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September 24, 2024

OPINION AND AWARD
INTEREST ARBITRATION PROCEEDINGS
PURSUANT TO REVISED CODE of WASHINGTON
(RCW) 41.80.200

In the Matter of a Dispute Between)	
)	
State of Washington Department of Corrections, Employer)	
and)	2025-2027 Collective Bargaining Agreement
Washington Federation of State Employees, Union)	
)	

Appearances:

For the Employer: Kelly Hiromi Oshiro, Assistant Attorney General
Lynn Allan, Assistant Attorney General
Office of the Washington Attorney General
PO Box 40145
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For the Union: Christopher J. Coker, Attorney
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Testifying at the Hearing

For the Employer:

Mac Pevey
Rachel Barckley-Miller
Carrie Stanley
Allesha Beaulieu
Kimberli Dewing
Robyn Williams
Allie Kohlhorst
Patrick Bracken
Dan Cowles

For the Union:

Ton Johnson
William Copland
Sam Pick
Courtney Durrah
Teresa Parsons
Sisto Campana
John Conaty

STATUTORY AND CONTRACTUAL FRAMEWORK AND PROCEDURAL BACKGROUND

The parties have a collective bargaining agreement (CBA) in place that runs through June 30, 2025. In the spring and summer of 2024, they entered into negotiations over a successor agreement with a term of July 1, 2025 – June 30, 2027. After ten negotiating sessions and three sessions with a mediator from the Washington Public Employment Relations Commission (PERC), the parties resolved all contract sections except for nine.

In accordance with Washington state statute, the parties submitted requests to WA PERC to be certified for interest arbitration on these nine issues. Both parties submitted the following issues:

Article 42 – Compensation
Appendix O – Assignment Pay
Appendix S – Classification Specific Salary Adjustments

The Employer submitted the following issue:

Appendix B – Job Classes Within DOC with Inherent Need for Flexibility

The Union submitted the following issues:

Article 25 – Commute Trip Reduction
Article 47 – Workplace Behavior
Appendix M – “CC” Salary Schedule
Appendix N - “CC” Salary Schedule
MOU – Vaccine Booster Incentive

On August 13, 2024, PERC Executive Director Michael P. Sellars certified the parties as requested. The parties selected the undersigned arbitrator to serve as the single arbitrator in this matter. A

virtual hearing was held on the Zoom platform on August 14, 15, 16, 19 and 20, 2024. The parties presented evidence through witness testimony and documents in support of their respective positions. The parties were ably represented by their advocates. The parties agreed that the arbitrator is to retain jurisdiction over interpretation of the award for thirty days after the award is issued.

During the arbitration proceedings, off-the-record discussions were held on several disputed articles. The parties succeeded in reaching tentative agreement on the following certified disputed articles:

Appendix B – Job Classes Within DOC with Inherent Need for Flexibility
Article 25 – Commute Trip Reduction
Article 47 – Workplace Behavior
MOU – Vaccine Booster Incentive

Some disputed issues within the other articles were also resolved. The following issues remain to be decided by the interest arbitrator:

Article 42 – Compensation (General Wage Increase)
Article 42.32 – Retention Bonus
Appendix S – Classification Specific Salary Adjustments
Addendum A, Section 8, Article 42.21 (D) Premium Pay

The parties made closing oral arguments on the record and the matter was submitted for decision. The decision of the arbitrator is final and binding. However, the award must first be reviewed by the State's Office of Financial Management (OFM) to determine if the award is financially feasible. If it is, the award goes to the Governor's office to be incorporated into the Governor's budget and submitted to the legislature. If it is not deemed financially feasible, the award is nullified.

Relevant Washington State Statute

RCW 41.80.200 Department of corrections-Interest arbitration for certain employees. (1) In order to maintain dedicated and uninterrupted services to the supervision of criminal offenders that are in state correctional facilities and on community supervision, it is the legislature's intent to grant certain employees of the department of corrections interest arbitration rights as an alternative means of settling disputes.

(6) (a) In making its determination, the arbitrator shall take into consideration the following factors:

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

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

(iii) Stipulations of the parties;

(iv) 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;

(v) The ability of the department of corrections to retain employees;

(vi) 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;

(vii) Changes in any of the factors listed in this subsection during the pendency of the proceedings; and

(viii) 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).

(8) (b) A decision of the arbitrator is final and binding on the parties, and may be enforced at the instance of either party, the arbitrator, or the commission in the superior court for the county where the dispute arose. However, the decision of the arbitrator is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to the compensation and fringe benefit provision of an interest arbitration award, the provisions are not binding on the state or department of corrections.

FACTS

The Employer and the Bargaining Unit: Washington State's Department of Corrections (DOC) operates prisons and community corrections in the 13th largest state in the nation, with eleven prisons and over 14,000 incarcerated individuals. The members of the WFSE are employed in the Community Corrections division. They work in Reentry Centers and a multitude of programs for paroled and probationary offenders such as Graduated Reentry and Community Parenting Alternative.

The WFSE corrections unit is a subset of a larger WFSE general government unit. Much of the WFSE corrections contract is derived from the WFSE general government contract. In 2013, the Washington legislature granted most corrections employees interest arbitration rights. Subject to interest arbitration are those aspects of the agreement that apply solely to DOC employees. As of this writing, the State is at the bargaining table with WFSE over the general government contract.

