In the Matter of the Arbitration

between Inland Boatmen's Union of the Pacific ("IBU"),

and

Washington State Ferries Division ("WSF"), Washington State Department of Transportation ("WSDOT"), State of Washington.

Findings, Discussion and Award.

Case Numbers:	PERC Case No. 135665-I-22. Arbitrator's X49.
Representing IBU:	Robert H. Lavitt and Bernard Iglitzin & Lavitt, LLP, 18 West Mercer Street, Suite 400, Seattle, WA 98119-3971.
Representing WSF:	Elizabeth Brown, Sara Wilmot, and the Office of the Washington Attorney General,
Arbitrator:	Howell L. Lankford, P.O. Box 22331, Portland, OR 97269-0331.
Hearing held:	Remotely, via Zoom, on August 15-17, 2022.
Witnesses for WSF:	Seth Hamlin, Erik Hansen, Sarah Smith, Terri Parker, Jerry Holder, Rick Singer, and Damien Valadez.
Witness for IBU:	Rian Brazeau, Peter Hart, and Summer Stinson.
Date of this award:	September 28, 2022.

This is a statutory interest arbitration under the authority of RCW Chapter 47.64 for the period July 1, 2023 through June 30, 2025. I am the parties' mutual choice as a sole arbitrator as permitted by RCW 47.64.300(2). The parties agree that the procedures leading up to interest arbitration have been satisfactorily completed, that there are no procedural objections to this interest arbitration, and that each party had satisfactory advance notice of the issues to be addressed in the hearing. The parties agreed to hold the hearing remotely in light of the continuing Covid-19 pandemic.

The hearing was orderly. Each party had the opportunity to present evidence, to call and to cross examine witnesses, and to argue the case. Testimony was taken down by a court reporter; and the parties agree that the Agency will be the official custodian of the record and will hold me harmless in that regard. The parties agreed to close the record with oral arguments. Only pay rates—set out under Rule 17 of the parties' collective bargaining agreement (CBA)—are unresolved, and PERC certified that issue to interest arbitration.

BACKGROUND

WSF operates the largest ferry system in the United States as measured by passenger and vehicle count and miles sailed.[1] I decided a similar dispute between the parties in 2014 for their 2015-2017 CBA (Union Ex. 7), and at that time WSF transported "some twenty-two million passengers a year on twenty-three vessels to twenty different ports." All four of those numbers—passenger count, vehicle count, vessels, and miles sailed—were severely impacted by the Covid-19 pandemic of 2020-2021 and have not yet recovered.

The IBU bargaining unit consists of WSF's unlicensed on-deck employees rated Ordinary Seaman (OS) and Able Seaman (AB and AB Bos'n), those who work in the shore gang, and most of the Terminal employees, i.e., Ticket Sellers and Ticket Takers and Traffic Control Employees/Ticket Takers, along with Information staff. At the time of the 2014 case, the size of the bargaining unit was between 875 and 900. The current record includes several different numbers for on-deck and terminal employees, all of

[1]The formula is at 23 U.S.C.A. SS 147: it reflects 35% of passenger count, 35% of vehicle count, and 30% of nautical miles serviced. Only New York and the Alaska Marine Highway come close to WSF, with New York having a higher passenger count and Alaska greater nautical miles sailed.

which are lower than the 2014 numbers.[2] WSF is currently trying to hire both deck and terminal employees.

Staffing was not a factor in 2014, but it certainly is here because there is no dispute that shortage of staff—sometimes of Mates or Engineers but sometimes of deck hands—is keeping the ferries on a reduced schedule and making some runs uncertain; and the first listed factor to be considered in interest arbitration is the official public policy of the State to "(1) Provide continuous operation of the Washington state ferry system at reasonable cost to users; [and] (2) efficiently provide levels of ferry service consistent with trends and forecasts of ferry usage..."

One of the historic foundations of the staffing problem is that WSF is (quoting the North District Port Captain, Tr. 64:8–10) "one of the very few that I'm aware of, companies in the industry, that sail at bare minimum certificate of inspection.."[3] Running at the bare minimum is significant because the Coast Guard issues each vessel a Certificate of Inspection (COI) which specifies its minimum crew. Apart from the engine room, the minimum crew for WSF's vessels consists of a Captain, one or two Mates, four to five ABs, and three to four OSs. Because WSF staffs at the legal minimum, if any one of those scheduled crew members does not show up, that vessel cannot legally sail. The missed sailings are not all due to IBU staff shortage. As the North Port Captain explained (Tr. 45:23–46:8):

