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TEAMSTERS LOCAL UNION NO. 117,)
) PERC CASE NUMBERS:
vs.)
) 26673-I-14-0659
DEPARTMENT OF CORRECTIONS.) 26580-M-14-7894

INTEREST ARBITRATION

2015-1017 COLLECTIVE BARGAINING AGREEMENT

Teamsters File No. 1082-2749

14674 Interurban Avenue S., South Conference Room
Tukwila, Washington
AUGUST 28, 2014
2:05 p.m.

ARBITRATOR: HOWELL L. LANKFORD
Arbitration Services, Inc.
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Milwaukie, Oregon 97269-0331

REPORTED BY: Karen M. Grant, CCR No. 2155
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1 ARBITRATOR: We're on the record at just
2 after 2:00 on the 28th of August in 2014, once again
3 continuing and finally concluding IBT 117 and the
4 Washington Department of Corrections, the Interest
5 Arbitration proceeding for the 1915/1917 Collective
6 Bargaining Agreement. The parties are present as
7 previously.
8 And all we have left today is closing
9 arguments, which the parties have kindly agreed to do
10 orally, in light of the pressing contractual deadline
11 for the issuance of the award in this case, and we have
12 agreed -- they have agreed that Dan is going to go first
13 on behalf of the Union.
14 MR. SWEDLOW: Thank you, Mr. Arbitrator.
15 So, right off the bat, it's important to
16 remember why we just sat through seven days of formal
17 testimony and flipped through all those exhibit
18 notebooks with the complicated D-rings. We did that
19 because the DOC employees are not allowed to strike.
20 Otherwise, with a 98 percent rejection vote, we would
21 have been picketing the prisons across the State and we
22 would have been sitting outside around burn barrels
23 instead of here around this conference table in Tukwila.
24 That kind of overwhelming rejection, which is
25 the highest voter turnout in DOC's history, is

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1 (Pages 945 to 948)

1 unmistakable evidence of widespread discontent with the
 2 State's last, best, and final offer. But the workers in
 3 the State prison system can't take that discontent out
 4 onto a picket line, so instead they sent us to plead
 5 their case and convince you that they deserve better
 6 than the State's offer.

7 The State's offer, three percent, that
 8 three-percent increase doesn't even come close to what
 9 this group of workers deserves. Their actual current
 10 wages have been significantly reduced compared to what
 11 they once were at DOC. We know that they haven't had
 12 any raises at all since 2008, we know that there was a
 13 three-percent wage reduction that lasted for two years,
 14 and we also know that the cost of living, as measured by
 15 the CPI increases, has decimated their inflation-
 16 adjusted wages over the past decade by 11 to 12 percent.
 17 The testimony of Will Aitchison on this issue was
 18 undisputed. The Employer didn't even try. And you can
 19 find that analysis in Union 20.

20 That 11 to 12 percent is then compounded by
 21 the, again, undisputed impact of the increasing employee
 22 premium share during that same period, which is at Union
 23 Exhibit 22. So, taken together, this represents a total
 24 loss of 13 percent since 2008, so the State's proposal
 25 for a three-percent wage increase is essentially leaving

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1 of heightened vigilance. That takes a toll over the
 2 course of a career; that takes a toll over the course of
 3 lifetime.

4 We heard compelling testimony about these
 5 issues from rank-and-file witnesses. We heard from
 6 Michelle Alejo and Alicia St. John about how much more
 7 stressful and difficult it is to work in a prison, even
 8 when compared to doing that same job at another state
 9 institution, like Western State Hospital.

10 We heard incredibly compelling testimony from
 11 Sergeant Eric Smith about the traumatic working
 12 environment and the devastating impact that work can and
 13 does have on correction workers' personal lives. He
 14 lost his first wife because he couldn't talk about work
 15 with her, and he lost his second wife because she was
 16 also a corrections worker, and they couldn't get away
 17 from it. Eric's experiences are not unique. This work
 18 is unbelievably difficult and dangerous and stressful,
 19 and it takes a toll on the people who do it. It's
 20 impossible to deny that fact, and I'm sure that's why
 21 the State didn't even try.

22 The 1.3 percent doesn't even begin to
 23 compensate for that kind of toxic environment. It
 24 deserves recognition. Now, like combat and hazard pay,
 25 it doesn't fix the problem, it doesn't fix the

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1 this group of employees with nothing more than a ten-
 2 percent loss. That's probably why the proposal was so
 3 soundly rejected by the bargaining unit. It just
 4 doesn't come close to making up for the losses that
 5 they've incurred.

6 Ten-percent prison premium is justified. And
 7 Michelle Woodrow, the Union's director of law
 8 enforcement and corrections, testified that the number
 9 one priority for this bargaining unit is to increase
 10 what we've been referring to as the prison premium from
 11 1.3 percent to 10 percent, and to eliminate the device
 12 of geopay. And that 1.3 percent has been eroded even
 13 further, because it's recently been given also to
 14 members of the federation, who actually don't work
 15 inside the prisons. But working inside of a prison
 16 environment is significantly different than other jobs.

17 We heard testimony from Dr. Suzanne Best, a
 18 whole host of statistical data that paints a very ugly
 19 picture of the mental and physical health impacts of
 20 working in a prison environment. Now, I'm not going to
 21 take a lot of time to go back over the details. It's
 22 all in her report and it's in the presentation, which is
 23 in the record. But it's clear and uncontested that
 24 corrections workers endure an incredibly difficult and
 25 dangerous workplace, where they live in a constant state

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1 underlying trauma and stressors of the job, but it goes
 2 a long way towards making workers feel appreciated, and
 3 it helps pay the bills, which certainly alleviates some
 4 stress.

5 Now, we anticipate an argument from the
 6 Employer that the Union hasn't introduced any evidence
 7 of other jurisdictions where there's something like a
 8 prison premium, but that's because money is already
 9 there. It's inherent in the comparability data itself.
 10 Those other jurisdictions are simply paid more for the
 11 same work.

12 So let's take a closer look at the external
 13 comps. Now, we have several areas of disagreement about
 14 the external comps, and I want to talk about those. But
 15 at the outset, it's worth noting that no matter how you
 16 measure it, no matter what methodology you use, nearly
 17 all the positions in this bargaining unit are far behind
 18 the comps. The issue, really, is just how far behind
 19 are they.

20 So these five issues, five areas where we
 21 disagree: First, we have a disagreement over which
 22 jurisdiction to use. Second, whether to compare top to
 23 top or top to mid. We have a disagreement -- I'll slow
 24 down. So we have which jurisdiction to use, number one.
 25 Number two, whether to compare top to top or top to mid.

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2 (Pages 949 to 952)

<p>1 Let me know when you're ready so I --</p> <p>2 ARBITRATOR: Go ahead.</p> <p>3 MR. SWEDLOW: Okay. Third issue is total</p> <p>4 comp vs. wages only; fourth is how to handle cost of</p> <p>5 living, and then the last is what to do about the</p> <p>6 geopay.</p> <p>7 So, turning naturally to number one, which</p> <p>8 jurisdiction to use, the State's analysis that they're</p> <p>9 presenting is internally inconsistent with respect to</p> <p>10 the job classifications that are statewide, in other</p> <p>11 words, not unique to the Department of Corrections. The</p> <p>12 State, in its 2010 and 2014 Total Compensation Surveys,</p> <p>13 used not just other states but also private and public</p> <p>14 sector employers in Washington, which, as Scott Frakes</p> <p>15 testified and acknowledged, are the real labor</p> <p>16 competitors with DOC.</p> <p>17 For example, we heard from Shaun Vaneaton, who</p> <p>18 is a great previous DOC employee, with 11 years of</p> <p>19 seniority, and he left a good bid position and a job he</p> <p>20 liked for the Monroe Police Department, where he makes</p> <p>21 more money as a police recruit trainee on injury status.</p> <p>22 We also heard from Ian Williams, also from Monroe, who</p> <p>23 joined many of his previous co-workers at the railroad,</p> <p>24 simply to make more money. That's where people actually</p> <p>25 go when they leave DOC. They don't go to work for</p>	<p>1 use different methodologies for different</p> <p>2 classifications within the same bargaining unit. All it</p> <p>3 does it create further rifts and divisions, because</p> <p>4 people's wage compensation structure is essentially</p> <p>5 being measured by different rulers. The Union didn't</p> <p>6 dispute the 2014 Total Comp Survey. That's now really</p> <p>7 the only evidence in the record.</p> <p>8 And given that there's no ruler, no way to</p> <p>9 measure the non-DOC specific classifications, absent</p> <p>10 consideration of in-state data, because that's all</p> <p>11 that's there, it's really important that you consider</p> <p>12 the data submitted by the Union that includes in-state</p> <p>13 comps for the whole bargaining unit, and that's found in</p> <p>14 Tedesco's -- the Tedesco law firm work at Union Exhibit</p> <p>15 41. It's really the only way to compare apples to</p> <p>16 apples, which is an important part of an interest</p> <p>17 arbitration process.</p> <p>18 I want to talk briefly about, very briefly,</p> <p>19 about the top-to-top vs. top-to-mid issue. The State</p> <p>20 has proposed that the arbitrator compare Step L, which</p> <p>21 is the top step of the DOC pay range, absent the Step M</p> <p>22 longevity step, with the midrange of the comparable</p> <p>23 jurisdictions. We submit there is no arbitral authority</p> <p>24 for that kind of approach. Again, Arbitrator should be</p> <p>25 comparing apples to apples. You heard Anil Karia's</p>
<p style="text-align: center;">Page 953</p> <p>1 Arizona, Colorado, Utah, Oregon Corrections. They go to</p> <p>2 local employers.</p> <p>3 And the point, though, is that the different</p> <p>4 methodology leads to dramatically different results.</p> <p>5 When you include the in-state employers, especially</p> <p>6 county, especially county corrections, it shows a much</p> <p>7 deeper deficiency. This can be seen by comparing Union</p> <p>8 Exhibit 54, which is the end of analysis for the</p> <p>9 non-DOC-specific classifications, and if you compare</p> <p>10 that to Union Exhibit 71, which is the end of the</p> <p>11 analysis for the DOC classifications, there are some</p> <p>12 classifications that you find in common on both lists.</p> <p>13 For example, if you look at the electronics</p> <p>14 technician, which shows up on both lists, under the</p> <p>15 State's 2014 survey, which included the in-state comps,</p> <p>16 the electronic technician was 13 ranges, which is</p> <p>17 32-and-a-half percent behind. But when you only do</p> <p>18 in-state comps, when the in-state -- I'm sorry. When</p> <p>19 the in-state comps are not considered, they're only</p> <p>20 25 percent behind. Much more dramatically, licensed</p> <p>21 practical nurses, they also show up on both surveys.</p> <p>22 In-state comps, LPN-2's are 30 percent behind, but if</p> <p>23 you only use out-of-state comps, they're only 10 to</p> <p>24 15 percent behind.</p> <p>25 The Union submits that it would be improper to</p>	<p style="text-align: center;">Page 955</p> <p>1 testimony on that issue. There is just no policy reason</p> <p>2 why a top-step Washington State Corrections officer</p> <p>3 should be compared to the midrange of other states'</p> <p>4 counterparts. It's an area of disagreement that doesn't</p> <p>5 require a whole lot more explanation, so we're going to</p> <p>6 leave it to you to figure out what the right thing to do</p> <p>7 is here.</p> <p>8 Turning to wages only or total compensation,</p> <p>9 the third issue, also a very simple, straightforward</p> <p>10 issue. Under a total compensation approach, which more</p> <p>11 accurately reflects the realities of what employees</p> <p>12 actually earn for their work, the Washington DOC</p> <p>13 employees fall even further behind the comps. It's not</p> <p>14 just about wages. If we shut our eyes to the total</p> <p>15 package, then we shut our eyes to a much more accurate</p> <p>16 picture of what employees are really earning. And</p> <p>17 again, if you look at the work of the Tedesco law firm</p> <p>18 at Union Exhibit 41, you can see a fuller picture, which</p> <p>19 takes into account total comp.</p> <p>20 On the fourth issue, cost of living, the</p> <p>21 arbitrator has already rejected the Employer's cost-of-</p> <p>22 labor approach, and we believe that's appropriate, but</p> <p>23 the comparative wages do need to be adjusted by a</p> <p>24 cost-of-living factor, because otherwise it skews the</p> <p>25 data unrealistically in favor of the State's position.</p>
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1 The Employers offered a very weak cost-of-
 2 living comparator in Employer Exhibit 4-30, and it's
 3 weak, because we've had some chuckles at the hearing
 4 about comparing different cities, but it really just
 5 compares state capital cost of living instead of overall
 6 state data, which is found in Mr. Aitchison's testimony
 7 in Exhibits 59 through 61.

