IN THE MATTER OF ARBITRATION BETWEEN

International Brotherhood of Teamsters, Local 117	PERC No. 135732-I-22
and	2022 Interest Arbitration
Washington State Department of Corrections	August 29, 30, 31; September 1, 2, 6, 7, 2022

BEFORE:	James B. Dworkin Arbitrator
REPRESENTING THE UNION:	Danielle Franco-Malone Eamon McCleery IBT, Local 117
REPRESENTING THE EMPLOYER:	Shawn Horlacher Oliver Beatty Office of the Attorney General
HEARING HELD:	August 29, 30, 31; September 1, 2, 6, 7, 2022 By Video Conference

WITNESSES FOR THE EMPLOYER: Mike Obenland, Siobhan Murphy, Todd Dowler, Nancy Waldo, Jack Warner, Robert Fuller, Terri Parker, Patrick Bracken, Kate Trickle, Nona Snell, and Eddie Reetz.

WITNESSES FOR THE UNION: Sarena Davis, Dr. Suzanne Best, Sergeant Jason Heuer, Amy Matero, Sheryl Green, Tim Snyder, Corey Doty, Cheryl Miller, Douglas Vincent, Jaime Look, Gladys Hedgers, Shawn Piliponis, Ryan Graves, Van Millard, Sarah Hinkel, and Carla Pusateri.

OPINION AND AWARD

I received a letter dated April 1, 2022 from Senior Counsel Susan Sackett DanPullo informing me that I had been mutually selected by the parties to serve as Arbitrator in the Interest Arbitration hearings to be held on the dates noted above. I was also informed about the statutory deadline of October 1, 2022 for the issuance of my award. It was actually requested that my award be issued on or before September 23, 2022.

As noted by Arbitrator Joseph Duffy in his 2021 Award, there are eight (8) factors that I must consider under Washington's collective bargaining law found in RCW 41.80. These are the same eight factors that the parties had agreed to in previous MOU's that had been in effect in three previous interest arbitrations. My award will be the fifth such interest arbitration award between IBT Local 117 and the Washington State Department of Corrections. These previous awards were issued in 2014 (Lankford), 2016 (Lankford), 2018 (Duffy), and 2021 (Duffy). I have benefitted greatly from a careful reading of these previous four awards.

The current interest arbitration hearing took place virtually utilizing Zoom technology. My Administrative Assistant, Sarah Geis, attended the entire hearing and served as the moderator. The hearing proceeded in a very orderly fashion. Each party was given the opportunity to call witnesses and to submit documents into evidence. A court reporter transcribed each day of the hearing. Both parties were very well represented by their respective counsel. All witnesses were subject to direct and cross-examination after being sworn in under oath. Both parties made opening statements on the first day of the hearing and closing statements on the final day of the hearing. The record in this matter is rather voluminous. It includes my handwritten notes, joint exhibits, union exhibits, employer exhibits, and court reporter provided transcripts of each day of the hearing. While each Exhibit in the record was of great importance, I do want to specifically cite Union Exhibit #1.2, where all of the proposed contractual changes were summarized, as being particularly useful to me in my study of the record in this case.

BACKGROUND

This Arbitrator is fortunate to have had previous grievance cases with these parties and thus I am somewhat familiar with the operations of the Washington State Department of Corrections. Nonetheless, I did find the testimony of Union witness Sarena Davis and State witness Mike Obenland to be very useful in providing a general overview of both the Union and the DOC. The bargaining unit has approximately 5,400 members in some 145 job classifications. Joint Exhibit #4 is a very useful Fact Card which contains much information that I need not repeat in this Award. Suffice it to say that I have carefully examined Joint Exhibit #4 and all of the other background information provided to me by both parties.

Also in the nature of very useful background information, State witness Dr. Suzanne Best, a Clinical/Forensic Psychologist, testified about the three types of stress that employees working behind prison walls suffer from. The bottom line from all of her testimony is that there are many psychological problems faced by both male and female corrections officers. Dr. Best also gave similar testimony in the 2021 Interest Arbitration hearing conducted by Arbitrator Duffy. Much of Dr. Best's testimony was reviewed by Arbitrator Duffy in his Award, so I will not repeat this same content herein.

ISSUES IN DISPUTE

While the parties were able to agree on many issues at the bargaining table, and at mediation, several other issues have been submitted as Final Protected Positions for this Interest Arbitration. A summary listing of these remaining issues is as follows:

1. ARTICLE 32 COMPENSATION
2. APPENDIX G SPECIFIC INCREASES
3. ARTICLE 16 HOURS OF WORK
4. ARTICLE 17 OVERTIME

5. ARTICLE 21 VACATION LEAVE

6. APPENDIX K DOC STATEWIDE SPECIALIZED UNITS

7. APPENDIX F ASSIGNMENT PAY

8. ARTICLE 37 LICENSURE & CERTIFICATION

9. ARTICLE 32 OTHER ISSUES

REQUIRED CRITERIA

RCW 41.80.200(6) sets forth eight (8) criteria that I am required to take into consideration when rendering my Award. I have carefully considered each of the following criteria in coming to my decision.

(1) The financial ability of the Department of Corrections to pay for the compensation and benefit provisions of a collective bargaining agreement.

(2) The constitutional and statutory authority of the employer.

(3) Stipulations of the parties.

(4) Comparison of the wages, hours and conditions of employment of personnel involved in the proceedings with the wages, hours and conditions of employment of like personnel of like state government employers of similar size in the western United States.

(5) The ability of the Department of Corrections to retain employees.

(6) The overall compensation presently received by Department of Corrections employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefits, and all other direct or indirect monetary benefits received.

(7) Changes in any of the factors listed in this subsection during the pendency of the proceedings.

(8) Such other factors which are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under RCW 41.80.020(1).

Two matters I want to discuss at this juncture are (1) the proposed usage of California as a comparison State and, (2) the relevance of County comparative data.

