

IN THE MATTER OF THE ARBITRATION

STATE OF WASHINGTON
WASHINGTON STATE FERRIES

and

Interest Arbitration
PERC Case No. 132967-1-20

PUGET SOUND METAL TRADES
COUNCIL.

Appearances: For the Union: Rhonda Fenrich, Esq.,
Fenrich & Gallagher, PC

For the Employer: Katie Garcia, Esq.,
Kate Schiewetz
Assistant Attorney's General

DECISION AND AWARD

The undersigned was mutually selected by the parties. A virtual hearing was held in the above matter on August 18 and 19, 2020. The parties were given the opportunity to present testimony and evidence. At the close of the hearing, the parties presented closing arguments. The arbitrator has considered the testimony, exhibits and arguments of the parties.

BACKGROUND

The Washington State Ferry System is operated by the Washington State Department of Transportation, herein after referred to as the Department. It is the largest State Ferry system in the United States. It provides ferry service to

several localities within the State of Washington. The Department has collective bargaining agreements with several different labor organizations. They include: Ferry Agents and Supervisors (FASFAA); Marine Engineers (MEBA); Masters, Mates and Pilots (MM&P); Office Professional Employees (OPEIU); Inland Boatmen's Union (IBU); Pacific NW Region of Carpenters Union (Carpenters Union); and the Puget Sound Metal Trades Union (Metal Trades). Over 1820 employees are covered by the agreements with these Unions. All the employees represented by these Unions are eligible for interest arbitration pursuant to RCW 47.64.006.

The Metal Trades Union is comprised of several Unions. They are the IBEW, IAMAW, Sheet Metal Workers, Teamsters, and the Boilermakers Union. There are 83 employees in this bargaining unit. Bargaining Unit members work in several different shops. Five of those shops are located at the Eagle Harbor Maintenance Facility. These employees are responsible for maintaining the electrical and mechanical systems on the ferry and at the terminal.

Collective bargaining agreements between the State and all the Unions are for two years. They must begin on July 1 and end on June 30. They are negotiated in advance so that the Governor can submit in the budget the costs of the Agreements. All the Unions must negotiate agreements to run from July 1, 2021-June 30, 2023. Those negotiations or Arbitration Awards must be completed by October 1 of the year before so they can be submitted with the budget. The Governor then submits to the legislature the Agreements or arbitration awards for approval or in the alternative, the Governor may determine

the agreements or awards due to “current economic and revenue conditions... are not feasible financially.” That occurred in 2010 at the time of the great recession.

These Parties had five virtual bargaining sessions. They were able to agree on all issues, but one. They then went to the Washington Public Employment Relations Commission to get certification of the issue or issues subject to interest arbitration. Both parties listed Appendix A, Straight Time Hourly Wage Rates as the sole outstanding issue. PERC on August 13, 2020 certified this issue “for interest arbitration pursuant to RCW.64.300.” The parties proposed the following:

State Proposal

Effective July 1, 2021, the wage rates for each classification represented by the Union shall include a three and one-half percent (3.5%) reduction. The wage rates... will remain in effect through Jun 30, 2022.

Union

Effective July 1, 2021 and through the term of this contract the wage rate for each classification represented by the Union shall include a zero (0) percent increase... In exchange for this wage freeze bargaining unit members will not be subject to furlough during the term of this Agreement.

The wage rates for the positions in the bargaining unit under each proposal are as follow:

	<u>7/01/19)</u>	<u>Union Proposal</u> <u>7/01/21-6/30/23</u>	<u>State Proposal</u> <u>7/01/21-6/30/23</u>
Journeyman	31.83	33.10	31.94
Lead Person	33.42	34.70	33.54
Foreperson	35.01	36.41	35.13
Health& Safety Sup.	35.01	36.41	35.13
Planner	35.01	36.41	35.13
Vessel Gen. Foreperson	35.65	37.07	35.77
Terminal Gen Foreperson	35.65	37.07	35.77
Helper	20.69	21.52	20.76

The employees in this Unit and all other bargaining units received a 4% wage increase on July 1, 2020. That increase raised the rates to the numbers shown under the Union proposal. It was, of course, during this period that the Corona Virus appeared. The Department budget on June 30, 2019 was in the black and the projections were optimistic. They showed an increase in revue of \$32 million. That changed after the first of the year. That is when ridership fell, and the budget faced a shortfall. The Governor issue a mandatory stay at home order from March 27 to May 4. Employees were required to take 8 furlough days in 2020. This saves the Department \$9 million. This is the backdrop for the current round of negotiations and for this Arbitration.

The State has calculated the savings to the Department for this bargaining unit should its proposal be adopted. It says it will save \$240,000 per year or \$480,000 over the term of the Agreement. The Union proposed a freeze would not add any additional cost, but it would not save any funds during the term of the Agreement.

