildlife Enforcement Only and Liquor and Cannabis Board Lieutenants.~~

A. If an Employee ~~Officer, Detective, Sergeant, or LCB Lieutenant~~ becomes temporarily disabled, he or she may be eligible to return to work in a modified duty assignment. The assignment may permit the Employee ~~Officer, Detective, or Sergeant~~ to work within the program in a modified capacity at the current rate of salary.

B. Opportunity for modified duty assignments are limited and are subject to approval and conditioning by the Chief or designee. Possible assignments will be based upon program needs and the employee's limitation(s). Assignments may be denied when an employee is deemed not capable of fulfilling all of the requirements of the modified duty assignment, or if the Chief or designee determines that there is insufficient need for the assignment. The Chief or designee's decision is final and is not subject to Article 31, Grievance Procedure.

C. Modified duty assignments must be presented to the Chief by the Captain or designee within seven (7) days of written submission and will only be considered when the request is accompanied by a medical release to work and description of limitations as determined by a licensed physician. If an assignment is available, a written description of the assignment will be provided to the requesting employee and to his/her chain of command and will require a physician's approval that the employee is able to perform the modified duties.

D. Modified duty assignments do not affect the essential job functions defined by the agency for the classifications covered by this Agreement. Employees in modified duty assignments may not exercise the authority of their commission, wear agency uniforms, or drive marked patrol vehicles unless authorized by the Chief or designee.

E. Non Work-Related Injury or Illness:

Nothing in this article precludes an employee who becomes temporarily disabled due to a non work-related illness or injury from requesting to return to work in a modified duty assignment. The cost of the medical evaluations and recommendations will be the employee's responsibility. The opportunity for modified duty assignments are limited and are subject to approval and conditioning by the Chief or designee. The Chief's decision is final and is not subject to Article 31, Grievance Procedure.

#### **DISCUSSION OF ISSUE #6 – ARTICLE 44 – WORK RELATED INJURY AND ILLNESS**

The Guild seeks to add a section to Article 44.1 to require that employees covered by the terms of that language shall receive workers compensation top off pay the equivalent of LEOFF II supplement payments. The Guild argued that while state law provides a floor for such benefits, the parties are free to negotiate a greater benefit.

The State seeks to retain current language with no changes and asserted that the CBA cannot be inconsistent with statute or applicable law.

It was unclear that the Guild's proposals were inconsistent with state law. The Guild seeks to allow officers to use their own leave benefits and aligns this proposed benefit with those provided to benefit with other local government law enforcement officers.

On this unique record, the Guild's proposed language is awarded.

#### **AWARD ON ISSUE #6 – ARTICLE 44 – WORK RELATED INJURY AND ILLNESS**

The Guild's proposed language is awarded.

### **ISSUE #7 – COMPENSATION APPENDIX – ASSIGNMENT PAY**

#### **LANGUAGE OF THE COALITION CBA – 2019-2021**

#### **COMPENSATION APPENDIX I - ASSIGNMENT PAY**

AP is granted in recognition of assigned duties which exceed ordinary conditions. The "premium" is stated in ranges or a specific dollar amount. If stated in ranges, the number of ranges would be added to the base range of the class. The "reference number" indicates the specific conditions for which AP is to be paid.

Group A indicates those classes which have been granted assignment pay; Group B indicates those assigned duties granted AP which are not class specific; Group C applies only to Ref #29.

#### **GROUP A**

Class Title	Class Code	Premium	Reference #
Fish & Wildlife Detectives	388D	See References	7, 37A
Fish & Wildlife Sergeants	388E	See References	7, 37A
Fish & Wildlife Officers	388A-C	See References	7, 37A
Fish and Wildlife Officer 2	388B	See References	60
Fish and Wildlife Officer 3	388C	See References	60
Assistant Fire Chief	396E	\$10.00 per hour	37A
LCB Enforcement Officer 4	390I	\$10.00 per hour	37A
Marine Vessel Operator	652R	Ten percent (10%)	32
Pharmacists, Clinical	295L	Ten percent (10%)	66

REFERENCE #66: Base salary plus ten percent (10%) will be paid to Pharmacists, Clinical within a State facility who are approved to practice under a Collaborative Practice Agreement when performing recognized patient treatment to include anticoagulation treatment and management; Hepatitis C treatment and monitoring medication management during palliative care; medication management for patients placed in the community to maintain stability; and prescribing for chronic conditions for patients in the State facilities once acuity is stabilized.