With regard to the Union's suggestion that California be added as a useful comparison Western State, I think we need to look closely at criteria (4) above. While it is certainly true that California meets the criteria of being a Western State, I find that California is not a Western State of similar size as Washington. Thus, I will continue to look at the stipulated comparative States that Arbitrators Lankford and Duffy before me have considered, those being Oregon, Utah, Nevada, Arizona, and Colorado. Several of these states are much smaller than Washington as correctly pointed out by the Union. However, the population size of California is five times greater than that of Washington. This extreme population size differential renders comparisons with California not as useful and reliable as comparisons among the traditional Western States used in all four previous interest arbitration hearings.

On the second issue of County comparative data, which would relate to both criteria number eight (8) and number five (5) above, I agree with the previous Arbitrators that such data would typically be taken into consideration and be a relevant factor in setting wages and total compensation. The problem I see is that all we have in the record is the statement that such data should be taken into account. What I do not have is any data on the extent to which DOC employees have bailed out of their prison jobs to take local law enforcement type positions in nearby counties. This situation leaves me with no choice but to weigh the State data more heavily than the County data which tends to be more anecdotal in nature. I would suggest that if the Union wants to make the argument for the importance of County comparative data in future cases, it would be very useful to provide some actual data relevant to criteria five (5) above. I have carefully studied the arguments made by the Union and the documents summarized on pages 27-38 of the Union's closing document (Union Exhibit #1.9) on the importance of the local labor market. I agree that local market conditions can and should be considered. But as noted

above, it is difficult to weigh the importance of local labor market factors without more specific data on employees who have left their DOC jobs to take alternative employment in their local labor markets.

STIPULATIONS

The third factor I am required to consider under Washington law are the stipulations of the parties. The following stipulations were made at the final day of the interest arbitration hearing.

(1) The parties have agreed to adopt the Union proposal on Article 21.12 and on Article 27.1;

(2) The parties have agreed to the Employer's proposed two (2) range increases for Investigator 1, Investigator 2, and Investigator 3 in Appendix G;

(3) The parties have agreed that all Joint Exhibits, Union Exhibits, and Employer Exhibits are accepted into the record of this case. The Union has agreed to withdraw Union Exhibit #4.7 and Union Exhibit #5.9;

(4) The parties agreed to a number of new and updated Exhibits which are formally part of the record in this case. I will not repeat all of the numbers here, but these Exhibits include things like scholarly articles on nurse mentorship and the closing PowerPoint presentations of the parties. The Union's closing PowerPoint is Union Exhibit #1.9, and the Employer's closing PowerPoint is Employer Exhibit #66.

MY FINDINGS ON THE ISSUES

1. ARTICLE 32 – COMPENSATION

At the hearing there was a voluminous amount of testimony and many exhibits related to the issue of Compensation. I found the testimony from witnesses presented by the Union and by the Employer to be very instructive and useful. Before I get to my specific award on this issue, I wanted to briefly list my findings as to the financial condition of the State of Washington.

(1) Neither side claimed that the State of Washington was in a dire financial situation. Rather, it was clear to me from data presented by both parties that the State of Washington does have a good ability to pay for substantial wage increases. However, some caution is required due to the following set of concerns.

(2) One concern is what inflation will look like in the next couple of years. Union economist Sarah Hinkel provided some excellent testimony, yet her predictions regarding inflation at the previous interest arbitration were too low. Nobody really knows for certain whether inflation will continue at its current pace or subside substantially. The COLA increase for social security was 5.9 percent in 2022, and it is projected to be somewhere near 10 percent in 2023. If this actually occurs, this will be the largest increase in forty (40) years. Not knowing precisely where inflation will be in the 2023-2025 biennium complicates the process of assessing what the exact wage increase should be in Article 32.

(3) Another factor of concern to this wage setting process is COVID. Even though we are currently some two and one-half years past the initial COVID surge in our country, much concern still remains. Some testimony at the hearing focused on the impacts of having to wear full PPE. Much of the interest we see today in remote work has been triggered by COVID and the reluctance of some people to work in crowded environments. This Arbitrator takes note of the prison environment and its impact on DOC employees, as so ably testified to by Dr. Best.

(4) Another factor of concern is the labor market employees face today. I heard a lot of testimony about excessive overtime and how that problem could be attacked with higher wages and hiring more employees. Those proposals made by the Union may work to some extent, but the issue of the difficulty of hiring employees is not unique to DOC. Indeed, it is a nationwide problem across many industries and jobs. Unemployment levels are at historic lows, so it is quite easy to switch jobs. It used to be common for employees to remain in one job with one company for a long time, perhaps for their entire careers. When one did switch careers, it was typical to give two weeks to a month's notice to your

employer that you would be changing jobs. In today's world, a person can decide to change jobs on a Tuesday afternoon and be in their new role by Friday of that same week. What in some areas used to be a monopsonistic labor market with only one employer has turned into a much more competitive situation. The DOC has convinced me that they are working hard to recruit new employees. The testimony of Todd Dowler about recruiting more CO2's so far in 2022 as compared to in all of 2021 was illustrative of the effort being made. This is not an easy task in today's labor market. Just increasing wages by a large amount may help some, but it is no guarantee of recruiting success or longevity on the job. Filling jobs and retaining employees in these jobs will continue to be a big problem for DOC and many other employers into the foreseeable future. What I have written about in this section is what the Employer referred to in its closing statement as the staffing storm.

(5) Another concern I have looked at while coming to my decision on compensation is the argument made by the Union regarding the historical wage differential the IBT has had as compared to WFSE employees. I will not go into the history of this premium, but I do believe some attempt needs to be made to preserve this historical trend. Therefore, I have carefully considered the Union arguments regarding the DOC Premium in coming to my Award on compensation.