> [T]here are certain periods of time where it's the M[asters] M[ates &] P[ilots]. And there are other times where it's IBU. And there are other times when it's the engine room that seem to kind of be an issue. So I can't tell you ... but they've all been difficult, very difficult at one time or another, several times over.[4]

The expiring CBA ran from July 1, 2021 through June 30, 2023; and before and during that period the State in general and WSF in particular had to deal with the unprecedented consequences of the Covid-19 pandemic. That recent history and the current state of the ferries is succinctly captured by WSDOT's March 8, 2022,

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[2]WSF Ex. 3, an organizational chart, shows 523 deck hands, and that apparently includes on-call and relief OS and AB sailors but apparently does not include funded vacant positions. The number shown for terminal employees, on that same basis, is 350. Part of the uncertainty seems to stem from the irregular treatment of on-call employees.

[3]By comparison, any baseball team that schedules exactly nine players for every game can be expected to forfeit a lot of games during an epidemic.

[4]MM&P is a separate bargaining unit; but the supply of Mates is related to the supply of ABs because 70% of Mates promote up from AB.

Washington State Ferries COVID-19 Service Restoration Plan (IBU Ex. 6A, bold italics not in the original):

> As conditions have evolved since the beginning of the COVID-19 pandemic, WSF has updated service levels at several key points:
>
> - March 2020: The winter sailing schedule was extended due to crew and vessel shortages and ridership levels not seen since the 1960s.
>
> - June 2020: The COVID-19 Response Service Plan outlined how WSF adapted service early in the pandemic from historically low levels on the "Winter Baseline" season to progressive increases in service as ridership returned and resources became available. The plan also included potential supplemental service that could be added to the baseline schedule when feasible.
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> - May 2021: WSF transitioned to "Summer Peak" season as crewing levels improved slightly, but some routes remained on lower than typical levels of service.
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> - October 2021: In response to a spike in cancelled sailings due to lack of qualified crew, WSF started operating a temporary Alternate Service Plan to provide customers with more predictable and reliable travel in the face of severe crew shortages.
>
> - November 2021: WSF restored the Anacortes/San Juan Islands route to its regular four-boat winter sailing schedule on a trial basis and started working on a plan to incrementally restore service to other routes as crewing levels allow.
>
> **The Four Pillars of Service**
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> *** Each of WSF's four pillars of service has been affected by COVID, specifically with: 1) a steep drop in ridership; 2) a lack of vessel availability; 3) a shortage of qualified crewmembers; and 4) significant decreases in revenue.
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> ***
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> **Ridership**
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> Early in the pandemic, ridership fell dramatically. In late March 2020, total ridership had fallen 78% compared to the same week in 2019. Vehicle ridership fell by 67%, with walk-on passenger ridership falling by 93%. While current ridership has rebounded since the peak of the pandemic, it remains depressed. Total system ridership in 2021 rose to roughly 72% of 2019 pre-COVID-19 numbers, with vehicles climbing to 85% and walk-on customers up to 42% of pre-pandemic levels. January 2022 saw a slight decrease in ridership compared to January 2021 as increasing COVID-19 cases again impacted the region.

Vessels

*** WSF had 24 vessels five years ago, but due to vessel retirements there are now only 21 active vessels in the fleet—an insufficient number for reliable service even without the pandemic. *** WSF will not be able to add to the fleet quickly enough to address the loss of vessels due to recent and planned retirements.[5]

Crewing

Currently, ***WSF is facing severe staff shortages that are unprecedented in its 70-year history. The effects of an international shortage of mariners, the COVID-19 pandemic, and the aging demographics of the workforce have combined to reduce staffing below levels necessary to reliably operate the system. This shortage has resulted in unplanned service reductions and a decrease in system reliability, especially as ferry ridership increases from the early part of the pandemic.***

Funding

WSF's operating budget is based on legislatively-approved service levels and is appropriate to the service level WSF was operating before the COVID-19 pandemic. With the biennial budget already established, funding is adequate to support current and restored service levels at this time. However, the pandemic-induced loss of ridership—and the loss of other business, such as advertising and galley service—has led to a corresponding loss in revenue. For the last 40 years, WSF's fare recovery rate (the percentage of operating costs covered by direct fares and miscellaneous revenue) has averaged about 75%. With the reductions in ridership, the fare recovery rate is now about 57%. For the current biennium (21/23) and the next (23/25), the gap in revenue is being filled with federal COVID relief funds. So, for now, the federal relief funding is providing a stop-gap, however, this funding source is not sustainable beyond the next biennium.