The 1,330 bargaining unit employees in the WFSE corrections unit are assigned to 31 classifications. Eleven of those classifications are in DOC only. The remaining twenty are in classifications that are also represented in other WA state government departments. Total budgeted

positions in WFSE-represented positions are 1,896. By this measure, the DOC has a 29% vacancy rate in WFSE-represented positions.¹

The single largest classification is community corrections officer 2 (CCO2), with 284 incumbents, followed by CCO3 with 204. Corrections specialist 3s (CS3s) and CS4s together have 245 total incumbents. Corrections and Custody Officer 1s, 2s and 3s have 173 incumbents among them. They are also known as “COs.”

The Union and the Employer collaborated on job descriptions for a 2024 salary survey. The key descriptions are as follows:

CCO2: This is the professional journey-level class of the class series. Manages a caseload of adult individuals that have committed criminal offenses including specialized case management for individuals that have committed sex offenses, drug offenses, parole board, interstate compact, and individuals placed under community supervision. Incumbents have full responsibility to affect arrests, search, and seizures; plan, organize, and complete assignments independently. Conduct high risk transports between governmental facilities. With an emphasis on behavioral change, uses evidence based practice in order to identify and target risk needs mitigation strategies, etc. Applies swift and certain response to a supervised individual’s violation behavior. Matches the level of supervision to the supervised individual’s risk of reoffending, based on static factors; assesses supervised individual’s criminogenic needs used in targeted treatment; and notifies local law enforcement of supervised individuals who commit new crimes. Qualifications: add required to be armed (2023 CBA), pass background, psych tests, display proficiency with defensive tactics, successfully complete required DOC law enforcement training program.

CS4: Community Response Unit (CRU): Typically assigned to Federal Fugitive and Investigational Task Forces with Federal Agencies to include FBI, ATF, DEA, USMS and county, state and city LEAs to investigate, locate and apprehend fugitives and individuals posing the greatest risk and concern to the community. These positions are fully commissioned peace officers-arming is mandatory. This position requires a BLEA or equivalent LE training and must pass an extensive background check by the federal agency of assignment. Cognitive Behavioral Intervention (CBI Facilitators/Trainers): Facilitate CBI programs, which target criminogenic needs, to higher risk individuals, providing them with opportunity to engage in cognitive self-change to develop skills needed to enhance social abilities and improve problem solving skills. With individual development in these skills, individuals may think in ways that change their actions which lead to safer communities and safer community corrections operations. Housing Specialists (ERD Housing Program): Collaborates with external partners regarding housing vouchers and finding housing resources for supervised individuals released from state prisons; identify and develop housing resources for these clients. Serves as a liaison between the housing vendors and DOC business office. Primary resource for housing placements and housing voucher for staff seeking services in the assigned geographic area of responsibility. Graduated Reentry (GRE): these positions develop and maintain a

¹ Union representative Ton Johnson stated at the hearing that the unit is “200 positions down.”

process of identifications, screening, and selection of incarcerated individuals to transfer to electronic monitoring to complete their prison sentences and required to participate in Reentry Services identified by the screening process. Positions created to support and implement SBHB 2638.

CO2: Performs security work among inmates both in adult correctional facilities and in the community. Uses advanced theory and principles of engagement to promote behavioral change. Performs secure transportation of offenders to and from the community, including supervision of incarcerated individuals performing work details in the community. Responsibilities include: assisting in controlling, directing, and monitoring the activities and movement of inmates; searching inmates and cells; patrolling and inspecting grounds, walls, corridors; inmate work areas, and cell blocks; intervening in and controlling acts of negative behavior and violence by using verbal de-escalation, control tactics, and physical force up to lethal force. Serves as a trainer, coach and mentor for Corrections and Custody Officer 1s.

Mac Pevey is assistant secretary for the community corrections division for DOC. He reports to the deputy secretary of DOC. He testified several times during the arbitration hearing and participated throughout. He stated that the community corrections division provides custody and supervision services for individuals who have received felony convictions on “two tracks.” One is individuals who have served a sentence in one of the state’s prisons and been released. The other is individuals who are initially sentenced to community supervision. These services were previously known as parole and probation, he testified.

Assistant secretary Pevey spoke to the evolving philosophy guiding the department’s work. “The space that community corrections operates within and is growing, it’s more of a holistic approach...It’s about the provision of services toward transition and reentry...We are moving far away from being solely just a punitive system,” he testified. The State of Washington is “on the forefront of community corrections practices,” he explained. He further testified as follows:

There's a lot of community interest and stakeholder interest about how we do our business and how we go about providing supervision and services to those individuals. I would say that legislatively and then through some of the external stakeholders, be it community advocacy groups or whatnot, that they have expressed a growing need to see us move more into a coaching/mentoring role to provide those services to ensure that individuals have the necessary supports and resources to be successful.

Mr. Pevey stated that shortage of staff is a “recurring theme.”

Ton Johnson is the law enforcement labor advocate for the Union. He was the chief negotiator for the Union in this round of bargaining. He testified to the complexity of WFSE members’ jobs: “Washington state has 40 different types of (sentenced individual) supervision.” He stated that the Union

has “been able to establish and maintain a very good partnership in support of the evolution of supervision that’s looked at nationally.”

Mr. Johnson expressed frustration about the State’s response to the Union’s efforts to correct the job classification system to reflect the changing duties of WFSE-represented positions, as follows:

We submitted desk audits. We worked internally to submit for a classification review. We have brought it to the table for negotiations. We have attended open forum meetings where they're looking at class analysis and review. I've worked extensively with many members of OFM to try to get alignment with that, and we’ve simply been unable to do it.