(6) There are several other concerns as well regarding the limits of the State's ability to pay. These include the rather unpredictable impacts of the war in the Ukraine, the trend in interest rates as to be decided by the Federal Reserve Bank, and the competing demands for the so called non-protected slice of the State's General Fund. DOC employees are not the only unionized workers who want a wage increase. Money is also needed to combat other serious problems like homelessness, the opioid crisis, housing, health care, and behavioral health. I also note that Washington is one of only nine states without an income tax. This Arbitrator is very aware of the fact of these competing demands for these non-protected dollars. I must take all of this into consideration when deciding upon the proper compensation for the Teamsters 117 bargaining unit.

Now I want to make a few comments about the testimony provided by both parties on Article 32. The Union's main witness on compensation was Economist Sarah Hinkel. She worked rather closely with Employer witness Terri Parker on the selection of comparable positions for the Union Wage Survey. There was actually a lot of agreement between the Union and the Employer on the selection of benchmark positions. Union Exhibits #6.14 and #6.9 reflect the State Survey done by Ms. Hinkel and data on the benchmarked positions. Finally, Union Exhibit #6.10 contains wage comparisons for counties within the State of Washington. The only remaining disagreements within Union Exhibit #6.9 were the Ferry Operator and the Automotive Mechanic Supervisor.

State witness Terri Parker works as a Compensation Analyst at the Office of Financial Management (OFM). Her testimony about the usage of the Regional Price Parity Index (RPP) to normalize out of state data was very helpful. She does not perform the wage survey itself, but is involved in cost impact modeling once the survey data is provided to her. She also is very involved in what is referred to as the total compensation methodology. This would include things like the average value of a health plan ($13,281) and the present value of retirement. These are factors that I am required to consider under criteria number six (6) in RCW 41.80.200(6). In her presentation Ms. Parker testified, for example, that the total compensation for a CO2 amounts to $72,215.

The State also called Segal Vice President and Senior Consultant Patrick Bracken as a witness. Mr. Bracken has an impressive resume (Employer Exhibit #44) with nineteen (19) years with the Segal firm. He led the project (Employer Exhibits #24 and #20) dealing with Total Compensation for Corrections employees. Employer Exhibit #20 is a sixteen (16) page PowerPoint presentation on the survey findings. I found this survey to be very well done. One basic finding of the survey was that the IBT jobs were at 102% of the pay range midpoint.

The Union also performed a total compensation survey. This Union survey was done by retired deputy fire marshall and Union witness Carla Pusateri. She testified to having done hundreds of total compensation surveys over some nineteen (19) years. Ms. Pusateri has performed this survey for the IBT since 2016, performing a total of five (5) such surveys for IBT 117. In her testimony, Ms. Pusateri went into some detail on how she collects her data and performs her survey analysis. In Union Exhibit #6.24 we find monthly compensation data for a ten (10) year employee. Ms. Pusateri testified that a ten (10) year CO2 would require a 12.8% wage increase to reach the average in the market.

While I found both the Union and the Employer surveys useful to study, the methods employed in conducting these surveys are quite different. I will not delve into all of the differences I discovered, but I do need to mention that the Union survey does not add the value of retirement benefits to adjusted total compensation. The Union survey also does not account for other factors I am required to consider in criteria number six (6), like paid excused time. Given these differences in methodology employed in these two surveys, I am not at all surprised to find some differences in their findings.

To sum all of this up, I would like to briefly cover the testimony of Employer witness Kate Trickle. Ms. Trickle carefully analyzed the costs of both the Employer and the Union's final protected wage proposals. Ms. Trickle works for the Office of Financial Management within the State of Washington. Two very useful Exhibits she talked about were Employer Exhibit #46 (Employer Final Economic Proposal) and Employer Exhibit #47 (Union Final Economic Proposal). The total incremental cost of the Employer Protected Position is $127,852,279. The total incremental cost of the Union Protected Position is $302,510,643. The difference between these two incremental cost figures is a rather large number, $174,658,364. I realize there are some disagreements between the parties as to the actual costs of the final protected positions. Nonetheless, even taking into account said differences, the two proposals have vastly different cost implications.

I tried to simplify things a bit by asking a simple question. What does a 1% increase on the wage schedule cost? Ms. Trickle was recalled by the State on day number six (6) of the hearing and provided the answer to my question in Employer Exhibit #59. A one (1) percent general wage increase costs $5.7 million as applied on July 1, 2023, which is the date the Award would go into effect if approved by the legislature. This number is calculated by using a bargaining unit number of 6,758, which is agreed to by both parties.

Upon being recalled by the Union, Sarah Hinkel provided some very useful data on the State of Washington's ability to pay in Union Exhibit #8.1. The bottom-line conclusions here are that the General Fund Revenues have been increasing, the General Fund Balance has been increasing, and the percentage of total General Fund expenditures on Corrections is lower than both the U.S. average and the average in each of the western comparable states (excluding California). I agree with Ms. Hinkel's conclusion that the State of Washington is financially stable and healthy. The Union claims that the incremental costs of their final protected position amounts to $264.3 million, not the $302.5 million testified to by Employer witness Kate Trickle.

To sum up my Award with respect to Article 32, recall that the Union's Final Protected Position was for a General Wage Increase of 8% in 2023 and 6% in 2024. By way of contrast, the Employer's Final Protected Position was for a General Wage Increase of 4% in 2023 and 3% in 2024. I find the State of Washington to be in a good financial position, but not so good as to go as high as the Union's demands. There are many factors I have discussed above which cause me to believe that some caution is required. On the other hand, the Union has convinced me that for a variety of reasons a higher increase is warranted than was offered by the State. Therefore, after an exhaustive review of the entire record on Article 32, I have come to this final conclusion.

AWARD: **ARTICLE 32:**

	2023	2024
General Wage Increase:	**6%**	**4%**

2. APPENDIX G – SPECIFIC INCREASES

As noted above, the parties have stipulated to an agreement on a two (2) range increase in Appendix G for Investigator 1, Investigator 2, and Investigator 3.