8 ARBITRATOR: What was the Employer
 9 exhibit, please?

10 MR. SWEDLOW: It was 4-30.

11 You may recall that we heard some --
 12 I'll hang on. Just let me know.

13 ARBITRATOR: And the Union exhibit?

14 MR. SWEDLOW: Union exhibit was 59 through
 15 61.

16 ARBITRATOR: Thanks. Okay.

17 MR. SWEDLOW: For example, 59 was that
 18 chart about the relative value of \$100 in Washington,
 19 and you may remember that -- so all these other states
 20 that we're looking at, \$100 in Washington was worth
 21 \$96.90. This was -- Will Aitchison testified about
 22 this. And in all but Colorado, it's worth more than
 23 \$100. In other words, the cost of living is higher in
 24 Washington than all the other states that we're looking
 25 at.

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1 How much higher? The Union Exhibit 61 shows
 2 how you adjust the numbers properly, and so for each of
 3 those five states, there's an appropriate adjustment.
 4 Colorado is 1.6 percent, Oregon is 4.4 percent, Nevada
 5 is 5 percent, Arizona is 5.1, and Utah is 6.4 percent.
 6 If you compare these to Employer Exhibit 4-30, you'll
 7 find that they're substantially more than what the State
 8 is proposing.

9 Then the last issue that I wanted to talk
 10 about with regard to the external comps was the geopay,
 11 location pay. So when doing this comparable analysis,
 12 the Employer would essentially have you spread geopay
 13 across the entire bargaining unit. Talking right now
 14 just about CO's, because it's a little easier to just
 15 focus in on that group, and it's the largest group, the
 16 Employer gave a 2.5 percent credit across the entire
 17 group. All CO's got a 2.5 percent credit because half
 18 of them get a 5 percent increase, so mathematically it
 19 makes a certain amount of sense.

20 But that was then used to increase the
 21 minimum, medium, and maximum salary data, which
 22 artificially decreased the gap between Washington and
 23 the comparables. And this is true with not just CO's;
 24 it's everybody who gets geopay. But it doesn't really
 25 work, because it's not really true. A lot of people get

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1 a lot less than that.
 2 When doing comparable analysis, you don't
 3 include premium pay, over which employees don't have any
 4 control, which is unlike, for example, firearms
 5 certification or an advanced degree. Employees don't
 6 really have a choice about where they work. This was
 7 also pointed out by the Tedesco law firm. If you were
 8 to do it, you'd have to compare, again, apples to
 9 apples, which the State didn't do.

10 Anil Karia pointed out in Exhibit 48 that just
 11 looking at Oregon alone, which he was a little more
 12 familiar with, the State had ignored important elements
 13 of compensation, some of which all the employees
 14 received, like the PERS buy-back, not factored at all by
 15 the State. And some, like various kinds of
 16 certification pay, only some employees receive.

17 Now, it's too late now to supplement the
 18 record, but we recently discovered that more than half
 19 of the correction officers in Oregon actually get a
 20 certification pay. So it's an important element to
 21 compare apples to apples, but the State would have you
 22 consider premium pay that Washington State employees
 23 get, while ignoring premium pay that other jurisdictions
 24 get, which again artificially decreases the gap.

25 Now, the end result of what we would

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1 characterize as the Employer's data manipulation here is
 2 that in the 2010 Total Compensation Survey, which is
 3 Union Exhibits 30 through 32, the State found -- and
 4 this is at page 20 of Exhibit 30, so we're looking at
 5 2010 Total Comp Survey. CO-2's were seven ranges
 6 behind. Seven ranges is 17-and-a-half percent. They
 7 were 17-and-a-half percent behind the average of the
 8 comps. Now, at that time, the DOC classifications, like
 9 the CO-2, for example, they were included in that
 10 survey. And they were, by the way, doing still that
 11 mid-to-top or top-to-mid analysis.

12 Now, we know - it's certainly undisputed -
 13 that since 2010, wages have remained flat, so you would
 14 expect that if the same survey was conducted today,
 15 using the same methodology, they'd basically be at the
 16 same place or probably a little bit worse, and yet today
 17 the State would have you believe that somehow in the
 18 last four years, with no wage increases, CO's have
 19 magically recovered over 12 percent of that deficiency,
 20 and now somehow they're only 5 percent behind. If that
 21 smells a little fishy, there's probably a reason.

22 So I want to talk a little bit about
 23 recruitment and retention, definitely an important
 24 factor in interest arbitration and one of the factors
 25 listed in the MOU. One of your tasks as an arbitrator

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1 here is to consider the public interest. There's lots
 2 of arbitral authority on the public interest element of
 3 an interest arbitration, and we submit that it is
 4 definitely in the public interest to have a highly
 5 trained, retained corrections worker force. There is
 6 compelling evidence in the record of turnover,
 7 especially at the bottom of the seniority list.
 8 You may recall hearing some testimony from
 9 Shannon Reeder, who talked about his first day on the
 10 job. He was fresh out of CORE, and he comes into closed
 11 custody with only one other officer, who is another guy
 12 from his CORE class, fresh out of CORE also. That
 13 lasted almost a year, before he became a CO-2, and
 14 finally he had the seniority to get out of the graveyard
 15 shift and get into a better location. But there was no
 16 CO-2 around, there was no sergeant around, there was
 17 nobody he could really turn to; somebody in a different
 18 building down the hall, but it was really on-the-job
 19 learning, without any guidance. That's dangerous.
 20 And Michelle Woodrow talked about the high
 21 number of CORE classes that the Union gets notice of and
 22 gets invited to, and the high number of new recruits
 23 that get trained in those classes and don't get
 24 retained; they don't stick around.
 25 There is evidence of an overall retention

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1 problem is so much bigger than just a few isolated
 2 classifications.
 3 If you look at Employer's Exhibit 2-19, which
 4 I think was introduced very recently, you'll see that
 5 the State hired 324 correction officers in 2013. I'm
 6 going to slow down enough to make sure you write those
 7 down. 324 correction officers in 2013, and now we're in
 8 2014. So far this --
 9 ARBITRATOR: What was the exhibit number,
 10 please?
 11 MR. SWEDLOW: 2-19.
 12 ARBITRATOR: Thanks.
 13 MR. SWEDLOW: So that exhibit shows 324
 14 CO's hired in 2013, and so far in 2014, 399. We know
 15 that there are only about 3,000 correction officers
 16 statewide. Almost 1,000 of those 938 -- and this is
 17 from Employer Exhibit 2-12. So 2-12 shows that 938 of
 18 those officers have less than five years' seniority.
 19 So, taking these numbers together, knowing
 20 that they've hired --
 21 ARBITRATOR: I'm sorry. What was the
 22 number?
 23 MR. SWEDLOW: The number of -- the exhibit
 24 number?
 25 ARBITRATOR: No. The number of CO's with

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1 problem on a statewide basis. We heard testimony from
 2 Paul Marvy showing a system that -- a systemic retention
 3 problem that's really remained a part of the
 4 Department's strategic planning process for many years.
 5 He used the Department's own data and their own records
 6 to show what really has never been a secret. The DOC
 7 doesn't score that well among State agencies as a great
 8 place to work. People leave good jobs at the DOC, where
 9 they have the seniority to get the right days off and
 10 the shifts that they want, and it's mainly because the
 11 wages are so deficient. This has a serious public
 12 interest impact.
 13 Mr. Frakes acknowledged some concern about
 14 what might happen if the economy picks up. The end
 15 result is, people might have other options, might have
 16 some mobility, and might not choose to stay at DOC. The
 17 arbitrator's award should recognize that risk, that
 18 issue, and fix the problem now, not leave the Department
 19 scrambling to fill holes.