REFERENCE #7: Law enforcement employees that are assigned a 171-hour, 28 day work period will receive their base salary plus ten percent (10%). (Administrative update as WAC was repealed during civil service reform) (Eff. 12/85; Rev. 12/89; 12/97; 7/17)

REFERENCE #32: For employees located at McNeil Island Special Commitment Center, who are fully trained and qualified, assignment pay will be paid when performing fuel oil transfer duties at the McNeil Island Oil Transfer Facility. Entitlement to assignment pay under this reference shall be on an hour-for-hour basis for all hours while actually performing all relevant fuel transfer duties. These duties include: maintenance of all tanks and affiliated systems, the transfer of fuel from bulk storage tanks to oil tankers, and relevant training. Basic salary range plus ten percent (10%). (Eff. 09/01, Rev. 11/01; 7/17).

REFERENCE #37A: LCB Enforcement Officer 4s at the Liquor and Cannabis Board, Assistant Fire Chiefs at Department of Social and Health Services at the Special Commitment Center, McNeil Island and the Department of Fish and Wildlife Enforcement Program certified instructors of hazardous materials, defensive tactics, tactical advanced first aid (excluding basic first aid/AED training), firearms, fitness, bicycle, boating safety, MOCC, EVOC, and pistol maintenance, will be compensated an additional \$10.00 (ten dollars) per hour, over and above regular salary and benefits, for every hour engaged in giving instruction to or in receiving re-certification training. Pistol maintenance instructors are eligible for this additional compensation when they are instructing in a classroom setting, providing one-on-one instruction or repairing at the firing range. Time spent for Department of Fish and Wildlife Enforcement Program certified instructors receiving additional instruction in classes pre-approved by a Training Lieutenant of Chief in disciplines identified in this reference shall receive ten dollars (\$10.00) per hour and above regular salary benefits. (Eff 7/05; Rev 7/07; 7/17).

REFERENCE #60: Within the Department of Fish and Wildlife, employees who are assigned by the appointing authority to work as a Field Training Officer (FTO) will be compensated for documenting daily observations of a Student Officer for up to one (1) hour at the overtime rate for each duty day worked as an FTO, and up to one (1) hour at the overtime rate for time spent on the end of phase report. (Eff. 7/17).

## **GROUP B**

REFERENCE #3: For required SCUBA diving and/or serving as Designated Person in Charge (DPIC). Basic salary range plus ten dollars (\$10.00) per diving or DPIC hour to employees in any class. (Eff. 7/15; Rev. 7/17).

REFERENCE #18: Employees in any position whose current, assigned job responsibilities include proficient use of written and oral English and proficiency in speaking and/or writing one or more foreign languages, American Sign Language, or Unified English Braille, provided that proficiency or formal training in such additional language is not required in the specifications for the job class. Basic salary plus five percent (5%). (Rev. 5/92; 7/17).

REFERENCE #26: Within the Department of Fish and Wildlife, basic salary plus ten percent (10%) for employees with a Class A or Class B Commercial Driver's License driving CDL performing the following duties: driving fish-hauling trucks to transport fish or to deliver a CDL truck for authorized maintenance, fish loading or unloading, pre and post trip inspections, fuel stops. The advanced pay level shall be for a one (1) hour minimum and thereafter on an hour-for-hour basis, rounded up to an hour. (Eff. 1/91; Rev. 7/17).

REFERENCE #54: Within the Department of Fish and Wildlife, basic salary plus ten percent (10%) for designated employees who are licensed spray operators. The designated employees are responsible for actual mixing, record keeping, and spraying of pesticide as documented by completion and signature of a "Pesticide Application Record." They shall be paid for actual hours of operation that continues for at least one hour. Mixing, record keeping, and application of pesticides that last for less than one (1) hour shall not qualify employees for assignment pay. (Eff. 7.15; Rev 7/17).

## **Group C**

REFERENCE #29: Upon review and approval from the OFM State Human Resources, employees in any position located where the cost of living impacts the agency's ability to recruit and/or retain employees, which would severely impair the effective operation of the agency, will be compensated a percentage increase as detailed with the Group C Listing (Eff. 5:01; Rev. 7/17).