The issues that I need to address are the so-called Targeted Wage Increases. In my opinion, the parties did an excellent job of agreeing on many of these targeted increases. The DOC proposal contains targeted wage increases for 42 job classes at a cost of $25,075,478. The Employer argues that these increases are financially feasible and constitute a big step toward working on increased wage competitiveness. The Union has proposed targeted wage increases for 68 job classes at a cost of $47,066,114. The difference in cost between the Employer's proposal and the Union's proposal comes to $21,990,636. While I believe that the Union's proposal is too costly, there are some targeted wage increases proposed by the Union that I am going to support. I will discuss these targeted increases below.

1. Targeted Wage Increase for Religious Coordinator

The testimony of Religious Coordinator Tim Snyder has convinced me of the need for a targeted range increase for this position. The Union's modest request is for an increase from the current range of 51 to a new range of 52. Union Exhibits #6.5 on comparative chaplain salaries and Union Exhibit #6.6 on the Volunteer Program were helpful to me in coming to my decision. I found Mr. Snyder's testimony on the stressful situations he must deal with like staff suicides to be very moving and powerful in nature.

AWARD: **Religious Coordinator**

My Award here is to accept the Union's proposal for a one (1) range increase for the Religious Coordinator.

2. Targeted Wage Increase for Mail Processing Driver

In this case the Union has proposed a range increase from the current contract level of 34 to a new range of 36. Union witness and Mail Processing Driver Jennifer Spencer made an excellent case for this increase through her testimony. Her testimony about all of the contraband like narcotics, spice, and meth found in the envelopes and packages she is required to open was quite startling in nature. Even though she did receive a general wage increase of 4% on July 1, 2022, I believe a two (2) range adjustment is a quite legitimate demand.

AWARD: Mail Processing Driver

My Award here is to accept the Union's proposal for a two (2) range increase for the Mail Processing Driver.

3. Targeted Wage Increase for Administrative Assistants

The Union has proposed a two (2) range increase for all Administrative Assistant positions. An AA1 would go from a Range 34 to 36, the AA2 would get an increase from a Range 37 to 39, and the AA3 would see an increase from a Range of 41 to 43. Union witness Jamie Look testified forcefully about the need for these range increases. She noted that employees in the AA positions are more skilled and have quite a bit of delegated authority from the people they support. Apparently, after the last arbitration award when OA's received a five (5) range increase and AA's received a much smaller increase, the OA's wage was higher than the wage of the AA1 position. Historically the AA1 position has been paid at a higher rate than the OA3 position. Ms. Look testified rather convincingly that had she not been promoted to an AA3 via the so-called desk audit, she would have seriously considered a demotion to an OA position in order to receive a higher wage. Even though her position received a two (2) range increase in July of 2022, I believe that the Union's proposal for this additional two (2) range increase is quite reasonable.

AWARD: **Administrative Assistants**

My Award here is to accept the Union's proposal for a two (2) range increase for Administrative Assistants.

4. Targeted Wage Increase for Recreation and Athletic Specialist

The testimony of Athletic Specialist 4 Ryan Graves has convinced me of the need for a targeted wage increase for the individuals in the Recreation and Athletic Specialist positions. Such positions have not received a targeted increase since 1992. Both the Union and the Employer are in agreement on the need for a targeted wage increase for these positions. They are actually only one (1) range apart in their respective positions. I think the larger increase is warranted.

AWARD: **Recreation and Athletic Specialist**

My Award here is to accept the Union's proposal for a five (5) range increase for the Recreation and Athletic Specialist.

APPENDIX G: **SUMMARY OF AWARD**

My Award is to accept the DOC's proposal for targeted wage increases (cost = $25,075,478), plus I Award the Union's proposals on the positions of Religious Coordinator, Mail Processing Driver, Administrative Assistants, and Recreation and Athletic Specialist.

3. ARTICLE 16 – HOURS OF WORK

1. The single largest language change proposed by the Employer in Article 16.1.G.4 is to remove sick leave from the definition of work for overtime purposes. Under the Fair Labor Standards Act (FLSA), employers do not have to count sick leave taken by an employee toward the calculation of overtime as these are not actually hours worked. However, as we see in the Collective Bargaining Agreement between IBT 117 and the DOC, employers can choose to count paid time off in the calculation of overtime hours. In fact, this is the case not only for the IBT 117/DOC collective bargaining agreement, but for all other CBA's in the State of Washington as shown in Union Exhibit #3.11.

I understand the Employer's concerns over the abuse of such overtime, as when an employee calls in sick on one shift but works overtime hours in a later shift on that same day. My reading of Employer Exhibit #38 is that sick leave is not so widely abused. Furthermore, I believe that major shifts in contract language ought to be made at the bargaining table, where compromises and trading of issues can satisfy both parties. My position is to not award major contractual language changes unless it is proven to me that a very compelling reason exists to do so.

AWARD: ARTICLE 16.1

My Award is to maintain the current contract language.

2. A second area of dispute where the parties are actually very close to an agreement is in Article 16.4 and 16.8.G on Personal Protective Equipment. The Union has proposed new language in Article 16.4 and 16.8.G on rest and meal periods for employees required to wear Personal Protective Equipment. Mr. Obenland testified that such breaks do not fit into the DOC staffing model. He testified that working Sergeants could provide the type of relief the Union was requesting. I agree with the testimony of Eddie Reetz who said that the Union proposal on rest breaks was too vague and that it should add the word "full" prior to PPE. Associate Superintendent Reetz also admitted that at the facility where he works no one is wearing full PPE at the present time. But as the Arbitrator cautioned earlier, COVID is a bit of a wild card at this time and could increase in severity suddenly, once again requiring some employees to wear full PPE. I am convinced that employees forced to wear full PPE do require several breaks.

AWARD: ARTICLE 16.4 and 16.8.G

I award the Union's proposed language but add the word "full" before Personal Protective Equipment.

3. There is also a dispute between the parties on Telework Position Eligibility in Article 16.9. The language makes it very clear that the Employer reserves the right to determine if the duties of a position

are eligible for telework and the frequency of said work. Union witness Cheryl Miller testified that cases on the denial of telework opportunity arise often. What the Union has proposed as new language would (a) say that requests for telework will not be unreasonably denied or rescinded, and (b) disputes over the approval, modification, or termination of a telework decision may be appealed to Step 2: Grievance Resolution Panel.