20 What's really interesting is, the State, in
 21 its proposal in Appendix G, the State wants to fix the
 22 retention issues for just nine classifications, but they
 23 don't even propose that on a facility-by-facility basis.
 24 It's statewide. It's a recognition that the retention
 25 issue is not a location issue, it's statewide, and the

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1 less than five years' seniority.
 2 MR. SWEDLOW: 938. Now, that just shows
 3 that five-year spread, so we don't know how many of them
 4 are brand-new and how many of them have three years and
 5 how many have four. But we know, based on Employer
 6 Exhibit 2-19, that because they hired 324 officers in
 7 2013 and 399 in 2014 so far, we know that almost 700 of
 8 those have less than two years. They're really new
 9 officers. They're very, very new, they're fresh,
 10 they're right out of CORE, maybe, you know, a few months
 11 in. We don't know exactly, but we know they're new.
 12 That is the kind of churn at the bottom where
 13 we heard Shannon Reeder's anecdotal testimony about
 14 coming into closed custody on day one, fresh out of
 15 CORE, being with someone with no more experience than
 16 you have, there's nobody there to help, learning on the
 17 job. It's okay to learn on the job, but there's a limit
 18 to what's reasonable. It's scary and it's dangerous and
 19 it should stop.
 20 But we're looking at CO's because they're the
 21 largest group, but it's definitely not limited to them.
 22 Healthcare workers, the trades, food service, they're
 23 all facing this problem, and to see this, you can look
 24 at Employer Exhibits 2-15 and 2-16. So 2-15 and 2-16,
 25 they both show high turnover rates in all sorts of

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1 classifications.
 2 Now, what might be a perfectly reasonable,
 3 healthy turnover rate in a law firm or in a warehouse,
 4 it's not the same in the corrections environment. The
 5 experience of people who understand this job, the safety
 6 mentality, the on-the-job experience, it's invaluable
 7 and it could literally be the difference between life
 8 and death. It's different than a warehouse, where you
 9 just have to know how to drive a forklift. I don't want
 10 to minimize warehouse workers, but ...

11 Now I want to turn to the spread between
 12 supervisors; in particular, the corrections officer-and-
 13 sergeant spread. The Union maintains that that spread
 14 is woefully inadequate. The data is in the record and
 15 it's undisputed. You can see Will Aitchison's testimony
 16 regarding Union Exhibit 24. This problem is apparent
 17 and it's very shocking. There is a 10 percent spread
 18 between a corrections officer and a sergeant. There is
 19 a 40 percent spread between a sergeant and a lieutenant.
 20 That is a huge difference. A little spread/gigantic
 21 spread. And then there's 20 percent between lieutenant
 22 and captain. Will Aitchison testified that the
 23 nationwide spread between officers and supervisors tends
 24 to run between 18 to 20 percent, and that's in Union
 25 Exhibit 26.

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1 on-call pay; really something of a separate issue here.
 2 These are easy and inexpensive and important fixes to a
 3 significant problem. Michelle Woodrow, you may recall,
 4 was asked to prioritize the Union's proposal, and she
 5 explained that, without question, the number one
 6 priority is the prison premium and elimination of the
 7 geopay, and then she went on to rank some of the other
 8 ones.

9 But she carved out these two issues that are
 10 kind of unique to the healthcare workers, and she
 11 explained that they were different and unique. The
 12 medical staff at the Department of Corrections is a
 13 different group. They don't typically get involved in
 14 Union activities in quite the same way as the
 15 corrections officers and other custody staff. They
 16 don't typically have a lot of contract disputes, and
 17 they don't get involved in disciplinary grievances as
 18 much either.

19 The one thing that we have consistently heard
 20 from them - pretty much the only thing that we've
 21 consistently heard from them - is about this equity
 22 problem with the shift premium and the on-call pay.
 23 Michelle Alejo testified that the LPN's perform the same
 24 work as the nurses on the weekends, so there's no reason
 25 they shouldn't get the weekend premium.

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1 The point here, though, is that the Union's
 2 proposal of a 12-and-a-half-percent spread is probably
 3 light. The record actually supports more of a 15- to
 4 17-and-a-half-percent spread, which would be a six- to
 5 seven-range spread. We've only proposed a five-range
 6 spread. This has a lot of practical impact. You may
 7 recall some testimony from Sergeant Keisha Channel, who
 8 said that when she was a CO, she could work one overtime
 9 shift, and she made the exact same amount of money as
 10 she's making now as a sergeant. And, actually, there's
 11 not a whole lot of overtime opportunities as an sergeant
 12 either. People don't stick around in that job for very
 13 long. They use it as a steppingstone to go somewhere
 14 else.

15 Now, the record is already pretty big, as we
 16 talked about the D-ring binders before, so we didn't
 17 make it any bigger by introducing a whole bunch of
 18 testimony and exhibits on the spread between supervisors
 19 and everybody else in all the job series. But the
 20 problem extends beyond just the CO/sergeant issue. It's
 21 pretty much systemwide. If you look at Union Exhibit 3,
 22 you can look at the last two pages of Union Exhibit 3,
 23 and we lay out in that exhibit all the classifications
 24 where we believe the increase is warranted.

25 I want to talk briefly about shift premium and

1 Sandra Conner, she testified about that \$25
 2 she gets for daily on-call pay. She talked about the
 3 impact that being on call has on her life. She can't
 4 travel, she can't go hiking out of cell range, she can't
 5 go boating, swimming, can't really drink on her days
 6 off. She's basically tethered to a phone, and she has
 7 to be accessible. That's worse when they're
 8 understaffed, which is kind of a chronic problem,
 9 because they then have to pick up an extra week to cover
 10 for the vacant position, an extra week of call. And
 11 there's simply no reason why she should get \$25, when
 12 contractors doing the exact same work are getting \$125
 13 or \$150. Now, the cost these two proposals is a drop in
 14 the bucket, but it's a very important drop for a very
 15 important groups of workers who have asked for little
 16 else.

17 The State has basically one major argument in
 18 this case. The State's argument is ability to pay, and
 19 on the public sector, it's well understood that ability
 20 to pay really means willingness to pay. The State can
 21 raise the revenue to cover its expenses. This is about
 22 legislative choices and prioritization. It's about our
 23 elected officials having the political courage to do
 24 what's right and necessity to pay for what we, as a
 25 society, have decided to do with people who break the

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6 (Pages 965 to 968)

1 law.
 2 Now, if there's any doubt about this, it's now
 3 clear in the record through the testimony of Mark
 4 Endresen and Union Exhibit 62. If you look at Union
 5 Exhibit 62, you see that all the other western states,
 6 with the exception of Alaska, spend a larger percentage
 7 of their total budget on corrections than Washington.
 8 And actually, on average, they spend twice as much as
 9 Washington. We spend about 3.6 percent of our budget on
 10 adult corrections. The average of the other states
 11 combined is 7-and-a-half percent, so twice as much. But
 12 it wouldn't actually take doubling the DOC's budget
 13 to --
 14 ARBITRATOR: What was the Washington
 15 number again, please?
 16 MR. SWEDLOW: 3.6 percent. Washington is
 17 3.6 percent, and if you look at the other states and
 18 average them, it's 7.5 percent.
 19 But the Union's proposal is \$120 million,
 20 essentially, the entire proposal, \$120 million, which is
 21 7 percent of the DOC budget, not 100 percent. It's not
 22 a doubling. If you funded the entire proposal, the
 23 entire Union proposal, at \$120 million, that's
 24 \$120 million on a \$1.7 billion budget across the
 25 biennium. It's not insignificant, but it's not

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1 it's one of several factors.
 2 Arbitrator Williams issued an award in 2009,
 3 which was a relatively dark time for public sector
 4 interest arbitration, in the City of Longview, and he
 5 said: "Ultimately, the arbitrator set aside its
 6 trepidation, focused on the statutory criteria, and
 7 notes that for most all of the comparators, wages and
 8 benefits are already set through the year 2011. This
 9 award is, in the arbitrator's view, consistent with the
 10 terms and conditions set forth in labor agreements in
 11 the comparators. Hopefully, actions taken at the
 12 national and state level will continue to have a
 13 positive impact on the economy, and business can return
 14 to a more steady state. Clearly this award contains
 15 some of the optimism found in that statement." He was
 16 issuing an optimistic award in 2009. That was a dark
 17 time. We're past that.
 18 There's plenty more arbitral authority
 19 available, I guess, upon request if you're interested,
 20 but the point is that arbitrators don't refuse to issue
 21 otherwise justified awards just because the employer
 22 cries poverty.
 23 And it's not all bad. It's not. Revenue
 24 forecasts are positive. You can see Union Exhibit 44,
 25 which demonstrates that the General Fund, during the

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1 impossible to fund. The Union's proposal is well within
 2 the norm when compared to what other states spend.
 3 Now, we're not pretending that the State
 4 doesn't have a decent argument on the ability-to-pay
 5 factor. We're not suggesting that the State has no
 6 money problems, but it's only one of several factors.
 7 It's not the only one. The other factors weigh in the
 8 Union's favor. On comparables, under anybody's
 9 analysis, under anybody's methodology, Washington DOC is
 10 way behind in their current wages and benefits and the
 11 loss to that earning power over time. They haven't had
 12 any wage increases for years, and they've had nothing
 13 but cuts.
 14 We heard lots about the difficult reality of
 15 working in prisons and we heard about retention
 16 problems. The ability-to-pay concept, that factor, it's
 17 one factor, with no more weight than any of the other
 18 factors. It's just not a trump card. And there's lots
 19 of arbitral authority on this issue. For example,
 20 Arbitrator Latsch in 2011, in a Lewis County case, he,
 21 in his award, he said: "While the arbitrator should
 22 consider the employer's economic condition as a factor
 23 to be applied, it is not the only factor to be
 24 considered and must be analyzed in light of the
 25 statutory factors," which is exactly what I'm saying;