And there’s a disconnect in the classification descriptions that lead to benchmarking, and those benchmarks come back not always accurate in the salary survey and the analysis.

Mr. Johnson testified that the Union and DOC in 2023 jointly submitted a request to OFM to review the community corrections classification system. “Information came back [from OFM] saying something to the effect that it would take three to five years in order to complete the process,” Mr. Johnson stated.

The State’s Economic Forecast: In the State’s most recent economic forecast, the Executive Summary states that “the economy continues to expand although inflation remains elevated.” The report noted a revenue decrease of \$189 million from previous projections for the 2025 – 2027 biennium. Nonetheless, the Revenue Forecast Council is projecting a \$5 billion (7.5%) revenue increase during the biennium of this disputed CBA (2025 – 2027) over the current biennium (2023 – 2025). The Council is also projecting a \$5.5 billion (7.7%) revenue increase in the 2027-2029 biennium over the 2025-2027 biennium.

Consumer Price Index: Cost-of-living increases continue to be a concern in the Seattle, WA metropolitan area. The following is excerpted from June 2024 Revenue Review of the Washington State Economic and Revenue Forecast Council:

From April 2023 to April 2024, the Seattle CPI rose 4.4% compared to the 3.4% increase in the U.S. City average index. Inflation has come down since reaching a peak in June 2022, but has remained elevated so far this year. Shelter costs in both Washington and the U.S. continue to outpace topline inflation, increasing 5.9% and 5.5% respectively in April. Core inflation (excluding food and energy) remains elevated, particularly in Seattle. Seattle core CPI rose 4.9% in April compared to 3.6% for the U.S. City average.

The following chart is excerpted from Employer exhibits created for the arbitration hearing, showing the increase in CPI for the year prior to the listed dates and WFSE wage increases. It should be

noted that bargaining unit members live both inside and outside the Seattle metropolitan area. Averaging the lower average CPI figures in the U.S. cities index with the Seattle index might be the best way to judge the impact of inflation on unit members’ spending power. Members of this bargaining unit who work in King County (Seattle and vicinity) receive a 5% geographical differential.

Year	Seattle Consumer Price Index Increase	WFSE General Wage Increases
7/1/2015	1.5%	1.3%
7/1/2016	1.9%	1.8%
7/1/2017	2.7%	2.0%
7/1/2018	3.2%	2.0%
7/1/2019	2.5%	3.0%
7/1/2020	1.7%	3.0%
7/1/2021	4.7%	0
7/1/2022	7.8%	3.25%
7/1/2023	5.8%	4.0%
7/1/2024	3.3%	2.0%
1/1/2025		2.0%
Ten-year totals	35.1%	24.35

Salary Survey: The State contracted with The Segal Group to conduct a survey of benchmark classification compensation in seven western states in early 2024. The survey used twelve classifications covering 61% of WFSE-represented positions. The states surveyed were Arizona, Colorado, Montana, Nevada, New Mexico, Oregon and Utah.

Of the most populous classes, the survey found matches for CCO2 and CO2. It did not find sufficient data for CS4. The survey used a sophisticated model that accounts for differences in cost-of-living in the surveyed states. Salaries in the seven surveyed states were adjusted upward, ranging from 3% in Oregon to 21% in Montana, to account for the higher cost-of-living in Washington. Both base pay and total compensation were surveyed.

The results of the total compensation survey showed that Washington lagged the market in most benchmark classes. Nine of the eleven were below market (defined by Segal as <95% of average). Of the most populous, CCO2 was at 85% and CO2 at 89%. The survey did not find sufficient comps (three or more) for CS4, as noted above.²

² In a similar survey for the prior bargaining cycle, Segal used the CS3 class and also did not find sufficient matches.

The Union, with the assistance of its international parent union AFSCME, conducted its own compensation survey. The Union survey removed Montana and New Mexico from the comparable states, based on earlier interest arbitration decisions for DOC and its unions in which arbitrators found that the five-state survey was superior.

Unlike the Segal survey, the AFSCME survey found sufficient matches for the CS4 to be statistically relevant. The results for the salary-only portion of the survey showed the average Washington state salary 16% below the comps. Of the most populous classes, CCO2 was at 24% below the comps, CO2 was 18% behind, and CS4 was 16% behind. In a separate analysis, the AFSCME survey found that “WA State’s healthcare and retirement is comparable to other states.”

Other State Bargaining Units: As of the arbitration hearing in this matter, no other State of Washington bargaining units had reached tentative agreements on 2025-27 contracts. The undersigned arbitrator issued a decision on August 5, 2024, for the Washington State Ferries and the Inlandboatmen’s Union. The decision awarded 4% general wage increases each year of the two-year agreement and two classification-specific wage adjustments. That decision, as of this writing, had not been certified by the OFM as financially feasible.

The WFSE unit has strong historical ties to the DOC prison unit represented by Teamsters Local 117. Many key classifications are in both units, including the CO series and the CS series. The much larger Teamsters unit, including over 5,000 members, has benefited from the interest arbitration system passed by the state legislature in 2013. Based on arbitration awards from 2015 to 2020, the Teamsters unit received 29% in general wage increases, compared to 18% for the WFSE unit. Pay for individual classifications have also diverged.