In truth, as noted by the Employer during closing arguments, the parties are very close on this Article 16.9 language. The Employer would prefer language that says approval, modification, or termination of a telework agreement is not subject to the grievance procedure. The Arbitrator agrees with the Union that voice is very important. The Employer has the final say on these telework decisions, but I do believe that having the ability to have concerns heard at Step 2 will serve a useful purpose for both parties. I am not convinced of the need to include the other proposed added language by the Union stating that the Employer will not unreasonably deny or rescind telework requests. I agree with the Employer's point that such language is rather vague and will lead to many challenges.

AWARD: ARTICLE 16.9

My Award is to add only the Union language on the ability to appeal telework decisions to Step 2: Grievance Resolution Panel.

4. ARTICLE 17 – OVERTIME

There are many, many parts of Article 17 that I need to deal with in this Award. With the possible exception of wages, I heard more testimony on the various aspects of overtime during this seven-day hearing than any of the other topics in dispute. I learned a lot about both voluntary and mandatory overtime. Both parties see excessive overtime as a problem, but they have different ideas about what to do about the situation. The Employer is trying hard to recruit enough new employees and to retain enough current employees to alleviate the overtime problem. On the other hand, I heard rather compassionate testimony from Union witnesses Sarena Davis, Dr. Suzanne Best, Amy Matero, and

Gladys Hedgers on the very deleterious impacts of working too much mandatory overtime. The mandatory overtime problem will not be an easy one to resolve given today's tight labor market, a topic I have covered previously.

(1) With regard to Article 17.2.D.6, the Union proposes new language allowing employees to reject a mandatory overtime assignment if it is assigned by the Employer within twenty-four (24) hours of a voluntary overtime assignment. Stated simply, the Union has not provided me with any convincing rationale as to why this new language would be helpful in resolving the problem described above.

AWARD: ARTICLE 17.2.D.6

My Award is to maintain the current contract language.

(2) A second area where the Union proposes new language is in Article 17.2.E, the section of the CBA referred to as All Call. This proposal would require the Employer to offer Correctional Officer overtime shifts to Correctional Sergeants signed up on the VOT list prior to using the Alert Sense system. The Employer prefers the current contractual language. My sense is that this may already occur at times as a non-binding extension of the sixty (60) day trial MOU. The Alert Sense system is used based on a contract with the vendor. It is entirely possible that the Employer may elect to use a different such system in the future. My assessment is that no change to the current language is warranted.

AWARD: ARTICLE 17.2.E

My Award is to maintain the current contract language.

(3) New language proposed by the Union in Section 17.2.F deals with two rather important items. First, the Union would like to have language where for an employee who has not worked a voluntary overtime shift in a week, the Employer could only assign such employee to one (1) mandatory overtime that week. Second, the Union would like to add language requiring the Employer to post the mandatory overtime list within three (3) hours of the start of each shift.

One problem with the first proposed change above is the distinction between a cycle and a week. A cycle contains the list of people eligible for mandatory overtime in reverse order of seniority. In recent times the Employer might go through a cycle one (1) or two (2) times per day. So there is a rather huge difference between only subjecting an employee to one (1) mandatory overtime per cycle versus one (1) mandatory overtime per week. Nobody wants DOC employees to have to work excessive amounts of overtime, but in my opinion substituting the word week for cycle is too restrictive in nature.

On the second proposed change noted above, I think the Union has a very good argument. Even Mr. Obenland testified that this is doable, but that it does have administrative challenges. Mr. Reetz also testified that the Union language for a three (3) hour posting would not allow enough time to get such a list completed. He suggested that a better approach would be to have a list containing the top 10% of employees rather than the entire list. My opinion is that a complete list is doable and that the employees actually deserve to have a better idea on where they stand on the current mandatory overtime list.

AWARD: ARTICLE 17.2.F.3

My Award is to maintain the current contract language.

AWARD: ARTICLE 17.2.F.4

My award is to adopt the proposed Union language on the posting of the mandatory overtime list.

(4) The parties are also pretty much in agreement on Article 17.2.H.5, Exemptions from Mandatory Overtime. The Union's proposed language was that an employee required to attend training would not be subject to mandatory overtime immediately after said training. While this is a laudable goal, the proposed language is a bit vague and could use some more specificity. Mr. Reetz testified that firearms training is not that tough and should not be included on this list. There was also testimony that the

training should be for a full eight (8) hour day to qualify for the exemption from mandatory overtime. I agree with these two points.

AWARD: ARTICLE 17.2.H.5

My Award is to add the following language to the CBA as Article 17.2.H.5.

"An employee who is required to attend eight (8) hours of control training will not be subject to mandatory overtime immediately after the training."

(5) The Employer has a proposal in Article 17.2.H.6 to change the language allowing for up to three (3) exemptions from mandatory overtime of one (1) day each, to allow such an exemption only once per calendar year. The Union argued forcefully to maintain the current contract language. The Arbitrator agrees with the Union. I heard so much testimony during the hearing about the harmful impacts of mandatory overtime that I am convinced that these impacts are very real. Thus, I am reluctant to change the current contract language in this section of the CBA.

AWARD: ARTICLE 17.2.H.6

My Award is to maintain the current contract language.

(6) With regard to Article 17.4.B and Article 17.5.B, the Employer has proposed striking from the Agreement numbers 1 and 2, arguing that said language is already contained in the Collective Bargaining Agreement in Article 23.4. The Union is very adamant in their opposition to the striking of this language from the CBA.

In this situation, I do not find the Employer's case for the striking of the above language to be very convincing. In truth, not much time was spent at the hearing covering the reasons why the Employer proposed to strike this language.

AWARD: ARTICLE 17.4.B and 17.5.B

My Award is to maintain the current contract language.

