In the Matter of the Interest Arbitration between PACIFIC NW REGIONAL COUNCIL OF CARPENTERS (Union or PNRCC) and STATE OF WASHINGTON, DEPARTMENT OF TRANSPORTATION, FERRIES DIVISION (Employer or State)	)	OPINION AND AWARD PERC #128347-I-16 INTEREST ARBITRATION

BEFORE: Kathryn T. Whalen, Neutral Arbitrator

APPEARANCES:

For the Union:

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For the Employer:

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HEARING: August 4 and 5, 2016

RECORD CLOSED: August 5, 2016

AWARD ISSUED: September 12, 2016

I. INTRODUCTION

This interest arbitration is between the State of Washington, Department of Transportation, Ferries Division (State, WSDOT, WSF) and the Pacific Northwest Regional Council of Carpenters (PNRCC or Union). PNRCC represents 23 journey-level carpenters who work out of WSF's Eagle Harbor Facility on Bainbridge Island. Under RCW 47.64.300 the parties requested, and Washington Public Employment Relations Commission (PERC) certified, one issue to arbitration--Appendix A wages for their 2017-2019 Collective Bargaining Agreement.

The parties submitted this dispute to a single neutral arbitrator, Kathryn T. Whalen. The Arbitrator convened the hearing beginning on August 4, 2016 and continuing through August 5, 2016. The parties had a full opportunity to make opening statements, examine and cross-examine witnesses, introduce documents, and make arguments for their respective positions. Closing arguments were presented on August 5, 2016 and the Arbitrator closed the record on that date.

II. STATUTORY CRITERIA

RCW 47.64.005 Declaration of policy.

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

RCW 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 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 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 the 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 classifications involved;

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

(h) The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature;

(i) The ability to retain ferry employees;

(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.

III. PARTIES' FINAL OFFERS ON WAGES

The Employer proposes a 3% general wage increase for all positions within the Union's bargaining unit during the first fiscal year of the 2017-2018 biennium and 1% for 2018-2019. The Union proposes a 7% wage increase for the first fiscal year (effective July 1, 2017) and a 7% wage increase for the second fiscal year (effective July 1, 2018).

IV. PRELIMINARY ISSUE: MEDIATION COMMUNICATIONS

On July 15, 2016, for half of that day, the parties met with Mediator Daniel Comeau of PERC in an attempt to resolve their remaining disputes. After that mediation session, Comeau continued to be involved by way of a teleconference and email until July 27, 2016. By letter dated July 29, 2016, PERC Executive

Director Michael P. Sellars declared the parties were at impasse and advised them that PERC had opened this interest arbitration case.

On August 4, at the onset of this hearing, an issue arose concerning the admissibility of an email chain between Comeau and the parties on July 27, 2016. The Union objected to the admission of that email chain, and any mediation communications, on the grounds that they were confidential.

The State argued that the email chain was not a confidential PERC mediation communication and should be admitted. According to the State, the contents of this email demonstrated that the Union's last protected position to the mediator was different from the 7% and 7% proposal it submitted to interest arbitration.[1]

I reserved a final ruling on this issue until after I had an opportunity to hear and consider the parties' evidence and argument. Having now done so, I rule that these emails are admissible. The following is my reasoning.

PERC's website includes the following information on confidentiality in contract (and grievance) mediation:

> Confidentiality is not complete:
> • Verbal or written communications made to the mediator in a caucus (i.e., without the other party present) are confidential and cannot be used in any legal proceeding arising from conduct at a mediation.
> • Verbal or written communications directly to another party, or written communications delivered by the mediator with a party's consent, may be used in a legal proceeding arising from conduct at a mediation.

[1] The State contended that the Union engaged in regressive bargaining by submitting the 7% and 7% proposal to interest arbitration, but acknowledged that I had no authority to decide that issue.

The email chain at issue began on the morning of July 27 by the mediator and was sent to lead negotiators for the State and Union: Valerie Inforzato and Jim Osborne, respectively.

