

IN THE MATTER OF THE ARBITRATION

STATE OF WASHINGTON,
WASHINGTON STATE FERRIES

and

Interest Arbitration
Case 135667-I-22

PUGET SOUND METAL TRADES
Council

Appearances: For the Union: Rhonda J. Fenrich, Esq.,
Fenrich & Gallagher, P.C.

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

DECISION AND AWARD

The undersigned was mutually selected by the parties. A virtual hearing was held in the above matter on August 31 and September 1, 2022. The parties were given the opportunity to present testimony and evidence. At the close of the hearing, the parties presented closing arguments. The Arbitrator has considered the testimony, exhibits and arguments of the parties.

BACKGROUND

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

The Metal Trades Union is comprised of several Unions. They are the IBEW, IAMAW, Sheet Metal Workers, Teamsters, and the Boilermakers Union. There are roughly 75 employees in this bargaining unit. The positions they hold are Journeyman, Leadperson, Foreperson, Health and Safety Supervisor, Planner, Vessel General Foreperson, Terminal General Foreperson and Helper. These employees work in several different shops. Five of those shops are located at the Eagle Harbor Maintenance Facility. They are the Weld, Pipe, Machine, Electric and Sheet Metal. These employees are responsible for maintaining the electrical and mechanical systems on the ferry and at the terminal.

Collective bargaining agreements between the State and all the Unions are

for two years. They must begin on July 1 and end on June 30. They are negotiated in advance so the Governor can submit in the budget the costs of the Agreements. All the Unions must negotiate every biennium. Agreements must run for this biennium from July 1, 2023-June 30, 2025. Those negotiations or Arbitration Awards must be completed by October 1 of the year before so they can be submitted with the budget. The Governor then submits to the legislature the Agreements or arbitration awards for approval or in the alternative, the Governor may determine the agreements or awards due to “current economic and revenue conditions... are not feasible financially.” That occurred in 2010 at the time of the great recession.

These parties went to interest arbitration two years ago before this Arbitrator. It occurred at the height of the pandemic. 70-75% of the ferry revenues are derived from ferry fares. The Governor’s stay at home order, caused ferry ridership to plummet. The exhibits offered at that hearing showed a significant deficit facing the ferry system. Many employees were forced to take furlough days. This bargaining unit was asked to cut their pay during the 2021-2023 biennium. This Arbitrator in year 1 of the Agreement ordered a 1.9% pay cut.

The Governor and the Legislature amended the budget for the current fiscal year. The Department of Transportation Marine budget was increased from \$540.7 million to \$587.3 million. Some of the increased funds came from the Federal Government’s Covid relief fund. The State with these additional funds overturned the Awards and instead all State employees received a 3.25% wage increase this year. It also stopped all furlough days. This then is the backdrop

to the current round of negotiations for the 2023-2025 biennium. The parties resolved many issues during their negotiations. However, there were other issues that deadlocked. The Parties sought certification from PERC to have those issues handled in interest arbitration. PERC certified five issues. They are:

1. Appendix 5 Foreperson and Leadperson pay differential
2. Appendix A Rate of pay
3. Article 6 Hours of work and rates of pay
4. Article 19 Safety, Sanitation, and ventilation (footwear and safety clothing allowance).
5. Article 26 Tools (increasing tool pay)

The parties at the hearing narrowed the outstanding issues. Article 6 was no longer in issue except for rate of pay. Issues surrounding proposed changes to the language in Article 6 were dropped.

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

Wages

The Union is proposing a 15% increase on July 1, 2023, and a 10% increase commencing on July 1, 2024. The State is proposing a 4% increase the first year and a 3% increase the second year. The first factor to consider is whether the State has the “financial ability” to pay for the increase sought by the Union. The Employer costed out the proposal of the Union. A 15% wage increase would cost the State \$1.043 million the first year and the 10% increase the second year

would cost \$1.843 million. The State's proposal of a 4% and 3% increase would cost \$278,513 year one and \$495,304 the second year. That is a difference of 72,000 the first year and \$1.35 million the second year.

Revenues from fares have increased since the height of the pandemic, but it is not where the State expected it to be prior to the pandemic. The State has obtained Federal funds that were not previously budgeted and expects to continue to receive those funds for the next several years. While it has obtained Federal money in the past, it is getting more money now due to the pandemic. That money can also now be used to cover operating expenses, including wages. That was not true in the past. The increase sought by the Union represents .0071% of the total transportation budget.

State Exhibit 9 contains a forecast as to where the economy will be for fiscal years 2022-2025. It shows a steep drop in 2023, a much smaller decrease in 2024 and virtually no change in 2025. That same exhibit predicts an increase in revenue from the initial forecast to now be \$6.16 billion. That is 10.3% higher than the original forecast. The forecasted increase is Statewide and not specific to the ferry system.