(7) One area of the Collective Bargaining Agreement in Article 17 where the Employer did make a good case for some needed language change was in Article 17.6. This Article 17.6 deals with the topic of Compensatory Time. The language change proposed by the Employer would reduce the allowable accrual of compensatory time to one hundred and sixty (160) hours for all employees. The current contract language allows Correctional Officers and Correctional Sergeants to accrue up to four hundred eighty (480) hours of compensatory time and allows all other employees to accrue up to two hundred forty (240) hours of compensatory time. Note that this Employer proposal does not eliminate the concept of compensatory time, which seems to be quite popular and important to DOC employees. Rather, the proposal is intended to reduce the maximum accrual of compensatory time hours. The accumulated compensatory time hours would still be able to be cashed out at the end of the biennium on June 30, 2023, as per the testimony of Employer witness Nancy Waldo.

The Employer has made quite a convincing case for the need for this amended language. The testimony of Mr. Obenland and the data contained in Employer Exhibit #32 convince me that the rather staggering costs of compensatory time are problematic for the Employer. Employer Exhibit #30 indicates that none of the comparable states have compensatory time. Finally, Employer Exhibit #31 shows the extent of compensatory time in other State of Washington Collective Bargaining Agreements. Employer Exhibit #62 contains data on Compensatory Time Hours and Value.

The arguments presented by the Union witnesses were not as convincing. For example, Sergeant Heuer basically testified that the reduction of compensatory time to one hundred sixty (160) hours is problematic. He didn't say why he felt this was problematic. The most convincing testimony for the maintaining of compensatory time was given by Union witness Sarena Davis. Ms. Davis was a very effective witness. Her testimony was that compensatory time was used by DOC employees for important things like if one has to go out for surgery. Ms. Davis said that were members to lose these compensatory time benefits, there would be a huge impact. The Arbitrator does agree that members

should not lose these compensatory time benefits. But I also believe that the current level of hours allowed to be accrued are too high. I also believe that the proposal by the Employer is too large of a cut in the maximum number of hours that can be accrued for this initial change.

AWARD: ARTICLE 17.6

My Award for the language in Article 17.6 is as follows.

"17.6 Compensatory Time

All employees who are Correctional Officers and Correctional Sergeants will be entitled to accrue up to two hundred forty (240) hours of compensatory time. All other employees will be entitled to accrue up to one hundred sixty (160) hours of compensatory time. Compensatory time may be voluntarily cashed out at any time except during the month of February. In addition, the full balance of accrued compensatory time must be cashed out at the end of each biennium."

(8) The parties are in agreement over the language contained in Article 17.2.K.1 on vacation leave hours not applying to the maximum overtime limit.

AWARD: ARTICLE 17.2.K.1

My Award is to add the following sentence as the second sentence in Article 17.2.K.1

"Vacation leave hours will not apply to the maximum overtime limit."

(9) The Employer has proposed new language in Article 17.4.B that would allow employees to elect compensation for mandatory overtime in the form of cash or compensatory time. However, voluntary overtime hours would be paid for in the form of cash only. The Union prefers to maintain the current contract language where employees can choose cash or compensatory time payment for any overtime hours worked.

I tend to agree with the testimony on this proposed change by Union witness Sarena Davis. Her argument was that if compensatory time was only available for mandatory overtime, employees will

quit volunteering for overtime. The net effect of this proposed language change would thus be that the Employer would be required to use more mandatory overtime. In my opinion, the Employer was not able to provide a good explanation for why such a language change would be needed.

AWARD: ARTICLE 17.4.B

My Award is to maintain the current contract language.

5. ARTICLE 21 – VACATION LEAVE

The parties stipulated to being in agreement with Union proposal in Article 21.12 on Additional Approved Vacation Leave ("CBA Days"). My Award will reflect this stipulated agreement.

With regard to other Union proposals on Article 21, the Employer has asked this Arbitrator to carefully review the recent arbitration award by Arbitrator Duffy (Union Exhibit #4.2). The Union has proposed to include the term compensatory time in Article 21.7, as well as the requirement that such supplemental requests be resolved within seven (7) business days. Finally, the Union has proposed to strike Section 21.14 on Selection of Paid Leave from the contract.

I have read Arbitrator Duffy's Award dated December 22, 2021 very carefully. He concluded that the Employer did not violate Article 21 of the Agreement as no unilateral change in the vacation selection process had occurred. Arbitrator Duffy's award speaks mostly about Articles 21.6 and 21.8, although he does briefly cover Article 21.7 in his award. In this Interest Arbitration, the Union is trying to insert the word compensatory time into a different part of Article 21, specifically 21.7 dealing with Supplemental Requests. The Union has not made a good case for the inclusion of this new language in Article 21.7. The one area where I think some additional language may be useful is where the Union proposes time limits for decisions to be made on such supplemental requests. While the Union has proposed seven (7) business days, I agree with the testimony of Eddie Reetz who opined that fourteen (14) business days would be much more reasonable.

Finally, with regard to the Union's proposal to strike Section 21.14 from the Agreement, I can find no good reason to do so. Arbitrator Duffy also mentioned that the striking of this language had been proposed previously by the Union at the bargaining table, and that this demand had later been removed from the table.

AWARD: **ARTICLE 21**

My Award is to include the language stipulated to by the parties in Article 21.12.

My Award is to include the following new language in Article 21.7.

"These requests will be resolved on a first come, first served basis within fourteen (14) business days of receiving the request."

My Award is to retain the current contract language in Article 21.14, Selection of Paid Leave.