At 9:12 AM the mediator sent an email to Inforzato and Osborne that set forth the parties' last protected positions. For Appendix A, wages, the parties' positions were stated in the email as: State/Ferries – 3 %(FY 17-18), 1% (FY 18-19); PNW Carpenters – 4% (FY 17-18), 4% (FY18-19). State Exhibit (Ex.) 12.

Osborne replied to this email shortly thereafter by stating "Thank you, Sir." Inforzato also replied with "I have no changes and have cc'd the assigned AAG Thomas Knoll. Thank you." State Ex. 12. Earlier in the email chain, Osborne also had indicated that Inforzato had correctly stated the parties' protected positions on wages. State Ex. 13.

At hearing, Osborne explained that he believed that these email communications all occurred within the context of "what if" exchanges between the mediator and the parties; at that time, he did not understand the meaning of "last protected position." This was his first PERC mediation and he thought these communications were confidential. The only written proposal submitted by the Union was 7% and 7%. Osborne did not think these "what if" communications to the mediator locked the Union in at 4% and 4%.

Osborne was genuine in his testimony. I found him credible. Regardless of Osborne's belief, however, I find he was mistaken about the confidentiality of this email chain. These communications were between the mediator and the parties; and the Union, as well as the State, indicated consent. I find they were not confidential communications. I rule that these email communications are admissible and I have considered them.

The State requested that I decline to consider the Union's 7% and 7% proposal in light of the Union's last protected position of 4% and 4%. The Union's proposal of 7% and 7% was certified to PERC in a letter dated July 29, 2016. It is part of the record in this case. I deny the State's request.

As a practical matter, while I have considered the above evidence as well as other evidence about the parties' mediation communications, it was not critical to my ultimate decision.[2] As explained below, other evidence and certain statutory factors formed the basis of my decision.

V. <u>DISCUSSION</u>

A. <u>Overview: Carpenters' Work for WSF</u>

The WSF facility is located on Bainbridge Island, where WSF is tasked with maintenance of all infrastructure of the ferry system—both vessels and terminals. There are nine different shops; three are represented by PNRCC. Those three shops are commonly referred to as the carpenters' (or shipwrights') shop, the insulation shop and the lock shop. As mentioned before, there are 23 carpenters in the Union's bargaining unit: 12 in the carpenters' shop (one position open), seven in the insulation shop and four in the lock shop.

Carpenters in the shipwrights' shop perform a wide variety of general maintenance work on vessels and at terminals, such as flooring, windows on vessels, name-boards on vessels, terminal cables and sometimes aprons,

[2] There also was limited testimony about a "what if" proposal made by the State.

mirrors, staging, ceiling tiles, siding and stairs. Currently, the carpenters are building two new offices at the Eagle Harbor facility.

The carpenters who work in the insulation shop do acoustic insulation of all different types, such as fire barriers and exhaust pads. They have sewing machines. They fabricate and template different configurations of exhaust blankets for engines and ship service generators. They perform asbestos abatement (which includes recordkeeping) and also hull insulation.

WSF carpenters in the lock shop do everything from electronic to mechanical locks of all types. They also do door closures and make (and track) all keys. They do corrective repairs and, generally, are the security group for WSF.

B. <u>Cost of Proposals and Ability to Pay</u>

1. <u>Fact Summary</u>

Kim Grindrod is a compensation and policy consultant employed by the Office of Financial Management (OFM), State Human Resources (HR) division. Grindrod prepared a cost analysis of the State and Union proposals that was submitted as State Exhibit 10.

The projected biennial cost of the State's 3% and 1 % general wage proposal for FY 2017-2019 was calculated as $123,396. The biennial cost of the Union's general wage proposal of 7% and 7% was calculated as $377,210. The projected cost of the Union's last protected position of 4% and 4% was $213,442. The difference between the State's proposal and the Union's proposals are $253, 814 and $90,046, respectively.