Here (from p. 7) are the current service reductions under the Alternative Service Plan compared to Traditional Summer Service, running, at most, 15 vessels rather than the usual 18 during the summer season (Tr. 59:24–60:4):

Route	Traditional Summer Service	Alternative Service
Anacortes/San Juan Islands	5 vessels, including 1 interisland-only vessel	4 vessels, including 1 interisland-only vessel

[5]WSF did not build a single ship between 2000 and 2010; and the M. V. Tillikum, which was pulled out of service for electrical repair, had been built in 1959 (IBU Ex. 6B, p.2).

Route	Traditional Summer Service	Alternative Service
Seattle/Bainbridge	2 vessels with late-night sailings	1 vessel, late-night sailings suspended*
Mukilteo/Clinton	2 vessels with additional late-night sailings	1 vessel w/ late-night sailings suspended*
Edmonds/Kingston	2 vessels w/ late-night sailings	1 vessel, late-night sailings suspended
Fauntleroy/Vashon/ Southworth	3 vessels on weekdays, 3 on weekends with #3 boat at 16 hours/day	2 vessels on weekdays, 2 vessels on weekends, late night sailings suspended.
Seattle/Bremerton	2 vessels	1 vessel
Anacortes/Sidney	2 sailings to Sidney	No sailings to Sidney
Port Townsend/Coupeville	2 vessels	1 vessel
Port Defiance/Tahlequah	1 vessel	1 vessel

* Full service had been reestablished on these runs by the time of the hearing (Tr. 45:5–7).

PROPOSALS

The only dispute at issue in this interest arbitration is Rule 17's rates of pay. In a nutshell, WSF proposes "Effective July 1, 2023 through June 30 2024, the wage rates for each classification represented by the Union shall be increased five percent (5%) [and] Effective July 1, 2024 through June 30, 2025, the wage rates for each classification represented by the Union shall be increased five percent (5%)."

IBU offers two alternative proposals, first, "Effective July 1, 2023 through June 30, 2024, the wage rates for each classification represented by the Union are shall be increased ten (10) percent [and] Effective July 1, 2024 through June 30, 2025, the wage rates for each classification represented by the Union shall be increased eight (8) percent."

In the alternative, IBU proposes, "Effective July 1, 2023 through June 30, 2024, the wage rates for 2 each of the classifications represented by the Union shall be increased by 5%. Prior to calculating the 7/1/23 General Wage Increase (GWI), each classification will receive a market correction (MC1) above the 7/1/22 wages as indicated in the table below. [and] Effective July 1, 2024 through June 30, 2025, the wage rates for each of the classifications represented by the Union shall be increased by 5%. Prior to calculating the 7/1/24 General Wage Increase (GWI), each classification will receive a market correction (MC2) above the 7/1/23 wages as indicated in the table below.

POSITION	7/1/23 MCI	GWI 5%	7/1/24 MCI	GWI 5%
AB	1.34	36.63	1.47	40.01
AB Relief	1.61	43.94	1.76	47.99
AB-Bos'n & AB-Quarter-master, AB Relief working Bos'n / Quartermaster	1.41	38.57	1.54	42.11
Bos'n / Quartermaster	1.7	46.29	1.85	50.55
OS & OS-Exempt	1.12	30.52	1.22	33.33
OS Relief	1.34	36.63	1.47	40.01
Auto Ticket Seller	1.23	33.71	1.35	36.81
Purser	1.23	33.71	1.35	36.81
Passenger Ticket Seller	1.23	33.71	1.35	36.81
Auto Ticket Taker	1.11	30.24	1.21	33.02
Passenger Ticket Taker	1.11	30.24	1.21	33.02
Terminal Watch / Attendant	1.06	28.92	1.16	31.58
Web Information Agent	1.25	34.11	1.36	37.25
Information Agent	1.15	31.48	1.26	34.38
Shore Gang Foreperson	1.64	44.70	1.79	48.81
Shore Gang Leadperson	1.56	42.55	1.7	46.46
Shore Gang	1.48	40.30	1.61	44.00

WSF notes that the IBU's alternative proposal is quite nearly a longer way of saying 10% and 8%, so this is a dispute between 5% and 5%, or 10% and 8%.

STATUTORY CRITERIA

47.64.005
Declaration of policy.

The state of Washington, as a public policy, declares that sound labor relations are essential to the development of a ferry and bridge system which will best serve the interests of the people of the state.