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1 same six-year time frame when the employees got
 2 absolutely nothing but cuts, the General Fund has
 3 increased by 20 percent and our annual revenues have
 4 increased by 20 percent.
 5 ARBITRATOR: 40, what was it?
 6 MR. SWEDLOW: 44.
 7 ARBITRATOR: 44.
 8 MR. SWEDLOW: And Exhibit 45 shows that
 9 the overall economic analysis is that the General Fund
 10 revenues are on the uptake and will continue.
 11 Ability-to-pay arguments, in general, are more
 12 accepted by arbitrators during periods of severe
 13 economic downturn. That's a Pierce County case from
 14 Arbitrator Krebs, noting that that's a -- that's an
 15 important time to look at it. But things are getting
 16 better, not worse. We are on an upwards trajectory.
 17 But, again, willingness to pay is not a trump card.
 18 There's nothing in the MOU or the law that suggests
 19 there's some magical significance to the fact that it's
 20 listed first out of a series of other factors. It's
 21 there and it's something to consider.
 22 In conclusion, we -- this -- this -- the MOU
 23 says that the decision of the arbitrator is not binding
 24 on the legislature. As you mentioned, OFM still has to
 25 find it financially feasible. So we are -- we want an

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1 honest answer to two questions. First, what does this
 2 group of dedicated public safety workers deserve, in
 3 light of the compensation deficiencies, which are
 4 measured against comparable jurisdictions, the DOC's
 5 recruitment and retention issues, the losses sustained
 6 relative to cost-of-living, overtime, and most
 7 importantly the danger and difficulty and impact of
 8 working in a prison environment?

9 And second, in light of the State's financial
 10 situation, what can be accomplished within the context
 11 of a two-year deal? You could say that we're asking for
 12 a decision that says, "In the absence of an ability-to-
 13 pay issue, my decision would be 'X'." Given the
 14 ability-to-pay issue, my decision is 'Y'," but "Y"
 15 cannot be what the State is proposing here.

16 All of the Union's proposals are justified and
 17 important. Finding the money to pay for it is really a
 18 matter of legislative priorities and political will to
 19 fund the decisions we make as a society. As Scott
 20 Frakes testified, the legislature could reduce the cost
 21 of the prison system by decriminalizing various acts,
 22 reducing sentencing lengths, and a host of other
 23 legislative decisions, but they haven't taken those
 24 steps yet. Maybe they will, but they haven't yet. In
 25 the meantime, we're in status quo mode.

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1 All of the Union's proposals are justified,
 2 but the most important thing, by far, is to recognize
 3 the uniquely dangerous and traumatic public safety work
 4 that this bargaining unit performs, and pay these
 5 workers the 10 percent prison premium.

6 These public safety workers can't strike to
 7 express their frustration with the State's contract
 8 proposal, so they've sent us to this forum and they've
 9 charged us with pleading their case. I hope we've done
 10 our job and that you consider awarding a fair and just
 11 contract that acknowledges what this brave group of
 12 workers does for us. Thank you.

13 ARBITRATOR: Thank you.

14 MR. THAL: Do you think we could take
 15 five?

16 ARBITRATOR: Certainly. Off the record.
 17 (Hearing at recess.)

18 ARBITRATOR: Once again back on the record
 19 and turning to the closing argument from the Agency.

20 MR. KLEIN: Thank you very much,
 21 Mr. Arbitrator.

22 Two preliminary points before we jump into the
 23 substance. First is, the Agency thought it was really
 24 important for me to express to you and to the Union and
 25 those who are here that the DOC really appreciates and

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1 People commit crimes, and they spend years
 2 inside of our State prison system. This is expensive,
 3 but the burden of that cost cannot be borne by the
 4 front-line workers who risk their lives every day to
 5 protect society and the people we incarcerate. That's a
 6 cost that has to be shared by all of us. If it requires
 7 raising some additional revenue, so be it. Let those
 8 who have the political will to write the laws that send
 9 people to decades in prison also write the laws that pay
 10 for that decision.

11 We're really not asking for anything
 12 unreasonable here. There's no reason that Washington
 13 State Corrections workers should be paid so far behind
 14 their peers in other states and in local counties.
 15 There's no reason we should be losing good workers,
 16 constantly training new workers, and struggling to fill
 17 chronically vacant positions with overtime.

18 There's no reason the spread between
 19 supervisors and those they supervise should be so small,
 20 and there's no reason healthcare professionals who work
 21 alongside nurses on the weekends shouldn't get the same
 22 shift premium as the nurses, and there's no reason that
 23 people should be tied to a phone and have limitations on
 24 their days off for just \$25 a day, when people doing the
 25 same thing are getting \$120 and \$150.

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1 is proud of the work that the employees in this
 2 bargaining unit do. The Agency wishes these were
 3 different economic times. They're not.

4 Second is, what I'm hoping to do today is give
 5 you some context for the dispute. Certainly, in the
 6 collective bargaining arena, trying to understand the
 7 context of proposals and the context of what's going on
 8 can be very, very helpful. It's a little bit like some
 9 of the arbitrators who will say with regard to interest
 10 arbitration, after noting it's an extension of the
 11 collective bargaining process, say: What would these
 12 parties have done if they were locked in a room, and it
 13 wasn't a case of strength, it was just both parties
 14 working in good faith to figure out where is the deal?

15 In making this determination, we have an MOU.
 16 We have an MOU that the parties entered into, and it
 17 says: "The financial ability of the Department of

18 Corrections to pay for the compensation and benefit

19 provisions of a Collective Bargaining Agreement."

20 Mr. Swedlow is right. From our perspective, this is the
 21 most important factor. We wish they were different
 22 times. We wish we didn't have to put on a case that had
 23 someone from OFM coming in and talking with you about
 24 all the difficulties. Unfortunately, that's not where
 25 we are.

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1 What we'd like to do is have you look a little
 2 bit through the lens of OFM, and that's what we tried to
 3 give you with the testimony of Mr. Pannkuk. We have a
 4 mildly improving economy, and he testified that, as part
 5 of the calculations and the forecasts that the -- that
 6 is currently going on within OFM, there's an assumption
 7 of a 4 percent increase in revenues, and we'll see that
 8 in a minute on the slides.

9 At the same time, there are -- there's
 10 conflicting evidence about where we're going and where
 11 the economy is headed. The forecasters note in the --
 12 that it may get better, could get worse. Don't know.

13 With regard to expense constraints,
 14 Mr. Pannkuk testified about where we've been recently,
 15 looked back at what's happened during the 2013-through-
 16 2015 biennium, noted that there are a lot of one-time
 17 funds that got used as part of that process. And, in
 18 his words, you can't keep robbing Peter to pay Paul.

19 Currently, OFM is anticipating, even assuming
 20 that there is a significant revenue increase, and
 21 currently they're calculating that at about
 22 \$2.6 billion - that's in Exhibit 3-2 at page 11 - the
 23 State is still \$900 million short.

24 How can that be? It really comes down to
 25 several factors, but the first and foremost factor is

1 the public schools from opening and figured that that
 2 will get legislature to make a -- to decide they
 3 absolutely have to fund, in terms of this being a
 4 paramount responsibility. OFM has concluded that the
 5 State is going to have to contribute \$1.2- to \$2 billion
 6 of new money in the 2015-to-2017 biennium in order to
 7 fund basic education; don't see there's any choice.

8 We showed you a slide and would encourage you
 9 to go back to that. It's 3-2. It's page 11, and you'll
 10 recall there was a green bar and a red bar. Indeed, I
 11 might ask you to look at that part of the presentation
 12 that says "Current OFM Projection" at the top. It's
 13 page 7. As you'll see, the green bar, and Mr. Pannkuk
 14 talked about this, includes an assumption of
 15 \$2.6 billion in new revenue. The red bar is
 16 expenditures; first, what's needed in order to carry
 17 forward what we're currently doing. He talked about
 18 what a maintenance budget is and talked about the
 19 importance of first figuring out, if you're going to
 20 carry forward into the next biennium, what you did in
 21 2013 to 2015, what's that going to cost?

22 You then have -- there has been addition in
 23 pension costs as a result of actuarial changes that have
 24 been made. There's some debt service. There is --
 25 healthcare costs are going up. There's the I-732 COLA.

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1 McCleary. In 2012, the Supreme Court handed down the
 2 McCleary decision. In that case, they said the State
 3 has a, quote "paramount," end quote, duty to fund
 4 higher -- fund basic education, which must be, quote
 5 "State's first and highest priority before any other
 6 State program or obligations."

7 We gave you information about the show-cause
 8 proceeding which is currently going on, would encourage
 9 you -- I think you -- it sounds like you were already
 10 familiar, to some extent, with all that. The hearing is
 11 still set and the -- it is safe to say that the folks
 12 who have brought the suit are very serious, when you go
 13 read the pleadings that they have filed most recently,
 14 about a week ago.

15 The Court, Supreme Court, has said to State:
 16 "You didn't comply last time. That's why we're doing
 17 the contempt hearing. That's why we want you to show
 18 cause and figure out whether or not what we need to do
 19 is enjoin expenditures, other than for public education.
 20 Perhaps we'll require selling off State property. Maybe
 21 we do fines."