Erik Hansen is a budget analyst for OFM. Hansen testified about the current financial condition of the State and its budget. He provided a power point presentation which was provided in documentary form. State Ex. 5. The Union also submitted evidence bearing upon the financial condition of WSDOT and WSF. Union Exs. 2 - 5.

The State has three budgets: the operating budget, also known at the general fund; the capital budget and the transportation budget. The legislature appropriates transportation funds. It considers the Governor's proposed budget, and then creates its own budget bill. Once passed, the budget goes to the Governor who can veto portions of it. Eventually it is signed into law and becomes the budget.

The 2015-17 transportation budget is about $8.7 billion, of which about $6 billion goes to the Department of Transportation. Within the transportation budget are operating and capital components. Important here is the WSF operating budget which is $484.3 million.

Washington's transportation revenues come from taxes, fees, permits, tolls and other revenues. Motor vehicle fuel taxes are the largest revenue source, followed by licenses, permits and fee revenues.

WSDOT's June 2016 revenue forecast for the current biennium shows a 24% increase over the prior biennium (2013-2015)—there is an overall upward revision in the forecast. This is due to higher fuel tax revenues, toll revenues, vehicle sales tax, and licenses, permits and fee revenues. There are more drivers on the road and ferry ridership also has increased.

For the current fiscal year, total transportation revenues are anticipated to be $2.7 billion, which is a 12.8% increase annually. For the 10-year forecast (2016-2025), the revenue forecast for June 2016 is up by $652 million or 2.1% from the last (February) forecast.

Despite positive balances and forecasts, there are numerous cost pressures on the transportation budget: the *U.S. v. WA Culvert* case;[3] increased passenger railroad operating costs; a shift in license fees from the Motor Vehicle Fund to the State Patrol Highway Account; the next phase of DOL computer upgrades; development of a new tolling system; WSDOT Timekeeping system development; a general maintenance level request; and labor costs.

The State also continues to project that revenues will decline as a result of more fuel efficient engines and climate pressures to reduce our dependence on fossil fuels.

2. Parties' Positions

The State acknowledges that the cost of the parties' proposals for this small bargaining unit are not shocking—only in the hundreds of thousands of dollars. The State is not claiming inability to pay. Revenue has gone up with the decline in fuel prices. More people are buying gas and driving further. Still, argues the State, this revenue increase should not be viewed in a vacuum. It is important to consider the substantial pressures articulated by Hansen in his financial presentation.

[3] As noted in my 2014 award for these parties, in the *Culvert* case a federal court agreed with tribes that the State of Washington had the obligation to fix a list of culverts that were created by the construction of roads. These culverts adversely affected the ability of fish to get upstream and, correspondingly, tribes' ability to catch fish.

According to the State, as a responsible steward of taxpayers' money, its 3% and 1% proposal is a reasonable pay increase taking into account all of these pressures as well as the other collective bargaining agreements that will result in a cost to the State.

PNRCC stresses that gas tax revenues have increased significantly and ferry ridership is up; the June 2016 transportation forecast indicates a 24% increase in revenues for the current biennium. For the next ten years, argues the Union, total revenue is projected to be $32 billion, up by $655 million. This is in contrast to the "doom and gloom" presentation made by Hansen in this proceeding.

The Union asserts the State has more money than two years ago when the parties' were in interest arbitration, yet they have offered virtually the same proposed increase to the Union.

3. <u>Arbitrator's Findings</u>

The State's costing analysis demonstrates that the difference in cost of the parties' proposals is $253,814 or $90,046, depending upon which Union proposal is used for the calculation. Either way the cost is relatively small. Transportation revenues have substantially increased in this biennium. Even with the financial pressures facing WSDOT, I find the State has the ability to pay the wage proposals at issue.