Statute

RCW 47.64.320 sets forth the factors the Arbitrator “shall take into consideration” in reaching a decision. As is true in all interest arbitration not all factors are relevant in every proceeding. This Arbitrator shall discuss those factors that are relevant here. Any factors not mentioned were deemed not relevant and not determinative in this matter.

The Financial Ability of the Department to Pay for the Agreement

The Department has relied heavily on this factor. It offered several exhibits to show the current financial condition of the State and the Department of Transportation, including the Ferry system. The State due to the Corona Virus has a projected shortfall of \$8.4 Billion. The Department of Transportation revenue is not derived from the General Fund, but from other sources, although on occasion the General Fund has helped supplement the Transportation budget. Given the General Fund shortfall this year, it is unlikely it will be able to supplement the budget during the coming biennium absent additional funds from the Federal Government. Any such funds are speculative at best.

The Transportation revenue is derived from many sources. The State has a gasoline tax of 49.4 cents per gallon. 8 cents of that tax go to Transportation. Another source of revenue the Department had been receiving came from car tabs paid when registering a vehicle. A referendum was passed that limited those fees. This has adversely affected the Department. It lost a source of revenue. That referendum is currently in Court. Funds are still being collected but are held in escrow pending the outcome of the litigation. They are not currently available to the Department.

The total operating budget for the Department is \$7.38 billion. 69% of that amount are labor costs. The projected revenue has fallen significantly due to the factors just enumerated. In addition, each mode of transportation has its own revenue source. There are several different types of transportation that fall within the Department. It includes rail, toll facilities and highway and the ferries. All of

them have experienced a sharp decline since the start of the pandemic. Rail service has fallen by over 90% and ferry service has dropped by 40%. \$969.8 million is the portion of the Department's operating budget dedicated to the ferry system. The testimony was that 75% of the ferry budget is derived from fares. Obviously, the fall in ridership has impacted the revenue for the ferry system. The fall in traffic required the Department to implement its winter schedule in the summer. This meant fewer ferries were in service. The Department expects a deficit for the ferries and for the Department as a whole.

This Agreement does not begin until July 1, 2021. The parties can only use their best judgment to predict what things will look like then. The Department projects a \$1.6 billion reduction in revenue for the 2021-23 biennium. The revenue for the ferry system is projected to be down \$29 million or 6.5%. Given these numbers, the Department felt it had to cut costs. As noted earlier, all represented employees on July 1, 2020 received a 4% increase as did many non-represented employees. These increases were negotiated well before anyone knew of the upcoming virus or the referendum on the car tabs. The State indicated that its proposal for a 3.5% decrease in salary is meant in part to recoup the cost of that increase. The estimated saving from its proposal is \$480,000. That is an amount the Union argues is equivalent to "budget dust" given the total size of the deficit. The State counters that every little piece taken together hopefully adds up to the savings needed.

There is no question that the economy has taken a massive hit from the virus. When this hit is coupled with the loss of revenue from car tabs per the I-976

referendum the State and the Department have clear financial issues. Of course, that problem would be more relevant for the current biennium than the one coming up. The figures for 2021-3 are merely projections. No one knows how long the virus will affect ridership or knows the outcome of the court case. Ridership had been on the upswing prior to the virus. Ridership was up in 2019. Since so much of the ferry budget comes from ridership, should it again start to rebound the situation would not be as dire as it would seem to be now. Nevertheless, this Arbitrator must deal with what it is anticipated to look like on July 1, 2021. Under that scenario, there is a deficit and a need to address it. While the Union proposal does not increase costs, it does not save costs either and that is what the Department feels is required. The Arbitrator finds that this factor, the Financial Ability of the Department to pay for the Agreement, favors the State proposal. The Arbitrator hastens to add that this is only one factor. The Statute lists other factors that can also come into play. A factor traditionally considered in interest arbitration is Internal Comparability and equity. It is a factor the Union believes supports its position. It is this factor where the Arbitrator will now turn.

Internal Comparability and Equity

The Department has reached agreement with its other Union. They fall into two categories. The Carpenters Bargaining Unit and an IBU unit agreed to a wage freeze for both years. It also agreed to 24 furlough days over the life of the two-year agreement. Those same terms were offered to this Bargaining Unit and were rejected. It was after the rejection that the current proposal was made. The

savings from the furlough days would be slightly over \$600,000. That amount is greater than the savings from the current proposal. The one thing these three units have in common is that there is no requirement to backfill the positions when there is an absence. The IBU unit covering Deck and Terminal employees, MM&P Licensed Deck Employees, terminal Supervisors Unit and unit of Oilers and Engineers all require backfill as part of their agreement. These units are not subject to furlough days since the position of any employee furloughed would need to be filled and that person would likely be working overtime. Thus, there would be no saving. None of the furlough exempt bargaining unit took a decrease in pay in lieu of no furloughs.