6. APPENDIX K – DOC STATEWIDE SPECIALIZED UNITS

Employer witness Jack Warner, the Superintendent of the Special Offender Unit at Monroe Correctional Facility, testified about the Employer proposal in Appendix K to make all of the Special Offender Unit at Monroe a Statewide Specialized Unit. Many of the incarcerated offenders are mentally ill and thus, this unit must have staff with the proper set of skills to deal with these types of prisoners. Mr. Warner testified that this proposal by the Employer was very important to him personally. While Mr. Warner's testimony was quite effective, I found the testimony of bargaining unit member and Day Shift Sergeant Robert Fuller to be even more convincing. Mr. Fuller stated clearly that he enthusiastically supported the Employer proposal for the entire Special Offender Unit at Monroe to be classified as a Statewide Specialized Unit. He spoke of the extreme importance of the selection of Custody Officers with the proper skills to work with these types of offenders. Employees need to possess strong de-escalation of conflict skills. Sergeant Warner stated that he personally had talked his way out of thousands of situations that might easily have required the usage of force. He also noted that the vast majority of the officers at Monroe support this proposal.

From the Union's standpoint, Sarena Davis pointed out that the Employer's proposal would give sole discretion to the Supervisor as to who he or she wants to work in these units. While this is accurate, the Arbitrator actually thinks that this would be a useful change. While Ms. Davis pointed out that in the past no disciplinary grievances have been filed in this unit, I am convinced that it would be a good thing to try to make certain that this will not occur due to the hiring of an employee without the proper skillset to deal with this population of prisoners.

AWARD: **APPENDIX K**

My Award is to accept the Employer's proposal to make all of the Special Offender Unit at Monroe a Statewide Specialized Unit.

7. APPENDIX F – ASSIGNMENT PAY

The Employer has proposed three language changes in Appendix F, as follows:

(1) The Employer has proposed a two (2) range premium for employees working in a BFOQ bid position;

(2) It has also been proposed that Specialty Teams receive assignment pay all of the time instead of four hours;

(3) Finally, the Employer has proposed a base salary plus three percent (3%) for Sergeants who volunteer and are designated as COFTP Training Sergeants.

The Union also has three (3) proposals on Appendix F, as follows:

(1) The Union proposes adding CRT, CRTL, and CRS to Group C with a two (2) range premium for employees working at WCC;

(2) The Union proposes to add in the DIMT team to the IA2 Specialty Teams;

(3) The Union proposes to increase the pay for instructors of defensive tactics, firearms and fitness by an additional fifteen (15) dollars per hour instead of the current ten (10) dollars per hour premium.

When compared to the vast amount of testimony and exhibits in the record on many of the other issues before me today, there was rather sparse treatment of these proposed changes in Appendix F. I will briefly discuss them one at a time and then state my Award in each case.

Proposal #1: Reference #42

The least controversial and least costly of the above proposals is for Reference #42 where the Union proposes increasing the additional pay of certified instructors of firearms, defensive tactics and fitness from $10 to $15 an hour. Union Exhibit #3.12 shows comparative rates in the WFSE Collective Bargaining Agreement. The Employer's Closing Argument document shows the cost of this proposal to be $87,000. This is very important training where I am certain that the DOC wants to have the very best certified instructors. An increase in pay of $5 per hour for these certified instructors seems very reasonable to me.

AWARD: Reference #42

My Award is to adopt the Union's proposal to increase the additional compensation from ten to fifteen dollars per hour.

Proposal #2: New COFT Language

The only argument the Union seems to have with the Employer's proposal on the 3% increment for COFTP Training Sergeants is that this increment should also include officers. The Arbitrator feels that this is a very reasonable proposal by the Employer. Perhaps in some future round of negotiations the parties may wish to address this issue of base salary plus 3% for officers as well.

AWARD: New COFT Language

My Award is to accept the Employer's proposed new language on Correctional Officer Field Training Program (COFTP) Sergeant.

Proposal #3: **Reference IA2**

In reality the parties are very close together on the issue of the IA2 Specialty Teams. There is agreement on the basic salary plus two ranges as the appropriate pay. The only real difference I can find is that the Union proposes to also include the DIMT Team on this list of designated specialty teams, members of which are assigned by the Appointing Authority. Since the parties are so close on this issue which does not seem to have any additional cost implication associated with it, I agree that the DIMT Team should be added to this list.

AWARD: **Reference IA2**

My Award is to add the DIMT Team to Reference IA2 as the only change to the contract language.

Proposal #4: **Group C**

Another issue I have to deal with in Appendix F is the Union's proposal to add CRT, CRTL, and CRS to Group C with a two (2) range premium for those employees working at WCC prison facility. The added cost of these two (2) range premiums is estimated to be around $126,000. On this issue, I agree with the Employer that it has not been clearly proven to me that it is crucial to address problems of retention and recruitment among these three classifications of employees.

AWARD: **Group C**

My Award is to retain the current contract language in Group C.

Proposal #5: **IA1 BFOQ**

The final issue to be dealt with in Appendix K is the Employer's proposal for a two (2) range premium for employees working in a BFOQ bid position. As per the Union's request, I have carefully read what Arbitrator Lankford has said about female employees in BFOQ posts. The Union has urged me to reject this proposal and I agree with this sentiment. The Employer has not convinced me of the need for this contractual language change.

AWARD: **IA1 BFOQ**

My Award is to retain the current contract language.

8. ARTICLE 37 – LICENSURE AND CERTIFICATION

On Article 37, the Union has made a rather reasonable proposal for a language change when chain bus drivers require an initial CDL certification, license and physical examination. A previous Interest Arbitration Award (Joint Exhibit #10) by Arbitrator Duffy had set the reimbursement level for such certification, license, and physical examination at $3,800. It has now become apparent that this amount is too low. The Union's proposal is for the Employer to reimburse in total the cost of the initial certification, license, and physical examination, with any renewal costs to be covered by the employee. OFM costing of this modest proposal is that from two (2) to ten (10) employees may be impacted over the biennium with a modest cost estimate of $10,000 - $ 13,000. The Employer has not objected to this Union proposal.

AWARD: **ARTICLE 37**

My Award is to adopt the Union's proposed language changes to Article 37 regarding the above discussed issue of reimbursement for certification, license, and physical examination.