47.64.006
Public policy.

The legislature declares that it is the public policy of the state of Washington to: (1) Provide continuous operation of the Washington state ferry system at reasonable cost to users; (2) efficiently provide levels of ferry service consistent with trends and forecasts of ferry usage; (3) promote harmonious and cooperative relationships between the ferry system and its employees by permitting ferry employees to organize and bargain collectively; (4) protect the citizens of this state by assuring effective and orderly operation of the ferry system in providing for their health, safety, and welfare; (5) prohibit and prevent all strikes or work stoppages by ferry employees; (6) protect the rights of ferry employees with respect to employee organizations; and (7) promote just and fair compensation, benefits, and working conditions for ferry system employees as compared with public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia in directly comparable but not necessarily identical positions.

RCW 47.64.320
Parties not bound by arbitration—Arbitration factors.

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

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

(3) In making its determination, the arbitrator or arbitration panel shall be mindful of the legislative purpose under RCW 47.64.005 and 47.64.006 and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

(a) The financial ability of the department to pay for the compensation and fringe benefit provisions of a collective bargaining agreement;

(b) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;

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

(d) Stipulations of the parties;

(e) The results of the salary survey as required in RCW 47.64.170(8);

(f) Comparison of wages, hours, employee benefits, and conditions of employment of the

> involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved;
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> (g) Changes in any of the foregoing circumstances during the pendency of the proceedings;
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> (h) The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature;
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> (i) The ability of the state to retain ferry employees;
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> (j) The overall compensation presently received by the ferry employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefits, and all other direct or indirect monetary benefits received; and
>
> (k) Other factors that are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under this chapter.

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Those factors are broad and inclusive. There is some duplication, and some factors can best be addressed together. Here is how they traditionally divide:[6]

- Comparability is listed in RCW 47.64.006(7), which establishes the geographic scope of the comparison and sets a standard of "directly comparable but not necessarily identical." That basis for comparison is set out in subsection (3)(f), which calls for consideration of "The overall compensation presently received by the ferry employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefits, and all other direct or indirect monetary benefits received." Finally, subsection (3)(e) requires consideration of the "results of the salary survey as required in RCW 47.64.170(8)."

- Changes in the cost of living. This factor is normally taken into consideration in bargaining about compensation and therefore fits under subsection (3)(k).

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[6]Past agreements and their bargaining history and the authority of the employer are often important considerations when there is a dispute over contract language proposals, which there is not in the case at hand. The only evidence of prior contracts shows that compensation increases in this bargaining unit have traditionally trailed inflation but led the State's non-represented employees.

- The employer's ability to staff adequately. This element is usually titled "recruitment and retention," and in RCW 47.64.320 it appears in subsection (3)(i), the ability to retain employees. Recruitment, the other half of the usual formula is certainly "normally ... taken into consideration in the determination of matters that are subject to bargaining" under RCW 47.64. Moreover, recruitment and retention are the two sides of ability to staff adequately. In RCW.47.64(006), the Legislature declares it to be the "public policy of the state of Washington to: (1) Provide continuous operation of the Washington state ferry system at reasonable cost to users; (2) efficiently provide levels of ferry service consistent with trends and forecasts of ferry usage..." And RCW 41.64.320(3)'s first instruction to an interest arbitrator is to keep that public policy in mind.

- Finally, there is the ability to pay factor, which is set out in subsections (3)(a)— "financial ability of the department to pay"— and (3)(h)—"limitations on ferry toll increases and operating subsidies..."

Comparability. The only comparability evidence in the record consists of the Marine Employees Compensation Survey. OMB sought total compensation numbers that reflected "average actual base pay," "health care value," and "retirement value." As published, the Marine Employees Compensation Survey (Jt. Ex. 2) respects the confidentiality of survey respondents by omitting responses that would be numerically unique to one respondent, so several key classifications had no comparables in the published study. But the summary numbers without those omissions was produced at hearing as WSF Ex. 13. Comparing actual base pay, Table 1 sets out the results of that survey.

Classification	Behind Average
AB / Bos'n	2.1%
AB	14%
OS	35%
Ticket Seller (auto)	13.2%
Ticket Taker	27.6%
Information Agent	5.9%
Web. Info. Agent	31.6%
Shore Gang	43.6%
AVERAGE	22.6%

In short, OMB's survey shows this bargaining unit to be 22.6% behind the survey average and 35.5% behind for the entry level deck position.

WSF agrees that the bargaining unit is behind but suggests (Closing Argument, Tr. 372:2–8) that the comparators are probably not the best comparators and "not comparable organizations to the State-run ferry system, which is the largest in the US."[7] But, as WSF recognizes, that argument has been foreclosed by the Legislature's determination of the scope of employers to be considered in the Survey.[8]

Changes in the cost of living. The cost of living increase in the Seattle–Tacoma–Bellevue statistical area led the nation at 23% between 2010 and 2020 The CPI-U for the Seattle-Tacoma-Bellevue statistical area was 8.1% February to February, 2022, 9.1% April to April, and 10.1% June to June.[9]

Of course, as WSF points out, inflation is a national phenomenon, beyond the control of the State of Washington; but inflation is such a common driver of wage rate increases that any across-the-board increase may be referred to as a "COLA."