C. <u>2016 Negotiations, Historical Evidence and Retention</u>

These 2016 negotiations were Inforzato's first biennial contract bargaining for the State. It also was Osborne's first WSF negotiations for PNRCC. The parties had their first negotiation session on March 23, 2016. They met again on April 27, May 18 and June 23, 2016. On July 15, for the first half of the day they had regular bargaining and then went into mediation as described above. Both Inforzato and Osborne characterized bargaining as a positive experience; the parties quickly established a good rapport.

From 2009, the wage history for the Union's WSF unit has been: 0%; 0%; 3% decrease; 3% decrease; 1.5% increase; 1.5% increase; 3% increase and 3% increase.

According to Union evidence, for carpenters working in Western Washington the prevailing wage is as follows: 2015/2016 - hourly wage of $40.36 with fringe benefits of $7.44 (health and security) and $5.50 (pension); 2016/2017 - hourly wage of $40.92 with fringe benefits of $7.66 and $6.15, respectively. Union Exs. 6, 7.

Osborne testified that in 2004, the WSF bargaining unit was at about 77% of the prevailing wage, but in the last twelve years it has consistently fallen from that standing. Currently, this bargaining unit is below 70% of the prevailing wage rate.

Osborne also reported that before and during negotiations, management told the Union that WSF was having some attrition problems in other bargaining units and management is concerned that it could happen in the carpenters' unit. As a result, WSF management would like its employees to have better compensation.

Although the parties made reference to retention in their argument, I find the evidence is insufficient to conclude there is a retention problem for this unit at this time.

D. Salary Survey, Comparability, and Overall Compensation

1. Fact Summary

Kamaron Durocher works for State OFM/State HR, Class and Compensation unit. Durocher prepared the State salary survey for purposes of RCW 47.64.320 (3) (e). State Exs. 6, 7. The survey covers 11 bargaining units of represented ferry employees of the State. Durocher made changes to the 2016 survey based upon feedback about it from recent arbitrations and the unions involved.

Durocher added "targeted organizations" for participation in the survey. Also, Washington State General Government was removed as a comparator. For this bargaining unit, Durocher looked for public and private shipyards engaged in similar work within the Pacific Northwest.

Ultimately, for this carpenter bargaining unit, Durocher used two participating organizations as comparators: The Port of Seattle and Puget Sound Naval Shipyard. Five organizations were invited, but only these two responded. Because of the small sample size, Durocher calculated simple averages as opposed to weighted averages for similar job classifications. The benefit data included monthly employer-paid medical, dental, and vision contributions for an employee with a spouse and two children. The amount used was not a composite rate.

The results of the 2016 survey show PNRCC employees lag behind these two comparators in average base pay and benefits by 9.6%. This calculation is based upon a "snapshot" as of January 1, 2016. The survey was completed in May of 2016, but the cut-off date for participants was January 1, 2016.[4]

According to Durocher, because of the small sample size and little data available, it is not wise to lock pay rates with this market data. Rather, it should be viewed as showing WSF carpenters are 9.6% behind these two organizations.

For purposes of this arbitration, the Union accepted the average salary minimum ($31.29/hour) and maximum ($35.17/hour) with an average of $32.87 that is used in the Employer's survey. The Union also accepted the use of the Employer's average hourly benefit calculation ($6.75) for participants.

The Union, however, did not agree to the State's average hourly benefit calculation ($8.41) for WSF carpenters because it did not consider actual individual employees. The Union also challenged the accuracy of the State's salary survey because it did not include pension benefits in its average base pay and benefit calculation.[5] The Union offered area prevailing wage information mentioned above as additional evidence of comparability and compensation.

2. <u>Parties' Positions</u>

The State stresses that its salary survey is different from that conducted for the last biennium; the State has made an effort to form the salary survey in a

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[4] In March of 2016, during negotiations, the State requested and the Union provided information for other possible comparables including: Foss Maritime, Lake Union Drydock, Puget Naval Shipyard, Vancouver Shipyards and Vigor Shipyards. The Union also helped with information about the Port of Seattle. The State did not incorporate this information into the 2016 salary survey.