Union representative Johnson testified as follows:

We have the same people working the same job classification often in the same unit that are being paid \$10,000 difference. The awards historically on the Teamsters side of the house recently have been based upon recruitment and retention issues almost exclusively, not inequities and not higher level duties and responsibilities or knowledge, skills, and abilities. So that has created significant tension amongst the employees themselves. Obviously the unions will hear about that, and it creates a different level of complexity.

In 2023, the Union and community corrections management agreed to jointly request a classification and compensation review be performed by the state’s Office of Financial Management (OFM). They submitted a letter to OFM that identifies the disparities in key classifications. As of this arbitration decision, the results of that request are still pending.

History of Interest Arbitration Awards for DOC and WFSE: The parties have relied on arbitration decisions to resolve their contract negotiations for at least the past three two-year cycles. (The parties did not open negotiations for the 2021-2023 cycle.) All three awards were deemed financially feasible by the OFM, incorporated into the Governor’s budget, and adopted by the legislature. The following chart, prepared by the undersigned arbitrator, summarizes key points in the last three decisions, highlighting pay increases for the most populous job classifications in the bargaining unit. The purpose of this chart is not to provide a comprehensive analysis of these complex awards, but merely to show the overall pattern.

Term of Agreement	Arbitrator	Date Issued	State’s Wage Proposal	Union’s Wage Proposal	Arbitrator’s Award	Notes
2017 - 2019	Luella Nelson	9/26/16	5% for CCO2s 2.5% for CCSs ³	20% for CCO2s 25% for CCSs	7.5% for CCO2s 12.5% for CCSs	The parties agreed to defer the general increase to the WFSE general government table
2019 - 2021	Luella Nelson	9/30/18	Status quo for CCO2s 5% for CCSs	15% for CCO2s 25% for CCSs	Status quo for CCO2s 5% for CCSs	The parties agreed to defer the general increase to the WFSE general government table-3% each year
2023-2025	Stanley Michelstetter	9/23/22	General wage increases of 4% on 7/1/23 and 3% on 7/1/24 Status quo for CCO2s Status quo for CCSs	General wage increases of 15% on 7/1/23 and 15% on 7/1/24 25% for CCO2s 12.5% for CCSs	General wage increases of 4% on 7/1/23, 2% on 7/1/24 and 2% on 1/1/25 5% over the life of the CBA for CCO2s	

³ Now known as CSs.

					7.5% over the life of the CBA for CCSs	
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The Employer’s Proposal

The following is the DOC proposal on disputed issues submitted to the arbitrator for decision.

- 1) 2% wage increase effective July 1, 2025;**
- 2) 1% wage increase effective July 1, 2026;**
- 3) Classification Specific Increases, Appendix S – (by proposed range increases - each range is approximately 2.5%)**
 - a. Community Corrections Officer 1 – 2**
 - b. Community Corrections Officer 2 – 2**
 - c. Community Corrections Officer 3 – 3**
 - d. Cook Series – 2**
 - e. Food Services Manager Series – 2**
 - f. Maintenance Mechanic Series – 2**
 - g. Secretary Senior allocated to Admin Assistant 2 – 2**
 - h. Secretary Lead allocated to Admin Assistant 3 – 3**
 - i. Secretary Supervisor allocated to Admin Assistant 4 – 4**
- 4) Essential employee pay – 3% premium to qualified unit members while deployed to prisons**

Rachel Barckley-Miller was chief negotiator for the State at this bargaining table. She stated that the Employer based its compensation proposals on the salary survey, recruitment and retention, and equity issues in formulating its proposal. She stated that the State’s proposal for the CCOs is intended to raise them to the same level as the CSs because there are “inequities between those classifications.”

As for the Union’s proposal, “we weren't really able to narrow down what the Union’s highest priorities were for those 23 targeted increases, which is why we didn’t accept their proposal as passed,” she testified.

Ms. Barckley-Miller stated that the secretary series statewide is being abolished and those positions are being reallocated to the administrative assistant series, with a resulting raise. The State’s proposals for the cooks, food service managers, and maintenance mechanics were intended to bring up the “lowest-paid positions.”

She also testified on the issue of prison deployment “essential” pay. It was awarded by the arbitrator in the last bargaining cycle. Since the provision involved community corrections employees temporarily working in the prisons, the implementation required a separate MOU with Teamsters Local 117. About half the eligible unit members applied for, received the training for, and received the 3% premium pay for all hours worked. Since 2022, no deployments have taken place. Hence, the State proposes to continue the premium pay but apply it only to hours worked in the prisons.

The Employer costed the Union’s economic proposal at \$179 million for the two years. It costed its own proposal at \$16 million. The cost of providing a 1% pay increase (including salary-driven benefits) in 2025 is about \$1.7 million.

The Union’s Proposal

The following is the WFSE proposal on disputed issues submitted to the arbitrator for decision.