22 In the pleadings, there is a different thing
 23 of -- something that was, I guess, done in New Jersey,
 24 where they had a somewhat similar dispute, where the --
 25 and the legislature hadn't funded, and so they enjoined

1 That's the one that funds -- that's the teacher
 2 education that the legislature has the ability to
 3 suspend. It's a COLA increase for public teachers. If
 4 you get interested in reading all the McCleary papers,
 5 you'll read a lot about whether or not that's a good
 6 idea, for the legislature to consider suspending that
 7 again. It is safe to say that there's a reason it's on
 8 this red bar. You have other policy obligations, and
 9 finally you have McCleary. Even before you get to
 10 McCleary, you're \$900 million short. \$900 million
 11 short.

12 After McCleary, we get to \$2.1- to
 13 \$2.9 billion short, so what's that caused OFM to do? To
 14 send out a directive to everybody: Part of the
 15 budgeting process. We're at the time of the year where
 16 OFM requests, actually requires, all the agencies to
 17 come in and provide them with their budgets. At this
 18 time, they said: We want you to, you're expected to,
 19 you are required to come back to us and tell us how you
 20 would cut 15 percent from what you otherwise would need
 21 to maintain current operations. Those responses are due
 22 in September. 15 percent is a very, very big number.

23 With regard to DOC, what's going on at DOC,
 24 the reality is, over the last several years, as a result
 25 of the cuts that have occurred, the fat and

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9 (Pages 977 to 980)

1 unfortunately some of the meat has been -- has already
 2 been cut. We showed you charts about the number of
 3 employees. It went from 9,249 back in 2009, down to
 4 7,917 in 2012, now back to 8,174, so we've come back a
 5 little.

6 And we'll talk a little more about the hiring
 7 and more -- and the increase in hiring. A factor in all
 8 that is that you went from 9,200 to 79, and you're now
 9 beginning to add back up some employees. Also, it
 10 closed several facilities, including McNeil Island,
 11 closed some of the individual living units, and
 12 repurposed other facilities, all in an effort to try and
 13 continue operating with the funds that were available to
 14 the DOC.

15 Within the prisons division, we gave you some
 16 evidence that the - I'm on page 9 - that the employee
 17 costs - that is, wages and benefits - are 76 percent,
 18 76 percent within the prisons division. Within DOC, the
 19 entirety of DOC -- and that's because, in the prisons,
 20 it's a labor-intensive place. Within all of DOC,
 21 employee costs are 67 percent. So if we start talking
 22 about where are you going to find 15 percent -- and the
 23 15 percent, by the way, is \$250- to \$280 million,
 24 \$250-to \$280 million.

25 Given a pie that already has a significant

1 regard to the DW case, as of the other day, the Governor
 2 and the head of OFM announced that they will be seeking
 3 a \$30 million stop-gap measure to get through this
 4 fiscal year. That gets you through 2015 to add some
 5 debt. It nowhere comes close to complying. The
 6 complying piece is going to be a much, much bigger
 7 number, as she said. She made that very clear in her
 8 testimony, and it's been made very clear that it will be
 9 much greater than those kinds of numbers. Similarly,
 10 the healthcare case. Too early to predict what the
 11 number is going to be, but if you're looking at the
 12 prison through the lens of OFM, it's not something you
 13 can ignore.

14 So on the one hand, we have a proposal for
 15 \$20 million. On the other hand, we have a proposal for
 16 \$120 million-plus, plus, plus. You heard Ms. Aslakson
 17 talk about the costing that she did and how hard it was
 18 to cost some of the things; in particular, what you do
 19 with catchup. The catchup, as she did it, was the
 20 Step L to mid. If you do that, you get to 120. If you
 21 do max-to-max or mid-to-mid, it's going to be a much
 22 bigger number. Even at 120, in the context - there's
 23 that word again - in the context of what's happened and
 24 what's going on with regard to the budget and OFM, that
 25 is a huge, huge obligation.

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1 amount of employee costs in it, finding 15 percent is
 2 going to be incredibly difficult. Indeed as Mr. Frakes
 3 said, it will undoubtedly require assistance from the
 4 legislature, in terms of what is done, in terms of the
 5 service that ends up being provided if you're going to
 6 get to that level of cut.

7 When McNeil Island was closed, just as an
 8 example, the savings to the State was about
 9 \$110 million. One could say: Well, maybe they won't
 10 cut -- maybe they won't cut 15 percent, maybe they'll do
 11 a different number. Possible. It depends on lots of
 12 imponderables at the moment. I think that's not what
 13 you would hear from Mr. Pannkuk, but if you assume --
 14 let's assume it's 5 percent. That's still \$83- to
 15 \$93 million at DOC. That is a very, very, very big
 16 number.

17 And then we have the Supreme Court. Then we
 18 have first the "DW vs. DSHS" decision, and second, more
 19 recently - that is, last week - we have "Moore vs.
 20 Health Care Authority." These are cases where the
 21 Supreme Court has found that the State is obligated to
 22 do things differently, one with regard to DSHS, the
 23 other with regard to providing healthcare benefits to
 24 part-time employees.

25 As Ms. Durant, who is with OFM, told us with

1 In thinking about this proceeding and how
 2 we've spent the last seven days - eight days now, I
 3 guess - together, it's a little bit like there's two
 4 DOC's. We have the DOC that was painted by Dr. Best,
 5 that it's a world of gloom, it's a world of doom and
 6 violence.

7 Then we have another DOC. Mr. Frakes talked
 8 about that a lot, but we also have some testimony from
 9 employees which we think was pretty important. It
 10 really told the story of: Yes, the work can be
 11 challenging, but bottom line is, this is a good place to
 12 work. We had Mr. Vaneaton talking about how his dream
 13 job came along. I'm on page 15. His dream job. He had
 14 been dreaming about long -- prior to the time he started
 15 at DOC of being a police officer, yet he said it was one
 16 of the hard -- to take that job and leave DOC was one of
 17 the hardest decisions he has ever had to make. We had
 18 Ms. Alejo saying: I like my job.

19 Then we had Ms. Keisha Channel have a fairly
 20 long -- on page 16 of the materials, what she was
 21 telling us. She said, "Do you want to remain as a
 22 sergeant? Nope, don't want to do that. Why? Because
 23 of pay." And then she talked a little bit about, with
 24 regard to pay, it's because: "I don't get the overtime
 25 opportunities as sergeant that I got as a corrections

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1 officer, but the Department of Corrections work, I love
 2 it, it is something that I always want to do until I
 3 retire, but no, I will not stay at the sergeant level.
 4 Is it just the pay issue? No. I want to grow with the
 5 Department of Corrections. I do see myself in a
 6 leadership role, and so the sergeant position is a
 7 stepping-off point." This is not an employee who is
 8 unhappy, who is wanting to leave, is looking for
 9 conductor jobs or whatever. This is an employee who is
 10 committed very much to the Department of Corrections.

11 So what do the -- what do the turnover stats
 12 say? We had some discussion about that earlier in the
 13 Teamsters' closing. First we have the report of
 14 Mr. Marvy. Mr. Marvy went through and analyzed each of
 15 the large agencies at the State of Washington on various
 16 measures. One of them was turnover. And what did he
 17 find? What did he tell us? What did the report say?
 18 It said the DOC has the lowest turnover rate of any
 19 large State agency - not sort of in the ballpark, not
 20 way high - the lowest turnover of any large State
 21 agency. DOC turnover is lower than the statewide
 22 average turnover, and by "statewide average," I mean all
 23 the employees who work for the State of Washington.
 24 It's not outside the state, this is just within the
 25 State. And this is all part of 2-14 and 2-16. And from

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1 have left them to go somewhere else, for whatever
 2 reason. And so that's why we also introduced the data
 3 that the Department had, and that shows that the
 4 correction officers, it was about 5 percent. We had
 5 some other classifications that were introduced.
 6 There's a lot of stuff in 2-15. I had mentioned in my
 7 opening the AA3 position. It's at 4.5 percent. We also
 8 offered some information on health care, and it's
 9 higher, no question, but it's -- RN's are 8.9 and LPN's
 10 are 10.5. Those are numbers which we would love to have
 11 down, but when you look around the State, we think
 12 it's -- that we're actually doing pretty well, given the
 13 work that they do and given the conditions they work in.

14 Let's talk about hiring. Mr. Marvy had a
 15 metric that he suggested we use and look at when it came
 16 to hiring. That metric was "number of days to hire."
 17 DOC went from 80 days in 2008, to 45 days in 2013 and
 18 '14. 80 to 45 is a reduction of about 44 percent.

19 Ms. Roberts talked with us about the efforts
 20 to improve the hiring process, the efforts to try and
 21 get more folks to come through the process and to move
 22 them along as quickly as we can so that we can cut down
 23 on the days to hire. There's no question that it's more
 24 difficult for correction officers than for other
 25 employees in the unit, and Ms. Roberts talked at some

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1 the -- if you look at the material the State had
 2 gathered, it was lower than all but one of the ten
 3 largest State agencies, at 4.5 percent in 2013.
 4 We recognize, and had some testimony, but
 5 there are different ways of looking at turnover, and I'm
 6 on page 18 now. One is -- and these are the stats that
 7 the Department of Corrections has, which includes
 8 turnover, and they show that in fiscal year 2014,
 9 turnover was at 7 percent for the Agency. With
 10 correction officers, it was lower than that. For
 11 correction officers, it was, with transfers, 5 percent,
 12 and without, 3.7.

13 And let's talk about the transfers, because it
 14 is a little confusing. State Human Resources gathers
 15 turnover data, and when they do it, they don't include
 16 transfers. The reason for that is because they want to
 17 encourage, one, Washington. They want to encourage
 18 Washington being an employee of choice and having
 19 employees move from position to position to position.
 20 When somebody accepts a promotion and leaves an agency
 21 and goes to a different one, they want that. They
 22 encourage that.

23 Ms. Roberts testified that, from DOC's
 24 perspective, while they like to have employees get other
 25 positions, they also want to keep track of when people

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1 length about that.
 2 It was also interesting to look at Mr. Marvy's
 3 statistics and see which State agency had the highest
 4 number of -- or the highest days to hire. Not
 5 surprisingly, I suspect you would know, the State
 6 Patrol, and it's because it's similar to the correction
 7 officers in terms of, given the duties and
 8 responsibilities they have, there's a longer process
 9 that you want to go through. Ultimately, as Mr. Marvy
 10 agreed, the DOL has "moved the needle," is I think the
 11 phrase that he used to that.