### **GUILD'S POSITION ON COMPENSATION APPENDIX I – ASSIGNMENT PAY**

The Guild proposes the deletion of the entire provision and move the 10% increase for 171-hour employees to Article 41 and move the specialty pay provisions to Article 41 as noted above.

### **STATE'S POSITION REGARDING COMPENSATION APPENDIX I – ASSIGNMENT PAY**

#### **COMPENSATION APPENDIX I - ASSIGNMENT PAY**

AP is granted in recognition of assigned duties which exceed ordinary conditions. The "premium" is stated in ranges or a specific dollar amount. If stated in ranges, the number of ranges would be added to the base range of the class. The "reference number" indicates the specific conditions for which AP is to be paid.

Group A indicates those classes which have been granted assignment pay; Group B indicates those assigned duties granted AP which are not class specific; Group C applies only to Ref #29.



## GROUP A

Class Title	Class Code	Premium	Reference #
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Fish & Wildlife Sergeants	388E	See References	7, 37A
Fish & Wildlife Officers	388A-C	See References	7, 37A
Fish and Wildlife Officer 2	388B	See References	60
Fish and Wildlife Officer 3	388C	See References	60
<del>Assistant Fire Chief</del>	<del>396E</del>	<del>\$10.00 per hour</del>	<del>37A</del>
<del>LCB Enforcement Officer 4</del>	<del>390I</del>	<del>\$10.00 per hour</del>	<del>37A</del>
<del>Marine Vessel Operator</del>	<del>652R</del>	<del>Ten percent (10%)</del>	<del>32</del>
<del>Pharmacists, Clinical</del>	<del>295L</del>	<del>Ten percent (10%)</del>	<del>66</del>

~~REFERENCE #66: Base salary plus ten percent (10%) will be paid to Pharmacists, Clinical within a State facility who are approved to practice under a Collaborative Practice Agreement when performing recognized patient treatment to include anticoagulation treatment and management; Hepatitis C treatment and monitoring medication management during palliative care; medication management for patients placed in the community to maintain stability; and prescribing for chronic conditions for patients in the State facilities once acuity is stabilized.~~

REFERENCE #7: Law enforcement employees that are assigned a 171-hour, 28 day work period will receive their base salary plus ten percent (10%). (Administrative update as WAC was repealed during civil service reform) (Eff. 12/85; Rev. 12/89; 12/97; 7/17)

~~REFERENCE #32: For employees located at McNeil Island Special Commitment Center, who are fully trained and qualified, assignment pay will be paid when performing fuel oil transfer duties at the McNeil Island Oil Transfer Facility. Entitlement to assignment pay under this reference shall be on an hour for hour basis for all hours while actually performing all relevant fuel transfer duties. These duties include: maintenance of all tanks and affiliated systems, the transfer of fuel from bulk storage tanks to oil tankers, and relevant training. Basic salary range plus ten percent (10%). (Eff. 09/01, Rev. 11/01; 7/17).~~

REFERENCE #37A: LCB Enforcement Officer 4s at the Liquor and Cannabis Board, Assistant Fire Chiefs at Department of Social and Health Services at the Special Commitment Center, McNeil Island and the Department of Fish and Wildlife Enforcement Program e Certified instructors of hazardous materials, defensive tactics, tactical advanced first aid (excluding basic first aid/AED training), firearms, fitness, bicycle, boating safety, MOCC, and EVOC, and pistol maintenance, will be compensated an additional \$10.00 (ten dollars) per hour, over and above regular salary and benefits, for every hour engaged in giving instruction to or in receiving re-certification training. Pistol maintenance instructors are eligible for this additional compensation when they are instructing in a classroom setting, providing one on one instruction or repairing at the firing range. Time spent for Department of Fish and Wildlife Enforcement Program certified instructors receiving additional instruction in classes pre-approved by a Training Lieutenant of (sic) Chief in disciplines identified in this reference shall receive ten dollars (\$10.00) per hour and above regular salary benefits. (Eff 7/05; Rev 7/07; 7/17).

REFERENCE #60: ~~Within the Department of Fish and Wildlife, e~~ Employees who are assigned by the appointing authority to work as a Field Training Officer (FTO) will be compensated for documenting daily observations of a Student Officer for up to one (1) hour at the overtime rate for each duty day worked as an FTO, and up to one (1) hour at the overtime rate for time spent on the end of phase report. (Eff. 7/17).