- 1) **5% wage increase effective July 1, 2025;**
- 2) **5% wage increase effective July 1, 2026;**
- 3) **Classification Specific Increases, Appendix S – (by proposed range increases - each range is approximately 2.5%)**
 - a. **Administrative Assistant 2, 3 and 4 – 10**
 - b. **Corrections Specialist 3 and 4 – 5**
 - c. **Construction & Maintenance Project Specialist Series – 10**
 - d. **Correctional Records Technician Series – 6**
 - e. **Corrections & Custody Officer 2 – 2**
 - f. **Corrections & Custody Officer 3 – 4**
 - g. **Corrections Mental Health Counselor 2 – 9**
 - h. **Corrections Mental Health Counselor 3 – 5**
 - i. **Food Services Manager Series – 9**
 - j. **Human Resource Consultant 1 – 4**
 - k. **Human Resource Consultant 2 – 5**
 - l. **Human Resource Consultant 3 & 4 – 1**
 - m. **Maintenance Mechanic Series – 6**
 - n. **Office Assistant, Support, Manager and Secretary Series – 12**
 - o. **Community Corrections Assistant Series – 10**
 - p. **Community Corrections Officer 1 – 5**
 - q. **Community Corrections Officer 2 – 10**
 - r. **Community Corrections Officer 3 & 4 – 13**
 - s. **Correctional Hearings Office 3 & 4 – 15**
 - t. **Cook 1 – 8**
 - u. **Cook 2 – 13**
 - v. **Cook 3 - 12**
- 4) **Lump sum bonus of \$2,000 per unit member on 7/1/25**

5) Essential Employee pay - Extend the MOU paying trained and qualified unit members a 3% annual bonus for all hours worked

Teresa Parsons is a labor advocate for the Union and serves as its classification and compensation specialist. She helped prepare the Union's Appendix S proposal. She did so by reviewing the comp surveys, the Teamsters contract with DOC, talking with WFSE community corrections members, and reviewing position turnover data.

Union lead negotiator Johnson emphasized the gap between the department's philosophy and the pay for WFSE-represented positions, as follows:

You've already heard a lot of testimony about how progressive the Department of Corrections is. Our concern is that progressive nature, which requires additional work and skills at a higher level, more knowledge, skills, and ability, aren't reflected in... the classification specifications. So there's a lag. That information hasn't caught up. It's that information that then...is used to benchmark those different classifications for that comparative analysis to be completed around salary surveys. That's one of the biggest issues and challenges that...we face. OFM has a monopoly on classification. It's their exclusive purview. And despite our efforts -- and I'm happy to articulate the efforts that we've taken to try to address what we perceive as inaccurate or a lack thereof information in relation to those specifications that drag the analysis down in terms of a true apples-to-apples comparison.

Mr. Johnson stated that the Union's proposal for 5% and 5% general wage increases was based largely on CPI. He defended the Union's proposal to maintain the 3% essential pay premium, analogizing it to a "bullpen" for prison work.

EMPLOYER'S POSITION

The Employer rejects the idea of comparing the WFSE unit to the Teamsters unit. "Different bargaining units do have different communities of interest and Unions must have the ability to attempt to negotiate independent contracts for their employees and to not be constrained by a deal that was previously negotiated with a different Union," the Employer states in closing argument. "Discrepancies across unions is not a factor that OFM is authorized to take into consideration when setting wages."

On the essential pay MOU, the Employer contends that it is obsolete. "Currently there's no need for Federation members to work in the prisons and they are not doing so, but certainly, if an emergency situation were to arise the State wants to account for that."

The State defends its selection of classes for targeted increases. "There was a lot of thought put into these job classes. It was based on the classes that are identified as needing some additional

recruitment or as having more recruitment and retention issues and also on those job classes that were identified as lagging within the State salary survey,” the Employer asserts. “For the CCO series, there is a goal to bring them more in line with the CS series, which is something that the Department has identified as an area of need.”

“It’s respectfully requested that the arbitrator choose the State’s economic proposals because they are financially reasonable and because they are based on retention and recruitment issues that were identified by the State,” the Employer argues. “It is not to the benefit of anyone for an award to be given that will ultimately be found to be financially infeasible by the Office of Financial Management and that is ultimately why the State’s proposal is reasonable and why the State is requesting that it be adopted.”

UNION’S POSITION

The Union emphasizes the disparity between WFSE salaries and Teamsters salaries. “We now have...identically situated employees working in identical jobs under identical job descriptions doing the identical work, sometimes in the same location and... Federation members are making \$10,000 less,” the Union states in its closing argument. “That creates a problem... The strife that it creates with the management folks in DOC trying to correct this...disparity. It creates strife in the Union world.”

“We’ve been dealing with, for the better part of a decade,” the Union argues “an esoteric premise known as the ‘prison premium.’ ...There needs to be a...community corrections catch-up...That is the interest of the Union here in no uncertain terms... We need to get a path towards that process and we’re asking you to do that.”

“The general wage increase, the Appendix S increases or range increases, the \$2,000 retention, as well as the 3 percent essential: while we understand it might be difficult for the arbitrator to award those in full, we’re asking the arbitrator to start the process and start the ball rolling and the correct decision to get us to...a catch-up.”

ANALYSIS of STATUTORY FACTORS

RCW 41.80.200 requires that that an arbitrator consider the following statutory factors in rendering a decision in an interest arbitration dispute between the Department of Corrections and one of its unions. As detailed below, not all the factors are relevant to each issue in the instant dispute. Under the catch-all clause under section 6(a) (viii), based on the parties’ presentations, the undersigned arbitrator has identified the cost of living, internal comparisons, and past agreements as factors that are normally considered.

1) Financial Ability: The Employer, in this instance, is not making the argument that it cannot afford the Union’s proposal. It is simply contending that, given the competing priorities facing the state, it would not be prudent to give a pay increase of the magnitude proposed by WFSE.