Considering all the financial resources available to the ferry system, the Arbitrator finds an increase greater than 4% and 3% is financially feasible. The other statutory factors will determine how much more, if any, to award. Once that is determined, the Arbitrator will again address the question of whether such an award is feasible.

Salary Survey

The State was required by law to do a survey of other jurisdictions in the Northwest, who have workers performing the same or similar work to those in the bargaining unit. The State did the survey. The States's own witness testified that the employees in this bargaining unit were behind those in the survey. That has been consistently true. It is not a new phenomenon. Joint Exhibit 6 is that survey. The Arbitrator has compared the wages in this unit to those shown in the survey. It is true that the number of responders in some cases was very low, but there is nothing that can be done about that. Employers cannot be compelled to provide the information requested. The State, this Arbitrator and the parties must work with what they have. The survey shows in some instances bargaining unit members are as much as 20% lower than what is shown in the survey. For example, a Boilermakers maximum base wage is 31% below those responding to the survey. The starting salary for these positions were close to the wages here, but a journey person in many other jurisdictions has step increases and there are none here. Thus, this bargaining unit falls behind each year those in the survey. The same is true for an oiler, sheet metal worker and the other crafts, although to a lesser extent.

This Arbitrator noted in his Award two years ago that "the wages of this Bargaining Unit are at the low end of the scale. Under ordinary circumstances, this could be a significant factor. As has been shown, times are not ordinary." That is not true today. As has been discussed, the revenue picture is much brighter today than it was then. Both the survey and the other exhibits clearly

demonstrate that an adjustment is needed for this Employer to remain competitive. The time to start that adjustment is now.

Comparison of wages of Ferry Employees with Public and Private Employers.

The Union has provided the wages for journeypersons in the area. The average wage is \$52.86. This is compared to the wages in this bargaining unit which is \$43.24. The wages for the Seattle Building Trades vary. Some crafts pay more than are paid here, such as IBE and Cement Masons. Some crafts pay less than here, such as Laborers and Painters.

The King County Building Trades received a 3% increase compared to the 3.25% increase here. For pay range 77, which is the lowest range, the maximum hourly rate equates to \$37.38 (75.500×1.03 divided by 2080). It goes up with each step thereafter. The lowest wage for journeyperson here is \$39.31. For range 92, the starting wage is \$42.12. There are then nine more steps. At mid-point the wage is \$53.23. The starting salary is comparable but once employees move up the chart they move ahead of employees in this unit, who have no steps.

The current wages for employees in this bargaining unit go from \$33.16 to \$36.41 for the highest paid journeyperson. A Port of Seattle Journeyperson makes \$53.11. A journeyperson on the shore gang makes \$38.90, but also gets an additional \$1 and another \$2 when using certain equipment. These additional amounts were awarded by an interest arbitrator who called it a “targeted increase.”

Overall Compensation

The Statute directs the Arbitrator to consider “the overall compensation presently received by the ferry employees, including direct wage compensation, vacations, holidays and other paid excused time.” It has already been shown that these employees base wage is below the comparables. Is that also true for total compensation? It should first be noted that the Arbitrator has not been shown any major changes to the compensation packages received by any of these outside entities. Absent a showing of such changes, it is assumed when the parties negotiated their agreements over the years, they were aware of what others were receiving in the form of benefits, like health insurance or pensions. The parties here agreed to their total package having that knowledge. Therefore, it is a variance in the pattern that is important and there was no evidence there was such a change.

When the total package of the comparables is compared to the benefits here, these employees do not appear to be as far behind as they were for wages, although it is difficult to discern. Part 2 of the survey addresses total compensation. It is missing data on some of the benefits so no real conclusion can be drawn from the survey regarding total compensation. The Union exhibits also fail to shed a great deal of light on total compensation in this unit versus the comparable. Fortunately, for the reasons noted, the Arbitrator puts more weight on the wages alone than he does on the total wage package.

Cost of Living

Increases or decreases in the cost of living is a factor to consider. It has risen approximately 8% in the last year. The 4% increase offered by the State would leave these employees with less buying power than they previously had. This factor favors a larger wage increase than offered by the State.

Ability to Recruit and/or Retain Employees

There was testimony that several employees in this Bargaining Unit left for higher pay jobs. Some of those jobs were within the ferry system. There was also testimony that there currently are vacant positions that the State has had difficulty filling. The 3% and 4% offered by the State would do nothing to improve that situation. Hopefully, a larger increase will.

Findings

This Arbitrator has made clear these employees are entitled to more than the 4% and 3% offered by the State. The Union seeks a 15% and 10% increase. That is too much, and it is debatable whether the State would have the ability to pay that much of an increase. There is a need to catch up, but it cannot be done in one contract. Where they will stand two years from now when the next contract is negotiated is unknown, but for the moment the Arbitrator finds some catching up is required. He awards an 8% increase in 23-24 and a 5% increase in 24-25. This figure is roughly one-half of what the Union sought and twice as much as offered by the State. It would cost the State approximately \$240,000 more the first year than what it offered. The additional cost the second year is approximately \$440,000. Those are manageable costs. The Arbitrator finds the

State does have the ability to pay this increase based on the revenue projected. They are “feasible financially.” This increase will help this unit catch up to the shore gang. Their base wage was 8% more than paid here. While the shore gang will undoubtedly get an increase, these employees are now much closer to that counterpart.