### **GROUP B**

REFERENCE #3: For required SCUBA diving and/or serving as Designated Person in Charge (DPIC). Basic salary range plus ten dollars (\$10.00) per diving or DPIC hour to employees in any class. (Eff. 7/15; Rev. 7/17).

REFERENCE #18: Employees in any position whose current, assigned job responsibilities include proficient use of written and oral English and proficiency in speaking and/or writing one or more foreign languages, American Sign Language, or Unified English Braille, provided that proficiency or formal training in such additional language is not required in the specifications for the job class. Basic salary plus five percent (5%). (Rev. 5/92; 7/17).

~~REFERENCE #26: Within the Department of Fish and Wildlife, basic salary plus ten percent (10%) for employees with a Class A or Class B Commercial Driver's License driving CDL performing the following duties: driving fish hauling trucks to transport fish or to deliver a CDL truck for authorized maintenance, fish loading or unloading, pre and post trip inspections, fuel stops. The advanced pay level shall be for a one (1) hour minimum and thereafter on an hour for hour basis, rounded up to an hour. (Eff. 1/91; Rev. 7/17).~~

~~REFERENCE #54: Within the Department of Fish and Wildlife, basic salary plus ten percent (10%) for designated employees who are licensed spray operators. The designated employees are responsible for actual mixing, record keeping, and spraying of pesticide as documented by completion and signature of a "Pesticide Application Record." They shall be paid for actual hours of operation that continues for at least one hour. Mixing, record keeping, and application of pesticides that last for less than one (1) hour shall not qualify employees for assignment pay. (Eff. 7.15; Rev 7/17).~~

### **Group C**

REFERENCE #29: Upon review and approval from the OFM State Human Resources, employees in any position located where the cost of living impacts the agency's ability to recruit and/or retain employees, which would severely impair the effective operation of the agency, will be compensated a percentage increase as detailed with the Group C Listing (Eff. 5:01; Rev. 7/17).

### **DISCUSSION OF COMPENSATION APPENDIX I – ASSIGNMENT PAY**

The Guild seeks to move the 10% pay increase for 171 hour employees to Article 41. The State seeks to simply delete inapplicable language from the coalition CBA as noted above.

### **AWARD ON COMPENSATION APPENDIX I – ASSIGNMENT PAY**

Based on the discussion above and the awards rendered herein the Guild's position is awarded here as having greater applicability.

# COMPENSATION APPENDIX AND FREEZE ON SALARY STEPS

The State proposed to freeze all steps as well on the applicable salary Appendix in order to save the 15% mandated by the Governor's office and OFM. The State asserted that in so doing, this will achieve a cost savings and that over comparable units have agreed to freeze the salary steps as well, albeit in some cases with the right of a re-opener in the second year of the CBA.

The Guild opposed such a move arguing that the freeze would in effect not only have an adverse salary impact on the officers in the first year but also in the second due to the inability to progress as they normally would through the steps on their PID and applicable anniversary dates.

At this point there was insufficient evidence to support the changes sought by the Guild in appendix I. The State's position with regard to that section of the CBA is awarded.

## SUMMARY OF AWARD

### **AWARD ON ISSUE # 1 – HIRING AND APPOINTMENTS – ON ARTICLE 5 - ISSUE #1**

The State's position is awarded on both Article 5.4 and 5.5.

### **AWARD ON ISSUE #2 - HOLIDAYS – ARTICLE 11**

The Guild's position on holiday pay Article 11.2.D is awarded.

The Guild's position on holiday pay Article 11.2.F is awarded.

The Guild's position on holiday pay Article 11.3.A is awarded.

The Guild's position on holiday pay Article 11.3.E is awarded.

The State's position on holiday pay Article 11.3.F is awarded.

### **AWARD ON ISSUE #3 – SHARED LEAVE - ARTICLE 14**

The State's proposal on Article 14.1.C.11 is awarded.

The Guild's position regarding Article 14.2.B is awarded.

The State's proposal on Article 14.3.D is awarded.

### **AWARD ON ISSUE #4 – CLASSIFICATION – ARTICLE 40**

State's position is awarded. Language to remain in the new CBA with the changes outlined on the State's final submission.