In the State’s most recent economic forecast, the Executive Summary states that “the economy continues to expand although inflation remains elevated.” The report noted a revenue decrease of \$189 million from previous projections for the 2025 – 2027 biennium. Nonetheless, the Revenue Forecast Council is projecting a \$5 billion (7.5%) revenue increase during the biennium of this disputed CBA (2025 – 2027) over the current biennium (2023 – 2025). The Council is also projecting a \$5.5 billion (7.7%) revenue increase in the 2027-2029 biennium over the 2025-2027 biennium.

The record is clear that revenue projections for the State of Washington general government are trending upward. The State can afford to provide a contract with pay increases that will help it achieve its mission of fulfilling its mandate to provide a modern, humane and efficient corrections system. Within the projected financial constraints, the Employer has the means to pay for a CBA that is based on increases in the cost of living, as well as additional targeted increases designed to bring the State into better alignment with the market.

2) Constitutional and Statutory Authority of the Employer: It is not clear what this factor entails. The parties did not emphasize it in their presentations. It may mean the obvious – that the arbitrator’s decision is not binding on the Governor or the legislature. Nothing in this arbitration award undermines or conflicts with the Employer’s authority.

3) Stipulations of the parties: The parties’ tentative agreements, reached prior to and during the arbitration process, are their stipulations in this instance.

4) Comparisons of wages, hours, benefits, and conditions of employment with employees in other states: The salaries paid by the DOC tend to lag the market, even based on the Employer’s own survey. In many key classes, the lag is considerably greater than the guideline of 5% under market set by the Employer’s survey consultant.

Compensation survey comparisons are not an exact science. One built-in factor that makes comparisons difficult is time displacement. The survey, by statutory necessity, is conducted in early January 2024 for increases that will not go into effect until July 2025. The comparison market is constantly evolving as CBAs are negotiated in unionized states and Governors and legislatures set salaries in nonunion states.

Job description comparisons are also inexact. The parties even disagreed about whether appropriate matches existed for the key classification of CS4.

In the instant case, no evidence emerged that the DOC is losing WFSE-represented employees to the surveyed competitors. On the other hand, the 70% ratio of filled positions to budgeted positions is concerning.

The arbitrator's takeaway from this complex set of factors is that key segments of the bargaining unit lag market wages. The Employer's proposal is not adequate to prevent a further erosion of market standing. A total of 3% over two years, plus a significant increase for the CCOs, as proposed by the Employer, will not come close to reversing the negative trend.

The Union's wage proposal, during a time of modest revenue growth and strong competing interests for state funding, is also way off the mark. The undersigned arbitrator's decision attempts to balance the reality of the market lag with the state's economic reality.

5) The ability of the department of corrections to retain employees: Another highly significant factor in assessing the import of market surveys is recruitment and retention. If the Employer is having difficulty filling positions and is losing trained employees in lateral transfers to rival employers, a salary lag may be to blame. Other less tangible factors, such as working conditions, may also factor in. In the instant case, the loss of employees to rival employers was presented primarily anecdotally, not statistically.

6) Changes in any of the foregoing circumstances during the arbitration proceeding: No changes to the statutory factors during the arbitration proceeding were in evidence.

7) Overall compensation received: Healthcare and retirement benefits are outside the purview of this interest arbitration proceeding. The Union, in any case, conceded that the benefits provided by the employer are in line with those offered by comparable states.

8) Other factors that are normally or traditionally taken into consideration:

a) Cost of living: Over the last ten years, WFSE DOC wages have not kept pace with inflation. Beginning in 2021, wages fell behind during the COVID pandemic. The wage proposal presented by the State runs the risk of the bargaining unit wages falling back below the inflationary trend. While the Seattle CPI is moderating, it probably will exceed 3% per year over the next two years.

b) Comparison with other DOC collective bargaining agreements: While this is not a factor specifically identified in the statute, it is most certainly a factor "normally or traditionally" considered in labor relations. In that sense, the undersigned arbitrator disagrees with the State's position that the Teamsters Local 117 contract is irrelevant. It is true that each union (and its management counterpart) negotiates its own agreement and makes tradeoffs that may not be quantifiable. But two contracts as closely linked as the WFSE and Teamsters in DOC will inevitably and properly be compared.

The reasons the intra-department comparison is relevant are numerous. For one, signing a more expensive outlier contract with one group can undermine the State's arguments about "ability to pay" in the other group's contract. Overlapping, if not identical, job duties for disparately compensated employees is also a prima facie problem. Pay differences can be, in part, justified by less tangible factors such as employee safety in a prison setting. But the pay disparities must be closely scrutinized to determine if they are proportionate to the differences in working conditions.

It was heartening to learn during the arbitration proceeding that the community corrections division and its union partner are taking steps to ask OFM to evaluate the key WFSE positions that are unique to the DOC. This arbitration award is a stopgap until that process is completed and can bear fruit.

c) **Past Collective Bargaining Agreements:** Interest arbitrators often use past agreements reached by the parties as guidance for their ordered decisions. In the instant case, the parties have no recent history of reaching agreements. Evidence in the record shows that the parties have resorted to interest arbitrators to resolve disputed issues in all recent bargaining cycles. A typical pattern in recent years has been a decision rendered by the interest arbitrator that was, on wages, somewhat higher than the employer's offer but considerably lower than the union's proposal. For example, Arbitrator Nelson's award for the 2017-2019 biennium ordered increases for the CCO2s and the CCSs (now known as CSs) that were 2.5% and 10% higher, respectively, than the Employer's offer. No evidence was in the record that OFM rejected these ordered increases. Arbitrator Nelson's award was 12.5% lower, in the cases of both classifications, than the Union's proposal.