9. OTHER ARTICLE 32 ISSUES

I have already covered the General Wage Increase issue for the two years of the biennium in dispute between the parties. There are many other issues in dispute within Article 32, to which I will now turn my attention. Perhaps it is best to start on the four areas where the parties are in agreement. In these four areas in which the parties agree I will simply state my Award below:

AWARD: **AREAS OF AGREEMENT**

1. **My Award is to make former longevity Step M a regular step at a cost of $9.5 million.**
2. **My Award it to approve the one-time COVID 19 Booster incentive at a cost of $6.0 million.**
3. **My Award is to ensure the same rate of pay for pregnant accommodated employees.**

4. My Award is for the Employee Referral Program at a cost of $439,000.

I will now individually cover the remaining proposals where the parties are in disagreement.

Union Proposal #1: New Salary Range Steps (32.1.E and 32.2.E)

The Union has proposed several new salary range steps, which the Employer has costed out at $59.7 million. The Union's argument is that a new longevity step such as O would assist the Employer in retaining senior employees. While this sounds good, I have not seen any hard evidence to demonstrate that this would actually be effective in retaining senior employees. While there may be some need to include something to reward longevity as suggested by Sarena Davis, this should be a subject for a future round of collective bargaining in my opinion.

AWARD: New Salary Step O

My Award is not to add any new salary range steps such as O to the new Collective Bargaining Agreement.

Union Proposal #2: Call back pay for non-scheduled medical personnel (32.14)

In my opinion, the Union has not made a convincing case to include call back pay for non-scheduled medical personnel in the new contract. There was very little testimony on this particular demand at the hearing. I think this should be another issue for a future round of bargaining.

AWARD: Call back pay for non -scheduled medical personnel (32.14)

My Award here is to retain the current contract language.

Union Proposal #3: Shift Premium (32.15)

The Union proposal here is to increase the shift premium from $1.00 to $2.50 per hour. Union Exhibit #5.8 shows the current shift premium compared to shift premiums in other states. Union Exhibit #5.9 was a "what if" document which was withdrawn by stipulation. Therefore, I have not considered Union Exhibit #5.9 in my decision-making process. What I have considered is the cost of this shift premium increase, which the Employer contends is $10.9 million. While I understand the complications

involved with getting people to stay on the nightshift, it is not clear to me that imposing such a shift differential will solve this problem.

AWARD: Shift Premium (32.15)

My Award here is to retain the current contract language.

Union Proposal #4: $3K Lump Sum for all Members (32.27)

This Arbitrator is familiar with these types of payments being made to the bargaining unit members after the ratification vote on the terms of a new collective bargaining agreement. In the case before me, members are not ratifying a new contract. What the Union is asking for is simply an additional $3,000 per bargaining unit member over and above the General Wage Increase and the other increases I have awarded. I believe that some lump sum increase on July 1, 2023 is warranted to help stave off future inflationary increases. However, a lessor amount seems more reasonable and affordable.

AWARD: $3K Lump Sum for all Members (32.27)

My Award is to include the following language in Article 32.27.

"Each bargaining unit member will be paid a one-time lump sum bonus of one thousand five hundred dollars ($1,500) on July 1, 2023."

Union Proposal #5: Nursing Mentorship Program (32.31)

The Union has proposed a Nursing Mentorship Program with a rather modest cost of $404,000. This Arbitrator understands well the importance of mentoring. I have in the past taught a course on that subject. Also, in my previous job as a Chancellor, I was able to observe just how important mentoring was to our nursing undergraduate students. I found the testimony of Union witness Sheryl Green to be very persuasive on the topic of mentorship. In the nursing profession, such mentors are typically referred to as nursing preceptors. The Employer did not make any strong argument against the inclusion of this provision into the Collective Bargaining Agreement.

AWARD: **Nursing Mentorship Program (32.31)**

My Award is to include the language proposed by the Union in Article 32.31 in the new Collective Bargaining Agreement.

Union Proposal #6: **CO1 Placed on Salary Grid (32.32)**

This proposal made by the Union would start all Corrections and Custody Officer 1 employees on the same salary range as the Corrections and Custody Officer 2 classification. Newly hired CO1's would start at Step A of their salary range. Ms. Davis testified that employees typically remain as a CO1 for one year, and after their probationary period is over, they move up to a CO2 position. The interesting thing that happens here is that the State funds all of these positions as CO2's, but then DOC underfills these jobs as CO1 positions. I can understand why the DOC would want to have this probationary period for CO1's, to make sure that they have the proper skills necessary to perform the role of a CO2. I am not convinced that this new approach is necessary at this time.

AWARD: **CO1 Placed on Salary Grid (32.32)**

My Award here is not to include the Union's proposed language in Article 32.32 in the new Collective Bargaining Agreement.

Union Proposal #7: **Double OT at 10% or Higher Vacancy Rate (32.33)**

The Union proposed language would require the DOC to pay double overtime rates when a facility has a 10% or greater vacancy rate. I do not really have a cost estimate for this proposal, but I do think that its implementation could have some unanticipated consequences. There might be an incentive to hire marginally qualified workers in order to remain just slightly below the 10% vacancy rate. The Union has not made a convincing argument for the need for this contractual language.

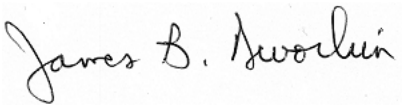
AWARD: **Double OT at 10% or Higher Vacancy Rate (32.33)**

My Award here is not to include the Union's proposed language in Article 32.33 on double overtime at a 10% or higher vacancy rate.

CONCLUSION

After a very thorough review of the voluminous record in this case (Transcripts, Joint Exhibits, Employer Exhibits, Union Exhibits, my ninety (90) pages of handwritten notes), I have issued my Award on the multiple issues in dispute on the various pages of this report. I certainly agree with what previous arbitrators have said about not being able to accomplish all goals of both parties at any one time. In rendering my Award, I have carefully considered the eight (8) criteria that are mandated in Washington law. My Award is one that is fair to both parties and, one that is financially affordable by the State of Washington.

This Award is issued and ordered on this twenty-sixth day of September, 2022, in Chesterton, Indiana.



James B. Dworkin
Arbitrator