The Union notes of the over 1828 employees in the Department subject to interest arbitration, 1610 of those employees have not been asked to make any sacrifice. That is 86% of all the employees in covered bargaining units. It then points out that the \$480,000 in savings is a drop in the bucket of what the Department needs to save. It contends it is unfair to require these employees to take a pay cut when others have not been asked to do so. As the Union described it, the Department made a choice to exempt 86% of the employees “from making a sacrifice.” It is unfair to then come to this group and ask it to bear the burden.

To highlight the above point, the Union offered as an exhibit an agreement in 2011 to cut wages for everyone. It followed a decision by the then Governor to declare the negotiated agreements and arbitration awards not “financially feasible.” The Department during the great recession faced a shortfall. The Department asked employees to take a 3% pay cut. Unlike the current situation,

all employees were asked to participate. They agreed, but with certain requirements. Pension contributions would be based on the regular wage, not the reduced wage. The 3% cut would revert to the original wage rates at the end of the Agreement. Thus, the starting point for bargaining for the next agreement would be the original wage. That provision is not in the current Department Proposal. The reduced rate would be the starting point. That is a big difference.

The ferry system, as noted, is running fewer ferries than normal for this time of year. Employees in the bargaining units that run the ferries have not been laid off. They are paid even when the ferry they are assigned is not in service. The Union points out for five months those employees have been paid their regular wage no matter whether a ferry operated or not.

There is definite merit to the Union's argument. Like was done in 2011, the wage proposal could have been made across the Board. The Department chose not to do that. It is understandable why the State did not find furloughs to be an option for these other groups, but it is unclear why it did not make a proposal like the one here to everyone. The State has said the losses in revenue now are greater than what existed in 2011, yet it chose to go on a different path. For these reasons, the Arbitrator finds this factor clearly favors the Union proposal.

Salary Survey, Retention of Employees and External Comparators

The Arbitrator is going to take these factors together because they are interrelated. There are other employers in the area in the ferry industry that employ crafts like those in this Unit and the other bargaining units. The Statute requires the Arbitrator to compare "wages, hours and employee benefits with

those of public and private sector employees.” Many of those entities pay a higher wage in the various classifications covered by those agreements. The Union contends that employees in this unit earn as much as 36% less than their counterparts. The Arbitrator finds the wages of this Bargaining Unit are at the low end of the scale. Under ordinary circumstances, this could be a significant factor. As has been shown, times are not ordinary. The fact that the Union is not seeking any increase highlights that point. While it is true, a pay cut puts them further behind, the Arbitrator must look at the whole financial picture and when doing so he finds that this factor is less significant in this dispute than would be true in different times.

The Union notes there has already been attrition in this bargaining unit that will be exacerbated if the Department proposal were adopted. There was also testimony that the proposed reduction would make it more difficult to retain employees given the other options. Ability to retain employees is another Statutory Factor and it would seem to favor the Union.

The flip side of that argument is that attrition and the ability to retain employees is also an issue for the classifications that were not subject to furlough, but would, under the Union equity argument, suffer a similar reduction in wage to what the Department proposed here. If like in 2011 all employees took the reduction, would the Department lose some of its critical employees? Similarly, if it laid off employees for a few months, would those employees come back when they would again be needed? Those are considerations. It is not totally clear from the evidence if this would occur, but

the Union raised the issue of retention and attrition. If that is an issue for them, it must also be an issue for the other units. The Arbitrator finds for these reasons that this factor, ability to retain ferry workers favors neither party. While this is not a factor standing alone that would be determinative, it is a factor under the Statute and thus to be considered.

The Statute also requires the Arbitrator to consider “the results of the salary survey” required by law. A salary survey was done. The problem with any survey is getting entities to respond to the survey. In this case, only fifteen organization responded to all or part of the survey and for this bargain unit only five responded. The survey did show these employees were below the average, but again with so few responders it is hard to draw a valid conclusion from these results. Furthermore, as was true when comparing wages, timing is everything and this is not the time to address any inequities. The Arbitrator is to consider this factor. He finds it is not a significant factor in his decision.

FINDINGS

The State has proposed a reduction of pay of 3.5%. As was discussed above, there is justification for their proposal due to the current finances of the Department. Witnesses testified as to how that figure was derived. It was argued part of the reason for that proposal was to recoup some of the expense of the 4% increase received by these employees. The acceptance of furlough days by the two other Unions most assuredly was accepted on that basis.