A review of recent interest arbitration awards shows that the Employer's proposal was consistently well below the maximum it was willing to accept. In recent years, the OFM has deemed financially feasible and incorporated into the Governor's budget contract terms that were more costly than those the Employer had proposed to the arbitrator. This pattern makes the undersigned arbitrator optimistic that the OFM will find the award outlined below financially feasible, an outcome that will be beneficial to both parties.

DISCUSSION AND DECISIONS BY ISSUE

In large part due to the parties' reliance on the arbitrator to make bargaining compromises, the parties found themselves far apart on compensation. The following is a summary of the undersigned

arbitrator's analysis of the parties' proposals measured against the statutory factors, followed by the arbitrator's decision on each issue.

Article 42 – Compensation (General Wage Increase) – A 4% annual wage increase will be, in essence, a hold-steady contract that will balance fiscal realities with the need to keep wages on pace with the cost of living. The following statutory factors are determinative in the Article 42 dispute: financial ability to pay, comparison to employees in other states, recruitment and retention, overall compensation received, and other factors normally taken into consideration (cost-of-living, comparison with other state bargaining units, and past CBAs). **Based on these factors, the arbitrator awards a 4% increase each of the two years of the CBA, effective on July 1, 2025, and July 1, 2026.**

Article 42.32 – Retention Bonus – The “retention bonus” dates from the onset of the pandemic. Bonus money can be better utilized for ongoing pay increases. Bonuses to existing employees do not assist the Employer in recruiting new employees. For this reason, the arbitration award does not adopt the Union's proposal of a \$2,000 bonus.

The following statutory factors are determinative in the Article 42.32 dispute: financial ability to pay, recruitment and retention, and other factors normally taken into consideration (comparison with other state bargaining units, and past CBAs). **Based on these factors, the Employer's proposal of no bonus is adopted.**

Appendix S – Classification Specific Salary Adjustments –On the critical topic of classification-specific increases, extreme opening positions have been presented to the arbitrator as “final” proposals. The Employer's proposal, on the one hand, does not address market lags for key community corrections classifications. The Union's proposal, on the other hand, presents a far-too-costly package of class-specific proposals that resembles an initial, or “educational,” proposal. Both parties, apparently, were counting on the interest arbitrator to make Solomon-like decisions on equity adjustments, cobbling together a package acceptable to both the WFSE and the department.

This arbitration award will not make those consequential class-specific decisions. They are better left to the parties. Even in the context of a statutory system permitting interest arbitration, a negotiated agreement reached by the parties is superior to anything an arbitrator can award. The interest arbitrator is a visitor, whereas the parties “live in” the CBA. They work with the contract day after day. They understand its origins, history, and interpretations. They understand the nuances of job classifications. They know which positions are harder to fill and keep filled. No amount of testimony during an arbitration hearing can substitute for the in-depth knowledge of the parties.

Instead, in the award detailed below, the arbitrator orders a funding pool for classification-specific increases that the parties are to utilize for time-limited negotiations. If the parties do not reach agreement, the default will be additional across-the-board increases for the entire bargaining unit. In

either case, the cost to the Employer will be the same. The cost of 2% per year is set by this award. OFM can cost the combination of the general wage increases and the additional 2% of classification increases (or general wage increases absent an agreement) as a 6% per year total increase. The undersigned arbitrator finds that an overall 6% total cost per year is necessary and sustainable.

The parties' experts – those who designed and conducted the surveys, those who analyzed the job descriptions and duties, those who crafted Appendix S proposals – have laid the groundwork for successful Appendix S negotiations. This arbitration decision provides the financial framework for reaching the necessary compromises.

If the parties can agree on a basket of class-specific increases, it will help reset their relationship. It will lay a foundation for resolving other important labor-management issues looming on their horizons.

The arbitrator's decision to award 2% per year for classification-specific increases is based on the same factors identified for the general wage increase: financial ability to pay, comparison to employees in other states, recruitment and retention, overall compensation received, and other factors normally taken into consideration (cost-of-living, comparison with other state bargaining units, and past CBAs).

All classification-specific proposals made by the Employer are adopted. In addition, a pool of 2% per year is awarded. The parties are to meet and confer as specified below to negotiate classification-specific increases using the 2% funds. Classifications for which the Employer has already made range proposals will also be eligible for additional increases. The parties may choose to utilize a portion of the 2% for across-the-board increases and a portion for classification-specific increases. If no agreement is reached, the 2% will be applied as additional across-the-board increases each year of the two-year agreement.

Addendum A, Section 8, Article 42.21 (D) Premium Pay – The parties previously negotiated special compensation provisions stemming from the COVID pandemic. One was a provision that allowed community corrections employees to receive special training and be eligible for deployment into state prisons as needed. In exchange, employees received a 3% differential for all hours worked. Approximately half of the individuals eligible for this differential signed up for it.

Evidence in the hearing is that the provision is no longer being utilized on a regular basis. No deployment has taken place since 2022. The Employer has offered to continue the differential but pay it only during actual deployment hours. The Union seeks to continue it as currently written.

Given the apparently temporary and infrequent nature of the need for this provision, the arbitrator adopts the Employer's proposal. Funds that were previously spent on this differential are better spent addressing wage disparities.