12 We then get to workplace conditions. There's
 13 no question that the work of a correction officer is
 14 demanding and it's potentially dangerous. DOC totally
 15 and completely gets that. You heard that from
 16 Mr. Frakes. Also recognizes that the front-line
 17 healthcare professionals are also subject to risks.
 18 Generally speaking, however, our perspective is that
 19 what is going on at DOC is nothing like what you would
 20 get if you look at and read Dr. Best's report or
 21 Dr. Best's statistics, the slide show gave us.

22 One place to look is inmate assaults on staff.
 23 Mr. Frakes testified that when you look at the trend on
 24 that, look to see what's been happening over time, that
 25 the trend as to the number of assaults is down, that

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1 that's been reducing over time. We're currently at
 2 about nine per month. We recognize Mister -- as I
 3 recall, Mr. Frakes specifically stated that's nine too
 4 many. We'd love to have zero, but nine is better than
 5 where we've been. And just in context, this is nine per
 6 month where you have 3,500 in the CO's and sergeants and
 7 5,800 total Teamster employees. It gives some context
 8 again - there's that word - to the number.

9 We also had some testimony from a gentleman
 10 who came to us from L&I. We had a witness who had
 11 talked about how comparing working at Western State with
 12 working at what she was doing at Monroe, had said that
 13 the work at Monroe was, she found, more stressful. L&I
 14 keeps data; not surprising, I guess, given all the stuff
 15 they get. One of the things they measure is violence-
 16 related claims, and when it came to DSHS and DOC, there
 17 is no comparison. DSHS, a much, much bigger agency than
 18 DOC, had four times a greater rate of the claims of
 19 violence than does DOC with regard to L&I. With regard
 20 to Western State Hospital and a comparison with the
 21 Monroe Correctional Complex, Western State was twelve
 22 times higher than the Monroe Correctional Complex.

23 We also had some testimony about the
 24 environment in prisons and how it's -- there was a time
 25 where there was no light, where it was dirty, not a very

1 been done at a time anywhere around interest
 2 arbitration, but that's when it was done.
 3 I think we would all agree that you're going
 4 to have employees -- given what we heard from
 5 Ms. Thompson about how important interest arbitration
 6 was for employees, it's been a high -- something the
 7 local has been working on with the legislature for, I
 8 think she said, four or five years. That as you get
 9 close to arbitration, that you're going to have
 10 employees who will fill out a survey, thinking about:
 11 Hmm, what's going to be best when we go to arbitration?
 12 Total number of responses was less than
 13 5 percent of the employees in the Teamster unit. At
 14 least one of those responses came from an employee who
 15 isn't in the Teamster unit, a contract employee. We
 16 think -- and much of the data doesn't come from here but
 17 came from other places. We think, when you look at it,
 18 you hear about it, and you consider it, that the State
 19 of Washington is doing pretty well. Clearly have
 20 improvements we need to make, but there's nothing in the
 21 record to suggest that State of Washington correction
 22 employees somehow deserve a premium over and above what
 23 correction employees might make elsewhere. There's
 24 nothing different, different in terms of the work here
 25 than anywhere else, from anything which is in the

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1 good place to work. Mr. Frakes gave some perspective to
 2 that, however, and talked about how that's been
 3 improving and how -- the efforts that have been made by
 4 DOC to improve the environment in the prisons.

5 We had some discussion about overcrowding.
 6 Again, we heard testimony that it's much better now than
 7 it has been at times in the past. Where we are right
 8 now is, it doesn't happen very often, with the exception
 9 of the receiving facilities. That's where inmates come,
 10 and there will be times where: Don't have enough beds,
 11 sometimes just get a lot more than we had expected.
 12 That's where the crunch comes. There will, at times, be
 13 other facilities where it occurs, but, for the most
 14 part, the number of beds and the number of inmates
 15 matches up.

16 Why the disconnect in the data? What is it
 17 that -- how come, when you look at and listen to the
 18 testimony from DOC employees, from the -- DOC and
 19 compare to Dr. Best, how come there's this disconnect?
 20 We think part of it has to do with the sample size and
 21 way that she did her survey. As you heard, in the month
 22 prior to interest arbitration, sent out something that
 23 was done, not by her, but it was done, I guess, through
 24 the Web site on the Teamsters about responding to a
 25 survey. She recognized that ideally it wouldn't have

1 record.
 2 Let's talk about comps for a few minutes. The
 3 DOC has proposed five comps: Arizona, Colorado, Nevada,
 4 Utah, and Oregon. I'm not sure where the Teamsters are
 5 in comps. There is information in the record with the
 6 five. If you look at their proposal, it talks about,
 7 with regard to the catchup, it's based on three comps
 8 and counties. Not really sure where they are. We do
 9 know what their expert said. Mr. Aitchison said: Use
 10 the five. So hopefully that's what you will focus on.
 11 The one thing we do know is that counties
 12 aren't comps. If you look at the MOU, and this is on
 13 page 24 of the materials, it says: "Comparison of the
 14 hours and conditions of employment of personnel involved
 15 in the proceedings with the hours and conditions of like
 16 personnel of like state government employers of similar
 17 size in the western United States." There is nothing
 18 about counties, there is nothing about private sector,
 19 there's nothing about other kinds of government
 20 employers. It says in very, very clear language: "like
 21 personnel of like state government employers of similar
 22 size in the western United States." We believe that is
 23 perfectly and totally clear, and that the five states
 24 that we have proposed and that Mr. Aitchison suggested
 25 you use are, in fact, the comps that should be used for

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12 (Pages 989 to 992)

1 purposes of comparison.
 2 It's interesting to -- if you go look through
 3 correction arbitration decisions in the state of
 4 Washington, they're all counties, because it's the
 5 counties that have the right to interest arbitration. I
 6 think there's a population threshold, as I recall. But
 7 if you look through those decisions, you don't see
 8 anybody pointing to the State of Washington as somehow
 9 being a comparable employer. Comparable employers in
 10 those cases are always counties. It's not surprising,
 11 because there are huge differences between states and
 12 counties.

13 We offered the Segal analysis, initially did
 14 western -- all of the states in the western U.S. that
 15 are part of the continental western U.S., then narrowed
 16 it down to the five that we've talked about, gathered
 17 information on those five states, got a minimum and the
 18 maximum, calculated a midpoint, and then adjusted for
 19 the workweek - the workweek adjustment being necessary
 20 because Utah had its employees working 43 hours rather
 21 than 40 hours - and we then adjusted for geopay and
 22 adjusted for the cost of labor.

23 We think it's, with regard to geopay, very
 24 important to include that; that the geopay is a
 25 percentage to base salary that is added for about

1 there. We have one state, Arizona, that has grades
 2 through nine years, and then it's open range after that.
 3 So we have to figure out: Okay, what do we
 4 do? Let's look at the data, and this is on page 28.
 5 This is Corrections and Custody Officer 2, and so if we
 6 go to -- and this is the unadjusted numbers. This is
 7 just straight numbers before you've done any adjustments
 8 for workweek or geopay or anything else. If you go to
 9 "Minimum," "Midpoint," and "Max," and you look down at
 10 the bottom to where "Washington" is, you see it's at 85
 11 or -- and then down to 82 percent of market at either
 12 midpoint or maximum.

13 If you then go over to the columns on the
 14 right, you get -- what you'll see is -- under
 15 "10 years," inserted is: What are correctional officers
 16 in Arizona who have 10 years of experience actually
 17 making? You'll have -- we have given to you in exhibits
 18 the actual data so you can see for yourself, if you want
 19 to go see what those officers are making. And in
 20 Arizona, the 10 Year number is 39,664, and five years
 21 later you see it's gone up to 39,840. What you'll see
 22 when you -- if you go look at the actual data provided
 23 by the State of Arizona is that while they proceed
 24 pretty naturally, as you would expect, through the nine
 25 steps, after that there's hardly anybody who gets a

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1 one-half of the correction officers. To exclude that,
 2 when that is a significant part of their pay, an
 3 additional 5 percent, ignores what they're actually
 4 getting paid. Some might try and argue: Well, you
 5 should just use everybody at 5 percent. We agreed
 6 that's not fair. What you ought to do is take an
 7 average, and that's what we did. If you look at the
 8 data and look at the Segal, you'll see the numbers in
 9 terms of the classifications who receive it, what
 10 percentage receive it, what percentage didn't, and
 11 that's the amount that is added for purposes of the
 12 geopay comparison.

13 So then we get to: How do you compare the
 14 data? It's pretty easy if you're talking about -- and
 15 I'm up to page 27 now, and I am going to want you to
 16 look at some stuff in just a minute. In a typical case,
 17 where everybody is on a step system, almost everybody or
 18 everybody is part of a bargaining unit, you can go to
 19 top step, 10 years, 15 years, make comparisons, and know
 20 you have a pretty good idea of where your particular
 21 jurisdiction is.

22 Here, it's way more complicated,
 23 unfortunately. We have two states that have a total and
 24 complete open range; that is, they have a minimum and
 25 they have a maximum. There's no progression through

1 raise. You're going to see everybody at 10 through --
 2 10, 11, 12, 13, and 14 years all at the same 39,664
 3 number, and then finally, when you get to 15, begin to
 4 see a little bit of a raise.

5 If you go to Nevada, again, when you take
 6 10 years, you'll see that the average is 64,707. If you
 7 go to -- excuse me. Nevada is one that's on the range.
 8 I picked -- I should have gone to Colorado, because
 9 Colorado is on an open range, unlike Nevada, which has
 10 steps. Colorado, the average of the 10 years is 46,296.
 11 For 15, it goes to 54,921.