Recruitment & retention: WSF's ability to staff adequately. Staffing numbers—and particularly estimates of *adequate* staffing—are hard to come by on this record. The best available estimate once again seems to come from WSF's March 9, 2022 Service Restoration Plan (IBU Ex. 6A). Pages 13 and 15 of that Plan show that the unlicensed deck employees totaled 558 in July, 2019, and 495 in March, 2022, with a "target staffing level" of 546. In light of the rest of the record, it is not clear whether those numbers reflect the on-call workforce at all; and it seems unlikely that they reflect staffing the new OSX shift (which the parties agreed to three months after the March, 2022 Plan) or that they include the backfilling required for the new AB to Mate or Pilotage programs. The best estimate therefore seems to be that in March, 2022, WSF was well over 50 unlicensed deck employees short of its target staffing level.

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[7]In 2014, each party submitted its own comparability analysis in addition to the Survey (IBU Ex. 7, pp 13-15).

[8]The Survey is limited by the sorts of questions the survey respondents are willing to answer. That has led the authors of the Survey to find "average" compensation by dividing total compensation paid by all employers by the number of employers, without reflecting whether each employer has a single employee on the payroll in that classification or a hundred. But if there were only three aircraft machine shops in Everett besides Boeing, and we added up the rates paid for machinists and divided by four, the result would not tell us much about the average rate received by aircraft machinists in Everett. Worse yet, it would *look* like it told us more than it really did.

[9]IBU introduced convincing evidence of Seattle's place as the leader of the pack for housing cost increases. But the housing component of the CPI-U already captures that rise.

The first two of the three programs that probably are not included in the Plan's staffing numbers are AB to Mate and Pilotage programs designed to address the acute shortage of Mates by encouraging the promotion of ABs; the ABs must then be replaced.[10] The second program that is probably not included in the Plan's target staffing level is the OSX / Terminal X-Staff programs which, according to the Lead Negotiator who signed the MOUs for the State, involve "hiring many more employees than ... we typically would" (Tr. 182:3–12). According to IBU's chief negotiator (Tr. 300:1–8 and 301:21 –302:2),

> the idea was to match them up with specific watches that already exist, so there would be some redundancy on those watches, and we went through the route lists carefully to determine where we had the risk of brownouts, where the brownout risk was the most, and what I mean by that is, you know, service interruptions anywhere from, you know, an hour or two to a full day.
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> This would be a new position identified with -- with guaranteed hours. The goal was 40 hours, right, for these positions? And it was to convert as many on-calls as possible into 40-hour shifts, with redundancy on specific watches, so that we could prevent any service interruption going forward, or minimize it...

Apparently, those MOU's came with separate funding (Tr. 94:18–21), but the resulting *staffing* demands do not seem to be included in WSF's Target Staffing Level. At the time of the hearing in late August, 2022 (quoting WSF's North Regional Port Captain, Tr. 38:8–13, emphasis is mine), WSF is

> still trying to make sure we can implement it. *With all the vacancies that have come through on our bidding process, we can't fill the basic jobs. We won't be able to fill the extra jobs.* So we're working, troubleshooting and trying to figure out how to -- how to make this happen.

WSF argues that staffing was not a serious issue in negotiations, but the Governor's directive to deal with at least part of the on-call staffing issue—which produced the OSX / Terminal X-Staff MOUs—arrived during the course of regular contract negotiations, and the parties agreed to bargain about that initiative separately. The basis of the resulting MOUs rests on dealing with routes and shifts where "brownouts" have been more common because of deck hand shortages or IBU shore staff shortages.

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[10]The Mates bargaining unit lost a higher percentage of staff than the IBU unit, and the resulting shortage has caused some of the service reductions and uncertainties. 70% of the new Mates come from the IBU unit, and 30% may be laterally hired. (Tr. 439:7–11.) Deck Hands moving into the MM&P unit must, of course, be backfilled.

WSF also argues (Tr. 375:4–6) that the North Regional Port Captain "attributed [the attrition] to COVID, retirements, employment actions, but he said that people who have been around for a while are not leaving." But it is hard to see how WSF can dependably operate even 15 vessels with only the deck hands "who have been around for a while," particularly when, as the North Regional Port Captain testified (Tr. 36:4–15), "people are basically dropping like flies [to COVID].[11] We've had several people that have caught [COVID] twice. One person that's caught it three times..." In the absence of such large numbers of sailing crew,[12]

> We utilize our on call pool. We utilize our -- our release AB [&] OS. Our overtime numbers are through the roof. Trying to keep those vessels running. And it happens quite often that we just can't keep 'em running, we tie up a boat. And that is the last thing we want to do.