Art 19 Section 15 Reimbursement for Footwear.

The current Agreement provides:

During the term of this Agreement, the Employer agrees to reimburse employees up to \$85 for the purchase of safety toed shoes, or at the employee’s option up to \$140 for the purchase of safety toed footwear with either a steel or composite safety toe and in accordance with applicable WSF Policy. .

The Union seeks to increase the amount to be reimbursed from \$85 to \$170, The reimbursement for safety toed footwear it wants increased from \$140 to \$300.

The Union argues the cost of footwear has increased, and the amounts currently paid do not cover the cost of the footwear. They are correct that the cost of this footwear has risen as have all costs. It is unclear when the current amounts were set in the Agreement by the parties. They are undoubtedly due for an increase from when initially agreed to by the parties. The Union proposal doubles the amount of reimbursement. That is too much. The State shows a cost of the Union proposal to be \$19,845 over the two years. While that is not a large amount of money considering the total cost of an employee, it is too big a jump. The Arbitrator will raise the soft toed shoe reimbursement to \$115 and the reimbursement for safety shoes to \$200.

Article 19. Section 13 Clothing Allowance

The Union is also seeking to raise the clothing allowance from \$130 each year to \$300. Its argument in support of the raises is similar to the argument regarding footwear. The price of work cloths has increased since the \$130 was set. It wants the amount paid to cover more of the work clothes employees must wear. It offered exhibits and testimony in support of its argument.

This Arbitrator agreed with the Union on footwear and increased the amount paid for footwear. While the Arbitrator did not give the Union all it requested, they did get a substantial increase. Admittedly, the cost to the State for those changes was not a very large part of the overall cost to the State for the employee. That is also true of this proposal. The problem, however, is that this additional cost would be coupled with the other added costs. The total cost when adding all the increases soon gets prohibitive. That is what would happen here were the Arbitrator to add more costs to the State than have already been granted. Even a smaller increase than sought would still face this problem. For that reason, the Arbitrator must reject changing the clothing allowance during this agreement.

Article 6, Section 1- Double time

The current agreement provides:

All overtime work by an employee will be paid at one and one-half times (overtime rate) the employee's straight time hourly rate of pay until a consecutive shift of 12 hours, excluding the lunch period is reached. All additional time will be paid at 2 times (double time) the straight time rate of pay until a minimum rest period of 8 hours is provided.

The Union seeks to delete the word “consecutive” from the section. Under its proposal anytime an employee works twelve hours they get double time for all additional hours. They need not be consecutive under its proposal. An employee who works 8 hours and goes home for a few hours and is then called back and works four hours would get the double time rate for all additional hours until given a rest period of 8 hours.

The Union had double time in its agreement for years, but it gave it up during a recession. It sought to get double time again in the 2017-2019 Agreement. That Agreement went to interest arbitration and Arbitrator Teather adopted the Union argument and added the proposed language as written by the Union. The Union has argued that the way it was implemented was contrary to what the Arbitrator adopted. It argues what it is proposing is what was supposed to be after the Teather Award.

The State on some occasions paid employees who worked 12 hours, but who did not work 12 consecutive hours. The Union points to that in support of its position. The State contends under the former time clock system, it did not show the actual hours that were worked, but only the total hours and that is why on occasion the State paid double time even where the hours were not consecutive. That has been corrected.

It is not insignificant that the language being contested was language drafted by the Union. It inserted the word consecutive. One of the rules of construction is ambiguous language is the responsibility of the drafter. Here, however, the Arbitrator finds this language is not ambiguous. It clearly states the hours must

be consecutive. If that was not what the Union intended, then it should have expressed its intent in clearer language when it proposed it. The language here clearly requires the work to be consecutive, and the Arbitrator is not going to change that. If that is not what was intended, it is what it got.

If the Union had been able to show the State was taking advantage of the language putting in a break just to avoid overtime, that would be an issue to address. The problem is there is no evidence this has been occurring. For these reasons the Union proposal is rejected.

AWARD

1. Effective July 1, 2023, the bargaining unit will receive an 8% wage increase.
2. Effective July 1, 2024, the bargaining unit will receive a 5% wage increase.
3. Effective July 1, 2023, the reimbursable amounts in Article 19, Section 15 shall increase to \$115 and \$200 respectively.
4. The Arbitrator is denying the Union proposal on Article 6, Section 1 (Double time) and Article 9, Section 13 (Clothing Allowance)

Dated: September 28, 2022

A handwritten signature in cursive script, appearing to read "Fredric R. Dichter", is written over a horizontal line.

Fredric R. Dichter, Arbitrator