The following statutory factors are determinative in the Article 42.21 dispute: financial ability to pay, recruitment and retention, and other factors normally taken into consideration (comparison with other

state bargaining units, and past CBAs). Based on these factors, the Employer's proposal to pay the 3% differential only during hours of actual prison deployment is adopted.

General Observations and Recommendations

The Prison Premium: In this bargaining cycle, the undersigned arbitrator has had the privilege of serving as the arbitrator for both the Teamsters and WFSE contracts with DOC. Prior selected neutrals have served as arbitrator for one or the other, but not both. The dual selection has provided this arbitrator the unique opportunity to hear from all sides their perspectives on the chief issue that divides the two unions: the "prison premium."

The prison premium refers to the pay differential between same or similar classifications of employees working inside and outside the prison walls. Historically, for reasons primarily stemming from interest arbitrators' awards since the interest arbitration system was instituted by the state legislature in 2013, pay for the Teamster-represented classifications in the prisons has significantly outpaced the WFSE-represented classifications outside the prisons.

Based on arbitration awards from 2015 to 2020, the Teamsters unit received 29% in general wage increases, compared to 18% for the WFSE unit. Pay rates for individual classifications have also diverged. CO2s in the prisons are paid over \$4,000 more annually than CO2s in community corrections. CS3s in the prisons make \$12,000 more annually than WFSE-represented CS3s.

Both unions have made cogent and impassioned presentations about the prison premium. The WFSE, for its part, advocates for doing away with the differential. It cites the new DOC sentencing and custody philosophies and the dangers that its members face every day on the job. The Teamsters just as strongly argues for maintaining, if not enhancing, the premium. It cites the historical bargaining record, and the stress and danger of working in the sometimes-violent prison environment.

The takeaway of this arbitrator is that both groups perform essential work to keep society safe. Unit members represented by both unions face stresses and uncertainties about their personal safety every day they swipe a timecard. This is true whether they monitor a cellblock or seek to apprehend a violent sentenced individual who has violated their sentence terms.

The prison premium is, ultimately, a product of the labor market. It is not a sign that one or the other job is more important or more dangerous than the other. The market, over time, can shift, and the premium may grow or shrink. Presently, the market assigns a premium to employees who work within prison walls and wires.

Both unions did a splendid job of advocating for their members in their respective arbitration proceedings. They made the strongest possible cases for the value of their members' work, as they should. The arbitration decisions in both cases reflect the strength of that advocacy.

When people compare the Teamsters and WFSE awards, as they no doubt will, they will find that the basic structure of the economic package in both decisions is the same. These awards do not erode the prison premium, nor do they expand the premium. While the market for these corrections positions is complex and varied, in general both groups lag the market in key classes by moderate amounts.

These awards also provide the parties with the identical mechanism to work on classification-specific adjustments. Both parties have a pool of 2% per year of the agreement at their disposal to negotiate range adjustments. These adjustments might result in a modification of the prison premium differential in some classifications. That is up to DOC and its partner unions. The unions and DOC also have other means, such as close analysis of job descriptions compared to actual duties, to address inequities.

A Recommendation for “Final Offer” Rules in Future Interest Arbitrations: As a general matter, the undersigned arbitrator recommends that, in future bargaining cycles, the parties voluntarily adopt a ground rule that the arbitrator must choose one side or the other’s proposal on each issue in dispute. Such a ground rule would become a “stipulation of the parties” under RCW 41.80.200 and hence would be binding on the interest arbitrator.

The effect of this ground rule would be to encourage the parties to make final offers that are more in line with what they believe an arbitrator might award. By doing so, they would tend to move closer to each other in their offers and would be more likely to reach an agreement without an arbitrator’s intervention. Such a ground rule, sometimes called “baseball” style arbitration, might serve to pause the arbitration treadmill the parties find themselves on, foster more successful negotiations, and improve their overall labor-management relationship.

AWARD

- 1) Effective July 1, 2025, all bargaining unit wage rates are to be increased by 4%.
- 2) Effective July 1, 2026, all bargaining unit wage rates are to be increased by 4%.
- 3) As soon as feasible after January 1, 2025, the parties will meet to determine the current number of employees in each classification for which the Union has proposed increases under Appendix S that have not been agreed to or proposed by the Employer. The parties will also jointly calculate the cost of providing the entire bargaining unit a 2% increase on that date.
- 4) The parties will then meet and confer over the Union's Appendix S proposals and attempt to reach agreement on a package of increases with a total cost of 2% (based on the January 1 joint calculation) to be implemented on July 1, 2025, and an additional 2% to be implemented on July 1, 2026.
- 5) The parties may, by mutual agreement, utilize a portion of the 2% each year for appendix S increases and a portion for general wage increases.
- 6) The parties will conclude the meet and confer session no later than March 31, 2025. If they fail to reach agreement on 2025 Appendix S increases, an additional 2% wage increase will be implemented for the entire bargaining unit on July 1, 2025. If they fail to reach agreement on 2026 Appendix S increases, an additional 2% wage increase will be implemented for the entire bargaining unit on July 1, 2026.
- 7) The Employer's proposal on prison deployment pay is adopted.
- 8) All other contract provisions are current contract language or as previously agreed to by the parties.
- 9) The arbitrator retains jurisdiction for thirty days after issuance of the award for the purpose of award interpretation.



Paul D. Roose, Arbitrator

Date: September 24, 2024