12 ARBITRATOR: Tell me again where those
 13 numbers come from, Otto.

14 MR. KLEIN: We got the actual salaries
 15 from the states, and that's --

16 ARBITRATOR: So these are population-based
 17 numbers, not arithmetic conclusions from the salary
 18 scale?

19 MR. KLEIN: No. They are actual
 20 population numbers, and they're in your notebook.

21 ARBITRATOR: Okay. Thanks.

22 MR. KLEIN: You'll find them for each of
 23 the three states.

24 And so you can see -- if we now look at:

25 Okay, where does the State of Washington end up? If we

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1 look at what's actually being paid in Arizona and what's
 2 actually being paid in Colorado and what's actually
 3 being paid in Utah, we see that now where Washington is,
 4 is at 93 percent of market at 10 years and falls to
 5 91 percent of market at 15 years. Again, we agree we're
 6 behind the market, but it is nothing like what has been
 7 suggested, in terms of where we are in the market.

8 On the next page, we adjust for workweek, so
 9 that gets the Utah on a 40-hour number, and then add in
 10 the location pay differential, the geopay, if you will.
 11 Now we see Washington is at, in the 10 Year, 96 and 94,
 12 again significantly different than the numbers that you
 13 got when you look at midpoint-to-midpoint or maximum-to-
 14 maximum.

15 That's because -- and it's perhaps best done
 16 by example. If we look at Utah and look at "10 Years"
 17 on the page 29, we see at 10 years 35,079. If you go
 18 over and look at the midpoint, they're still \$2,000
 19 under the midpoint. It's not until just about 15 years
 20 of experience in Utah that someone gets to a little over
 21 the midpoint.

22 Similarly, as you'll see up in Arizona,
 23 10 years and 15 years, you're still -- at 15 years,
 24 you're still not at the midpoint. In Colorado, you're
 25 \$6,000, \$7,000 under the midpoint at 10 years, and do

1 you're really going to try and make a comparison that
 2 makes some sense, there's something to be said for -
 3 actually, a lot to be said for - the Step L-to-mid.
 4 And you can see, if you look at either with or
 5 without geopay, it gets us slightly over where we are
 6 when you look at the 10 and 15. So if you compare on
 7 this page the without geopay, it has 95 as opposed to 93
 8 and 91 at 10 years, so it overstates a little bit where
 9 we are to the market, but not very much, and it's way
 10 closer than a mid-to-mid and way closer than a max-to-
 11 max comparison.

12 Now, you may be saying: Well, that's just got
 13 to be the correction officers, it must be -- I don't
 14 know what it could be, but maybe that's something about
 15 correction officers. So in your data -- and again, the
 16 Arizona stuff is at 4-15 and Utah is at 4-15. We look
 17 at chaplains. In Arizona, there are ten chaplains.
 18 They range in experience from one to 26.9 years. The
 19 highest paid is 49,959 or \$10,000 under the top of the
 20 range. In Utah, four chaplains, somebody who has been
 21 there for .7 years and somebody else who has been there
 22 for 29.2 years, so got quite a range. And this is still
 23 on page 31. The highest paid is 46,155, which is
 24 \$11,000 below the top of the range, and that's even
 25 though you have someone who has been there for 29 years.

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1 get up to just over it by the time you get to 15 years.
 2 When you think about the way of -- the comparisons that
 3 are done, where you have people in steps and you go:
 4 "Okay, let's take a snapshot at 5 years, at 10 years, at
 5 15 years," this is the data which does that, and we
 6 think it's important.

7 We've tried to then look at, on the next page,
 8 which is page 30, five different snapshots. The left
 9 column is without geopay and the right column is with
 10 geopay. All of these numbers come off of the couple of
 11 pages we were just looking at a few minutes ago. So
 12 mid-to-mid, if you look at it without geopay, we're at
 13 85 percent of the market, with geopay is 89 percent of
 14 the market, max-to-max is 82 and 85. Step L to mid, and
 15 that's the third row there, that's the analysis that the
 16 State has used in the past in terms of evaluating data
 17 when it gets back surveys, when it's gotten back the
 18 General Government Survey.

19 I'll be the first to admit, when I first heard
 20 that's what they did, I go: You do what? But when you
 21 look at what's actually happening and you think about
 22 the fact that in that survey, again, you have a large
 23 number of -- I think over half of the people who
 24 responded are private employers. You're going to have a
 25 ton of open ranges - a ton of open ranges. And so if

1 We couldn't do, with that small a sample set, the sort
 2 of analysis you could do with correction officers.
 3 We'll be the first to admit, if we'd try to do it, you
 4 just couldn't do it, because there's just not enough
 5 numbers in these others.

6 But when you look at where people are paid and
 7 you look at a comparison of the mid-to-the-range and the
 8 max-to-the-range, it confirms that using a max-to-max or
 9 a mid-to-mid comparison significantly and substantially
 10 understates where Washington DOC members are, in
 11 relationship to the market.

12 I'm going to move forward to cost of living
 13 and cost of labor. I think I read the tea leaves
 14 correctly and -- not really tea leaves. It was pretty
 15 darn clear that you were not a big fan of the
 16 cost-of-labor approach that was utilized by Segal.

17 ARBITRATOR: You picked that up, did you?
 18 MR. KLEIN: Actually, Ohad had said,
 19 "Otto, you know" ...

20 And understand that certainly with regard
 21 to -- if you go read arbitration decisions in this
 22 state, you don't see cost of labor utilized. You do
 23 see, sometimes, a cost-of-living factor utilized. This
 24 is what Segal does in all their analyses. They believe
 25 cost of labor is a better factor, and so they thought it

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1 was important to give that to you, and we have.
 2 We understand that trying to evaluate cost of
 3 living is hard. I think Will talked about how -- excuse
 4 me. Mr. Aitchison talked about how that's just a tough
 5 task and pointed to the fact of some recent DEA data
 6 that he'd come across. You had made a comment that
 7 caused me to think back to an arbitration I did a long,
 8 long time ago for the City of Seattle involving Rumsaker
 9 and Jim Webster on the other side, and Jim just going on
 10 and on and on, busting my chops about how: They're not
 11 even going to tell us how they ran the data, because
 12 it's proprietary? It's a very difficult task.

13 Our suggestion to you is -- we recognize there
 14 is a little difference in the cost of living between
 15 Washington and the other jurisdictions. We probably
 16 wouldn't apply a formula, but we think it's fair for
 17 you, as you're looking at the data, as you're analyzing
 18 where Washington is in relation to the data, that you
 19 say: "Overall, there is at least a little bit of a
 20 factor here in terms of other -- the other jurisdictions
 21 having a slightly different cost of living than does
 22 Washington," and by "slightly different," meaning that
 23 the cost of living -- it costs less to live there than
 24 it does to live here.

25 So, on the comps issue, first encourage you to

1 page 83 - that at 16 of the 20 years, Washington is
 2 ahead, gives more vacation than the average. There's
 3 three years where it's behind the average and one year
 4 where it's a push. Over the course of a 25-year career,
 5 while the average of the comps is a little higher than
 6 Washington at years 21 through 25, over the entire
 7 career, the correction officer comes out ahead in
 8 Washington over the other -- over the other five
 9 jurisdictions.

10 We've also offered to you some information on
 11 health care. Recognize that it's -- there is no good
 12 way to compare healthcare plans. We've offered the data
 13 because it's in the Segal report. It gives you a sense
 14 of what's being paid, but we recognize that trying to
 15 compare healthcare plans is difficult, at best, and has
 16 gotten even more so, given the changes in different
 17 kinds of healthcare plans we're seeing.

18 Retirement benefits, again, especially with
 19 some states having underfunding issues, you just have
 20 all sorts of different methods, and it's really hard to
 21 compare. You certainly can't use that as part of a TCC.

22 But also noted that there was a statutory
 23 issue at work here. That is, that under Washington law,
 24 the parties are prohibited from bargaining matters
 25 that -- the phrase is, I believe, "matters pertaining to

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1 follow the MOU. Use the State comps, as the parties
 2 agreed to do.

3 Second, you've been asked to look at and have
 4 had introduced to you the General Government Survey.
 5 That is a survey which is done by the State. It's done
 6 pursuant to statute, as Ms. Durant testified. We think
 7 the State data is the data that is most important here.
 8 The State data involves five states, which is what the
 9 parties have agreed to in the MOU. The General
 10 Government Survey is -- I think it's about 85 private
 11 employers and 85 public employers, some of the public
 12 employers being all over the U.S.

13 Another factor to consider is market, the
 14 Segal testimony of a recognition that there's a range to
 15 market. It's not a precise 100 percent point; rather,
 16 you need to think of it as a range. The number that
 17 they use, that they think is appropriate, is 95 to 105
 18 percent. Again, we think, when you look at the data,
 19 that overall you'll conclude the State's a little
 20 behind, but it is nowhere near behind what has been
 21 suggested to you.

22 With regard to benefits, we've given you some
 23 information there about vacation and healthcare
 24 expenditures. With regard to vacations, you'll see in
 25 the first 20 years - and this is in the Segal data at

1 retirement benefits." Understand it's okay to be aware
 2 of what that is, but certainly, if you start factoring
 3 that into the formula, you start cranking in things
 4 related to retirement benefits - whether it be how much
 5 is contributed by the employer, how much is contributed
 6 by the employee, pickup, et cetera - you have started to
 7 bargain matters that pertain to retirement benefits, and
 8 we think that's inappropriate.

9 Next I'd like to talk a couple minutes about
 10 the classification issue. You, at one point, had talked
 11 about the tension that exists between collective
 12 bargaining and a statewide classification system.

13 Ms. Durant talked about 41.06.157, which requires by law
 14 that we provide a, quote "simple and streamlined," end
 15 quote, classification system, and also a system that,
 16 quote "enhances mobility," end quote. The goal --

17 ARBITRATOR: Reminiscent of the statement
 18 that appears on the 1040 explaining how simple the tax
 19 process is now.