Finally, there are two other parts to the staffing picture, over dependance on overtime, and an aging workforce. The two are related. Since the pandemic, as The North Regional Port Captain explained,

> I can use either Bremerton or Edmonds-Kingston as an example. Every day, the morning crew on that second boat, if they're running, gets asked to hold over for four hours. So their 8-hour day gets turned into a 12-hour day. And they are -- they are working these, both MMP, and IBU, saying -- for the most part agreeing to being held over for 12-hour days, almost every day, because they want to see the boats running.
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> But this is two and a half years of this now. They are getting really tired of it, unbelievably burnt out, and I can't blame them.

IBU's Regional Director agreed that the current overtime burden cannot be carried forever. He also agreed with the North Regional Port Captain that WSF, like the rest of the region and the industry in general, is in the path of a "silver tsunami" (Tr. 337:6–11) as an entire generation of deck hands is at or approaching retirement age. Beginning before the pandemic, a study by the Joint Transportation Committee concluded that WSF's overtime had increased by 45% over the last five years. (Tr. 336:8-11 and 23–337:5):

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[11] The August absentee numbers seem to be down somewhat from January, when there were an average of 239 Covid absences every day (IBU Ex. 6A.)

[12] During the hardest days of the pandemic, Governor Inslee issued an executive order requiring all State employees to be vaccinated. WSF lost about 60 employees afloat and another 60 shore employees as a result of that order (Tr. 52:19–53:2). But Covid-19 continues to affect WSF's ability to operate.

And those are – that's a clear indication to us that the ferries have been over-relying on overtime to maintain normal operations. ***

[S]o it creates burnout, right? So people are -- are being held over anywhere from two to four hours a shift to fill vacancies, being asked to come in early, and then there's just kind of the old-fashioned overtime where there's a lot more additional full days of overtime on your days off, working on your days off, right? And that's just wearing people out.

Ability to Pay. WSF's 5% and 5% year proposal would cost about \$10.7 million; and IBU's 10% and 8% would cost about \$20.2 million, or, for the alternative proposal, about \$20 million. So the ability to pay question focuses on the \$9.5 to \$9.3 million difference.

Washington passes three different budgets: an omnibus budget which deals with general fund income and expenditures, a capital budget, which supports State (and some local) construction, and a Transportation budget. WSDOT and WSP are dependent on the Transportation budget. While the omnibus budget is supported mostly by sales tax, the Transportation budget's source of funds is primarily not sales but fuel taxes.[13] On the expenditure side, WSDOT accounts for over 68% of the Transportation budget. The total Transportation budget for FY 2021-2023 came to almost \$77.8 billion; and \$8 billion of that went to WSDOT.[14] That \$8 billion covers operating costs and the salaries and benefits of about 10,000 FTE, only about 1,000 of whom are in this bargaining unit.

Fuel tax as a revenue source has a built-in limitation: the tax is in cents per gallon, not as a percentage of fuel prices. Of the \$0.494 per gallon Washington fuel tax rate, only \$0.08 per gallon is available to support the preservation, maintenance and operation of all the State's highways, bridges and ferries.

The latest, June 2022, revenue forecast estimates the new WSDOT budget to be less than the \$8 billion it got in the prior biennial budget. That projection would be substantially less were it not for the Move Ahead Washington package passed by the Legislature in 2022. That Act provided funding spread over the next 16 years from four major sources: \$5.4 billion from the Climate Commitment Act, \$3.7 billion in federal funds, a \$956 million bond authorization, and \$6.9 billion from state revenue including \$2

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[13]Gasoline and diesel taxes support just over 50% of the Transportation budget (WSF Ex. 4, p. 5).

[14]The Transportation budget used to have a second substantial funding source in vehicle registration fees, but the Washington voters ended those taxes by initiative, and the Legislature has never created a structural replacement for that lost revenue.

billion from the general fund.[15] $350 million of those funds were specifically directed to the ferry operating account and another $32 million for a new policy allowing those 18 and under to ride fare-free.[16]

That new funding was required, in part, because the pandemic has at least temporarily ended the traditional operating income pattern of WSF: about 70% of those costs used to come from the fare box, leaving only 30% to come from other WSDOT income sources. Some of Move Ahead Washington's $350 million in WSF operating support was to at least "soften the blow" of that lost fare box income as well as going toward the traditional 30% that has come from outside WSDOT funds. (Tr. 85:10–15).[17] Some of that lost revenue was covered by Federal Covid-19 funds which will expire in 2024.