### **AWARD ON ISSUE # 5 - WAGES –ARTICLE 41 (INCLUDING STEP FREEZE)**

**ARTICLE 41.1.A & C- GENERAL WAGE INCREASES FOR YEAR ONE AND YEAR TWO OF THE NEW CBA –**

The wage award is for a 0% increase in the first year of the new CBA and a 0% general wage increase in the second year of the new CBA subject to and with the same wage reopener language that is in the WSP CBA.

**ARTICLE 41.1.B STEP INCREASES** – as discussed above, no freeze on steps is awarded. The Steps and ranges change is to remain as in the coalition CBA through the 2021-2023 CBA.

**ARTICLE 41.1.G - LONGEVITY INCREASE**

The Guild's request did not find sufficient evidentiary support and must be denied at this time. However, the State's position to freeze all longevity steps as currently in the coalition CBA is denied.

**ARTICLE 41.2 – WAGE SCHEDULE**

The Guild's proposal to combine Fish and Wildlife officer 1 and 2 classifications is not awarded at this time for the reasons set forth above.

**ARTICLE 41.6 – PAY FOR PERFORMING THE DUTIES OF A HIGHER CLASSIFICATION**

The State's position on this unique issue is awarded.

**ARTICLE 41.7 – ESTABLISHING SALARIES FOR NEW EMPLOYEES AND NEW CLASSIFICATION OF RANGE AND STEP.**

The State's position is awarded.

**ARTICLE 41.8 A AND B – PERIODIC INCREASES**

As discussed above, the State's position is awarded. 0% increase in year one and a 0% increase in year two, subject to the wage re-opener language.

**ARTICLE 41.8 C – PERIODIC INCREASES**

As discussed, the step system in place from the 2019-2021 coalition agreement was awarded to remain in place for the 2021-2023 term.

**ARTICLE 41.8.E – PERIODIC INCREASES**

The award is to retain the current language as follows: Employees who are appointed to another position with a different salary range maximum will retain their periodic increment date and will receive step increases in accordance with Subsection A, B and C above and to retain the step increases as previously discussed.

**ARTICLE 41.9 – SALARY ASSIGNMENT UPON PROMOTION**

The award on this article is to delete the language of Article 41.9 in the current coalition CBA, consistent with the above discussion.

**ARTICLE 41.10 – SALARY ADJUSTMENTS**

The State's position is be adopted

**ARTICLE 41.11 - DEMOTION**

Based on the submissions by the Guild dated September 15, 2020, the parties are in agreement to retain the current contract language in the new CBA.

**ARTICLE 41.12 – TRANSFER**

The State's position is awarded.

**ARTICLE 41.13 - REASSIGNMENT**

The State's position is awarded.

**ARTICLE 41.17 - CALLBACK**

The Guild’s position is awarded.

**ARTICLE 41.18 – SHIFT PREMIUM**

For the reason set forth above, this provision should be deleted in its entirety as inapplicable to the current CBA.

**ARTICLE 41.24 – ASSIGNMENT PAY PROVISIONS**

The award on this article is to retain current language and pay for the specialty positions

**ARTICLES 41.25, 26, .27 AND .28**

The Guild’s proposal that they remain in the CBA is awarded.

**41.33 GEOGRAPHIC PREMIUM PAY**

The State’s position is awarded that the coalition language be retained with no changes.

**EDUCATION PAY – NEW ARTICLE**

The Guild’s proposal is awarded as follows:

A. The following monthly education incentive pay will be paid to each employee upon completing the listed degree and providing proof of completion to the agency.

Associate Degree Two percent (2%)

Bachelor Degree Four percent (4%)

B. The above percentages will be based upon the employee’s base rate of pay.

C. An employee will be entitled to one (1) education incentive pay only.

D. Degrees must be from an accredited institution of higher education.

**AWARD ON ISSUE #6 – WORK RELATED INJURY AND ILLNESS – ARTICLE 44**

The Guild’s proposed language is awarded.

**AWARD ON COMPENSATION APPENDIX I – ASSIGNMENT PAY**

The State’s position is awarded. No change from existing coalition language with respect to this bargaining unit.

Dated: September 29, 2020

Fish and Wildlife Guild and State of Washington Interest AWARD 2020

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Jeffrey W. Jacobs, arbitrator