The Department in Employer Exhibit 15 explained how it derived at the 3.5% proposal. Part of the percentage was indeed done as an attempt to recoup some

of that increase. What is unique is a portion of the 3.5% is meant to offset anticipated increases in health insurance premiums for the biennium. RCW 47.64.270 addresses health insurance. Negotiations are done through coalition bargaining. All “bargaining representative subject to this chapter are to engage in coalition bargaining.” At present, employees pay 15% of the premium and the Employer pays 85%. That is subject to bargaining. There have been no bargaining sessions as of the date of the hearing for 2021-23. How the negotiators will choose to handle expected increases is not yet known. What is significant is that health insurance issues are to be left to these negotiators. Whatever is agreed to will be across the board for all represented employees. The Department anticipates that the rate increase for this bargaining unit for the two years will cost \$220,000. To recoup that it is proposing a decrease in pay of 1.6%. What troubles this Arbitrator is that this flies in the face of the Statute. The entire group is to decide how to handle it not just these employees. Why should this group pay for increases through lower wages when the coalition has yet to decide what to do? That determination should be left to the coalition. Therefore, the Arbitrator finds at the outset that 1.6% of the proposed increase must be rejected. That the Department is facing financial issues cannot be denied and they must be addressed. This proposal will do little to address the problem given that it only affects 83 employees. Conversely, the coalition covering all 1824 represented employees can have a far greater impact on the Department’s finances and its deficit.

This then leaves the proposal to decrease wages by the remaining 1.9%. This proposal would save the Department \$254,000. The cost to employees who accepted the 24 furlough days clearly outweighs the cost to these employees by adopting a 1.9% cut in pay. On the other hand, it costs these employees far more than it cost the 1610 employees who took no cut in pay and had no furlough days.

This inequity is indeed troubling, but it must be balanced against the financial plight of the Department and its attempt to find ways to cut expenses. Labor which comprises so much of the operating budget is the most logical place to look. It is true with fewer ferries the fuel costs have gone down, but that alone does little to address the problem. Why the Department did not do what it did in 2011 and ask everyone uniformly to take a cut only they can answer. As noted, retention probably played a role. Thus, there are two competing factors with which this Arbitrator must grapple. Does the ability to pay outweigh the inequity or is it the other way around? These are the two factors the Arbitrator finds that will decide this matter. It is a close call. The fact that employees got a 4% raise in the middle of a pandemic would seem to swing the pendulum towards the Department. That increase certainly is not something they would have done had the facts been known when agreement was reached. No one back in the summer of 2018 when the prior agreement was negotiated had any inkling of what was about to come. To the contrary, the projections were optimistic. Since these facts impact this Agreement, the Arbitrator cannot ignore them. The Arbitrator finds financial ability to pay must prevail at least for the first year.

The parties and the Arbitrator must try to predict what the situation will be nine months from now and then an additional twelve months after that. The best prediction is that it will take more than nine months for things to again get closer to normal. The Department projections seem to be on target for 2021-2. The Arbitrator finds for all the reasons discussed that for the year July 1, 2021- June 30, 2022 employees pay shall be reduced by 1.9%.

The question then is what to do about the second year. Will the upswing predicted before the virus take hold again by July 1, 2022? There is no reason to suspect things will not get better by then, thereby, alleviating the problem. Twenty-one months will have elapsed, and hopefully there will be a vaccine. Obviously, the further one goes out in time the more speculative are the projections. The Arbitrator finds it would be unfair to continue the wage cut another year. This Bargaining Unit would already be doing more than 86% of the other employees. The Arbitrator finds the wage rate shall revert to the current rate for the year July 1, 2022-June 30, 2023, which would put it back during the busier summer season and be the starting point for the next negotiations. Employees shall not be furloughed during the term of the Agreement. The pay reduction is in lieu of furloughs. The Chart shows the wages for the two years.

	<u>7/01/21-06/30-22</u>	<u>7/01/22-06/30/23</u>
Journeyman	32.47	33.10
Lead Person	34.04	34.70
Foreperson	35.72	36.41
Health& Safety Sup.	35.72	36.41
Planner	35.72	36.41
Vessel Gen. Foreperson	36.37	37.07
Terminal Gen Foreperson	36.37	37.07
Helper	21.11	21.52

AWARD

1. The wages of all Bargaining Unit employees shall be reduced by 1.9% for the year July 1, 2021-June 30, 2022.
2. The wages of all Bargaining Unit employees shall revert to the rate in effect on July 1, 2020 on July 1, 2022 and shall remain at that rate through June 30, 2023.
3. Bargaining Unit members will not be subject to furloughs during the term of the Agreement.
4. The parties have asked the Arbitrator to retain jurisdiction to resolve any issues concerning the implementation of this Award. The Arbitrator shall retain jurisdiction for no less than 45 days.

Dated: September 18, 2020



Fredric R. Dichter, Arbitrator