Here is the history of WSF's operating budget from the 2021-23 legislative session and from the 2019-21 second supplemental budget ((2021-23 Enacted Budget Summary (IBU Ex. 3A, pp. 12 & 20, in thousands):

	Agency Request	Gov. Proposed	Enacted	Difference
2019-21 Second Supp.	504,535	492,752	534,250	41,498
2021-23	455,537	431,008	540,735	9,727

(The Agency's request for the 2021-23 budget reflected a requested 10% overall deduction and may have been made before Coronavirus Relief and Recovery Act Federal funds were announced.)

[15] An income and spending projection over a sixteen year period is not quite a sure thing, since the plan will span several different legislatures and is based on best guesses about distant future revenues.

[16] $836 million was to build four new vessels; $160 million to do ferry preservation and support, and $193 million for electrification of ferry vessels and terminals. It is not clear whether some of the preservation and support will be bargaining unit work. It is not entirely clear, but apparently this does not include the $600 million in Covid-associated federal money designed to backfill revenue loses.

[17] Move Ahead Washington money also included just over $626 million for the construction of four new vessels and $160 million for "ferry preservation support." Those allocations do not affect the funding of ferry operations except that the record does not show whether any of the preservation support work will be done by IBU Shore Gang employees.

Thus the legislature provided almost $41.5 million more than the Governor proposed for the severely troubled 2019-21 biennium and about $9.7 million more than the Governor proposed for 2021-23; and the enacted funds for WSF's operating budget increased by almost $6.5 million from one biennium to the next.

Ridership has not fully recovered from the pandemic, and no one has made a reasoned projection of the percentage of the pre-pandemic ferry commuter population that will continue to work from home. Fuel tax revenues and tolls have similarly failed to recover so far. However, the June, 2022, Transportation budget forecast increased by almost 4% above its predecessor, not including Federal funding under the BIL Act. And (quoting IBU Ex. 2B, p. 42) the June Economic and Revenue Forecast, "The total forecast for funds subject to the budget outlook process was increased by $1.46 billion in the 2021-23 biennium, $832 million in the 2023-24 biennium, and $176 million in the 2025-27 biennium."

At the Federal level, WSDOT has long received about 25% of its funding from the Federal Highway Administration and Federal Transit Administration. On August 5, 2022—just ten days before the arbitration hearing—the Federal DOT announced the allocation of Bipartisan Infrastructure Law (BIL) funds over multiple years "to enhance ferry" service in 35 States, including $42.4 million for Washington. About $21 million of that is new money; and for the first time, those funds may be used not just for capital projects but for operating costs. That increased Federal funding appears to be expectable through 2025. A week before the hearing in this case, the BIL was signed allocating $38 million to Washington for ferry support; and this time, the Act expressly permits use of that Federal funding for operating costs.

DISCUSSION

In 2014, the Compensation Survey"did not show substantial lag except [for OS and Attendant classifications]" (IBU Ex. 7, p. 12); and the CPI-W (All Cities) had increased 1.2% throughout 2013 and an additional 3% in the first half of 2014; and the State was finally able to put the prospect of deficit behind. IBU proposed increases of 4% and 4%, and WSF proposed a single 3% increase all across the State; and I awarded 2.5% each year. In 2018, the Survey showed the bargaining unit to be 4.9% behind the average; and the June, 2018, Seattle CPI-U was up 3.3% (2.2% without gasoline). IBU proposed 6.1% each year and WSF proposed 2% each year; and Arbitrator Michelstetler, NAA, awarded increases of 3% each year. In 2022, four years after Arbitrator Michelstetler's 2018 award, and eight years after mine, the fundamentals have shifted under our feet. Most importantly, as IBU points out, the ferry system has not able to operate continuously due largely to staffing shortfalls. The Survey shows this bargaining unit is now 22.6% behind the average—35.5% behind for the OS entry level—and the April and June Seattle-Tacoma-Bellingham CPI-U increased by 9.1% and 10.1% respectively. The word "deficit" was not mentioned except in the negative; and both the Legislature and the Federal government have taken unprecedented steps to support the ferries. In response to the 22.6% average lag and near 10% inflation, IBU proposes increases of 10% and 8%, and WSF proposes an unprecedented 5% and 5%.