[5] The State's survey included a benefit summary that described employer retirement contributions for participating employers.

way that is acceptable to the parties and to obtain as many participants as possible. The State contends that the Union did not provide new comparables in this proceeding; and the parties have agreed about much of the survey except for a few benefit calculations.

The State contends that the Union's wage evidence (Union Exhibits 6 and 7) do not establish that listed carpenter classifications are comparable shipyard carpenter positions. That is, this evidence fails to show similar work which is important for comparison purposes. According to the State, the Union's evidence should not be given much weight because it is not as detailed as the salary survey and provides limited information.

Relying upon testimony from WSF General Manager R.J. Kelly, the State contends that this workforce has the benefit of job security with little fear of layoff. Layoffs have not occurred in Kelly's tenure of 15 years with WSF—despite work slowdowns. There also is a favorable benefit package for the WSF work force.

The Union argues that PNRCC carpenter wages have continued to decline comparative to the market and even since the 2014 interest arbitration between these parties. The Union stresses that historically it has been a team player in tough economic conditions; that is, it agreed to two successive zero wage increases and then two successive 3% wage decreases during the recession. The Union is not asking for the prevailing wage as evidenced in its exhibits; rather, it is just trying to get back to where it was in 2004—77% of the area prevailing wage.

The State's own salary survey, emphasizes the Union, shows that the carpenters are about 10 percent behind the market average. The Union believes the situation is actually worse; however, accepting the 10 percent lag, the WSF carpenters still continue to lose ground relative to the market.

According to the Union, Osborne provided undisputed testimony that WSF is concerned about retention of employees. The Union argues WSF should be concerned, given that nearby comparables (such as the Port of Seattle) pay more.

3. <u>Arbitrator's Findings</u>

The State has made improvements to its salary survey in order to address concerns raised by the parties and by prior arbitrators. Still, as noted by Durocher, the survey consists of a small number of participating employers so the results must be viewed with caution. As revealed in this arbitration, one thing that would likely help is for the State to request comparable information from the Union earlier in the survey process, before any internal deadlines for inclusion of such information have passed.

That being said, the results of the 2016 salary survey are important because it shows that WSF carpenters are below the market average of two nearby comparables by 9.6%. In addition to this lag, evidence demonstrated that the Union continues to lose ground from its 2004 standing with respect to area prevailing wages.

V. Summary and Conclusion

State revenues have increased and recent revenue forecasts have been adjusted upward. The State has the ability to pay these employees the Schedule A wages proposed by either party—whether 3% and 1%; 4% and 4%, or 7% and 7%. The State's salary survey shows that WFS carpenters lag behind nearby comparators by 9.6%. The carpenters of this small bargaining unit continue to lose ground with respect to the area prevailing wage.

On the other hand, the parties still have not agreed to, or submitted, sufficient comparable information to evaluate comparability and overall compensation with complete confidence. Further, as in the 2014 arbitration, I remain mindful that the State has many financial pressures and obligations.

Considering all of the relevant statutory factors, I find the State's proposal is on the low side and the Union's proposals too much for this biennium. I find a just and fair wage to be a 7% increase spread over two years: FY 2017—4% and FY 2018—3%. I will issue an award consistent with these findings and conclusions.

In arriving at my findings and conclusions, even if not specifically mentioned, I have reviewed and considered all of the evidence, authorities and arguments submitted by the parties.

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Being mindful of the legislative purpose under RCW 47.64.005 and 47.64.006 and taking into consideration the factors of RCW 47.64.320 (3), the Arbitrator awards the following wages:

1. FY 2017: Effective July 1, 2017, the bargaining unit will receive a 4% wage increase.

2. FY 2018: Effective July 1, 2018, the bargaining unit will receive a 3% wage increase.

3. Pursuant to RCW 47.64.300(3), the parties will share equally in my fees and expenses.

Respectfully submitted,

Kathryn T. Whalen

Kathryn T. Whalen
Arbitrator
Date: September 12, 2016