One thing that has not fundamentally changed is WSF's dependence on overtime to meet Coast Guard staffing requirements. The 2014 Award noted overtime costs for deck employees had jumped a shocking 50% in 2013 and more in the first half of 2014. Part of that increase was due to increases in the COI, adding an additional AB to eleven vessels. But overtime increases for terminal employees showed similar increases without that explanation. (IBU Ex. 7, p 14.) And no such COI increase explains the Joint Transportation Committee's finding that overtime has increased another 45% over the last five years. In 2014, WSF segregated turnovers due to retirement, death, or promotion; and what was left was modest, but that rate jumped "alarmingly" for those working their way into full-time employment. (IBU Ex. 7, p. 15.) Add on retirements, resignations, and extended absences spurred on by the COVID-19 experience, and "overtime is through the roof." Moreover, the retirement and mortality separations that seemed harmless in the past take on a more threatening appearance when viewed as part of a 'silver tsunami' of departures throughout the region and throughout the industry.

In 2014, too, the Union showed that private employers commonly picked off newly hired—and trained—OSs, showing a serious competition for deck personnel. The best estimate on the current record is that OS training costs somewhere in the neighborhood of $10,000 each.

The issue before me is not simply whether WSF is losing IBU bargaining unit employees who are searching for more pay. As WSF notes, there is no direct support for such a claim in this record. The issue is whether WSF, running 22.6% behind average compensation overall and 35.5% behind at deck entry level for the next two years, can reasonably be assured of attracting the workforce necessary to provide *continuous* operation of the Washington state ferry system at reasonable cost to users. There is no doubt that the current level of deck and terminal staffing has not met that goal:

> *WSF is facing severe staff shortages that are unprecedented in its 70-year history. The effects of an international shortage of mariners, the COVID-19 pandemic, and the aging demographics of the workforce have combined to reduce staffing below levels necessary to reliably operate the system. This shortage has resulted in unplanned service reductions and a decrease in system reliability, especially as ferry ridership increases from the early part of the pandemic.*

The shortages have included Mates and Engineers; but a significant part of the shortages have been in this bargaining unit, as witnessed by the Governor's initiative and the parties' MOUs providing "hiring many more employees than we typically would" (Tr. 182:7–12) for runs and posts that have a record of "brownouts" due to IBU staff shortfalls. But that partial solution can work only if it can be staffed, and so far those FTEs have not even appeared on HR's recruitment horizon.

Even without consideration of the public policy of continuous operation of the ferry system, OMB's Survey and the recent increases in the Seattle-Tacoma-Bellingham cost of living would make it difficult to accept WSF's 5% and 5%. That proposal would leave bargaining unit employees at the *end* of the next biennium 17.6% behind what the average had been six months *before the beginning* of the biennium; it would leave entry level deck hands over 35% behind; and it would cover only about half of the recent cost of living, not counting whatever the increases will be throughout 2023-2025. Although the WSDOT workforce is spread over the state, the WSF workforce is localized in the Puget Sound area where increases in the cost of living have been the highest. Because there is no good reason to expect a precipitous plunge in those numbers in the next two and a half years, pay rates must not be so out of sync with the CPI that entry level employees cannot afford to work for WSF.

WSF's only compelling arguments here are, first, $9.3 million is a lot of money ($9.5 is even more), and, second, such an unprecedented award—on top of the $10.7 million cost of WSF's 5% and 5% proposal—might have a hard time passing statutory the financial feasibility test. The award here is founded quite largely on the unique and shocking lag between IBU and the Survey average, and that magnitude of lag should not be a recurring feature. But it is issued in the context of the most recent Economic and Revenue forecast (IBU Ex. 2B, p. 42) shows an increase of "1.46 billion in the 2021-23 biennium, $632 million in the 2023-25 biennium, and $176 million in the 2025-27 biennium." Moreover, a string of interest arbitrators and legislatures have expressed dismay at continuing overtime costs, and it was the opinion of both WSF and IBU witnesses that those costs will not be overcome without adequate staffing. It is problematic to try to guestimate those savings, but WSF's prior record of ever-increasing overtime has now led to "through the roof" costs. I will therefore front-load the award in order to at least make an immediate dent in the lag behind the Survey average and award 8% for the first year and 6% for the second. I estimate the total cost of that award at approximately $14.9 million, which is something like $4.2 million more than WSF's two-year proposal but $5.3 million less than IBU's.

AWARD

I award a general increase of 8% effective July 1, 2023, and a second general increase of 6% effective July 1, 2024.

By stipulation of the parties I retain jurisdiction for the limited purpose of resolving any issues that may arise in the implementation of this Award. That retained jurisdiction shall lapse unless first extended for good cause shown within sixty days of October 1, 2022.

Respectfully submitted,

Howell L. Lankford, NAA
Interest Arbitrator