20 MR. KLEIN: I hadn't thought of that
 21 analogy, but it's a good one.

22 The goal is to try and achieve some overall
 23 consistency, to the greatest extent possible, but
 24 recognizing that there may be, at times, classifications
 25 that need some range adjustment. And here, as you

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1 heard, there are some classifications that, consistent
 2 with the criteria established by OFM, that DOC had
 3 proposed there should be an adjustment to, and OFM had
 4 agreed to that. Those are in the proposal that we gave
 5 you.

6 We then get to our Splatter and Twister
 7 exhibits. As you know, the State of Washington has a
 8 great many classifications and bargaining units.
 9 Ms. Mitchell taught us through the game of -- or her
 10 version of Twister, that the legislature grouped many of
 11 these different unions and bargaining units into much,
 12 much larger groups, thereby making sure that it reduced
 13 significantly, when it went to full-scope bargaining,
 14 something that was going to completely dismantle the
 15 classification system.

16 If we had -- if every single union was
 17 bargaining independently for wages, there would be no
 18 classification system at the State of Washington.
 19 Legislature clearly, by having organized it this way,
 20 evinced an intent to want to have a system of bargaining
 21 that allowed for wage bargaining, but at the same time a
 22 recognition that it is important to maintain consistency
 23 in the overall state classification system.

24 We gave you some evidence, and have got a
 25 little of it on page 39, of what we have called, for

1 Agreements. OA3's: 214 Teamsters, and the rest of the
 2 state, 1,167 in 36 agencies, and 10 other CBA's.
 3 Maintenance mechanic: We have 13 of those in this unit,
 4 and in the rest of the State, there's 120 in 8 agencies,
 5 and 8 other CBA's. The same is true in the healthcare
 6 positions on page 41, with regard to RN-2's and the
 7 LPN-2's. In negotiating and in -- hopefully, as you
 8 look through and sift through all the evidence, we hope
 9 you'll think carefully about the splatter effect. It's
 10 very real to us.

11 Within DOC, there's really two groups. You
 12 have the custody, correction officers and sergeants, and
 13 then the noncustody, which is all of the employees that
 14 support the city that is a prison. I believe it was
 15 Ms. Roberts who had talked about that in her testimony
 16 and sort of describing the city that is a prison.

17 Within noncustody, we think there's really --
 18 there's two subgroups. First is those that are
 19 corrections-unique positions, where it's classifications
 20 that are unique to corrections, and then the
 21 classifications that have the external splatter effect
 22 because they are in lots of different places. With
 23 regard to custody, we agree those are the positions that
 24 do work that is the most dangerous out there, in terms
 25 of the DOC and the work done at DOC.

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1 lack of a better term, "internal splatter" within the
 2 DOC. Ms. Durant testified about the concept of
 3 splatter, which is the impact it has when you have
 4 employees in a unit or an agency, and lots of employees
 5 in other units or other agencies elsewhere.

6 Internally, if you look at Exhibit 4-6, you'll
 7 see that there are 28 classifications that are also in
 8 the federation bargaining unit at DOC or are
 9 nonrepresented. With regard to internal splatter and
 10 the ripple effect, which perhaps no better evidence of
 11 that than the federation wanting, and the State and DOC
 12 ultimately agreeing to, a 1.3 percent, where, for our
 13 positions - that is, our federation positions that are
 14 also in the Teamster bargaining unit - we want equity.
 15 We want to have our people paid the same.

16 And it's important to understand, again, the
 17 context of that. They could have gone to arbitration.
 18 They had an MOU, which is in the record, of the right to
 19 take, for correction classifications, arbitration. They
 20 said: Equity, and we'll do what's -- whatever it is
 21 that gets worked out at the general government table.

22 We've given you some examples of external
 23 splatter on page 40. There are AA3's. There are 24 in
 24 the Teamster unit. The rest of the states, there are
 25 575 in 45 agencies, and 9 other Collective Bargaining

1 We recognize that there are assaults on
 2 inmates, and that, as Mr. Frakes indicated, most of
 3 those occur on the custody staff. There is a quote that
 4 was utilized early in this proceeding: "Hours of
 5 boredom interrupted by sheer terror." We think it's
 6 completely fair to add to that: "Even while bored, you
 7 must retain a high level of awareness." We recognize
 8 that's the case with custody officers. Mr. Frakes
 9 explained, however, while we certainly expect other
 10 employees who are in an office position or other kinds
 11 of positions, whether they be inside or outside, to have
 12 a level of awareness, it's a very different level of
 13 awareness.

14 Let's talk for a few minutes about the Union
 15 proposals. First is, we have the 10 percent proposal,
 16 and I'm on page 44. As of the result, the way the
 17 10 percent is done, it results in not one but two GWI's,
 18 or general wage increases, in the first year. That's
 19 because the 10 percent occurs based upon whatever salary
 20 is in place for others on July 1. And so if, on July 1
 21 of '15, others at the State have received an increase --
 22 and let's just suppose, for purposes of this analysis,
 23 it's a 3 percent increase. So they've gotten a
 24 3 percent, and then you put a 10 percent on top of that.
 25 The Teamsters are now, for everybody, 13 percent ahead

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16 (Pages 1005 to 1008)

1 of where they are at the moment. It's not just a
 2 10 percent, it's a 13 percent. Then we have the GWI,
 3 which is part of the proposal, so that's another
 4 4 percent, so now we're at 17 percent before we've left
 5 the gate.
 6 With regard to market catchup, I'd encourage
 7 you to go and read through the proposal carefully to try
 8 and understand how it's done. The State -- I think you
 9 had asked a question earlier of one of our witnesses
 10 about: Is there a formula the State uses with regard to
 11 the General Government Survey? And there was in 2007 a
 12 formula, which was: If you were more than 25 percent
 13 behind, then there was a catchup that was done at that
 14 time. Since that time, there hasn't been any sort of
 15 formula which has been in place. The financial times
 16 have been such that there haven't been any sort of
 17 formulas like that which are used.

18 The proposal from the Teamsters suggests using
 19 three states and counties, in terms of measuring
 20 catchup. Not sure how you're going to do that, based
 21 upon the evidence that you have before you, but somehow
 22 that's the formula that's supposed to be used for
 23 figuring out where employees are with regard to the
 24 market and retention. Our suggestion to you is, if
 25 you're going to be looking at it, the place to look is

1 sort of the overall award is -- fits within financial
 2 feasibility -- we recognize that the proposal for the
 3 correction sergeants of 12-and-a-half-percent is
 4 warranted by the information which is in the record. We
 5 draw the line there, however, because when we look at
 6 all the other classifications, we don't see that there's
 7 evidence to support it. Many of those classifications
 8 are found elsewhere throughout the state; the old
 9 external splatter, if you will.

10 There's been a consistency with regard to the
 11 number of ranges between those. If there's going to be
 12 a change somehow here, which obviously is going to have
 13 a splatter effect, it better be based on something which
 14 is solid evidence and not just: Well, here's what's
 15 done in the corrections world. We don't think there's
 16 anything that's been offered to you with regard to the
 17 comps, with regard to the factors used by the State, or
 18 anything else that would suggest that all these other
 19 positions deserve to have a 12-and-a-half-percent
 20 increase. Some of them, we have some information that
 21 the State put on that tells you which ones supervise and
 22 which ones don't, and you'll find a lot of the proposals
 23 include positions where some people supervise and some
 24 don't.

25 Let's talk for a moment about the on-call

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1 the State data.

2 The prison premium. We don't believe there's
 3 evidence to suggest that everybody in this bargaining
 4 unit should be getting a 10 percent premium. We believe
 5 the comparisons ought to be to the other state
 6 correctional operations, and that there's nothing to
 7 suggest in the record that other states have a prison
 8 premium.

9 Let's talk for a moment about the supervisory
 10 spread, what I will call, for lack of a better phrase,
 11 "the 12.5 percent bootstrap." We heard a lot of
 12 evidence - I mean a lot of evidence - about the
 13 relationship between correction officers and sergeants,
 14 the looking at the spread, both the sort of informal
 15 survey that Mr. Aitchison had done, the testimony he
 16 gave concerning other agencies. You can then -- I would
 17 encourage you to, as you go through and once you get the
 18 transcript, go through the records, your notes,
 19 exhibits, and see if you find anything even remotely
 20 like that for any of the other classifications that the
 21 Teamsters are proposing should also be at 12-and-a-
 22 half-percent. I'll tell you now, you're not going to
 23 find it, but I'll let you look for yourself, just to see
 24 if you can.

25 The DOC's position is: As long as we can --

1 proposal. Here, the Union has proposed that the on-call
 2 go from \$25 to \$125 for overtime-exempt. You heard
 3 testimony from the State that what we're doing at DOC is
 4 consistent with what's being done elsewhere in the state
 5 for the on-call overtime-exempt.

6 With regard to: Well, overtime, you have
 7 contract employees who are doing this. You heard the
 8 testimony that, with regard to DOC, contract employees
 9 are not working on-call. The on-call is being done by
 10 employees in the bargaining units. You heard further
 11 testimony that at 10 of the 12 facilities, what they do
 12 is they answer the phone. They need to be -- they need
 13 to have their phone with them, be in a place that gets
 14 cell phone coverage, but otherwise don't have
 15 restrictions on terms of their lives, where they go,
 16 what they do, as long as they're able to answer the
 17 phone and answer the question that arises.

18 With regard to the other two facilities, there
 19 apparently is some flexibility of the individual
 20 returning. If they do that, however, the bargaining
 21 agreement has in place a mechanism for employees to get
 22 exchange time. We don't think there's been any evidence
 23 with regard to the comps on this. There has been some
 24 information you got, I think, on New Mexico. There is
 25 also a payment in Oregon that is done on-call, which is

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1 way closer, when they do the calculation, to 25 than
 2 elsewhere, and there's also the evidence or the
 3 agreement that, in Nevada, they don't have it in the
 4 bargaining agreement. We would ask you to maintain the
 5 status quo on this.

6 We've also offered information about the cost
 7 of this and the shift differential that's included in
 8 the information of the costing. We have a disagreement
 9 in terms of whether or not that's a significant amount
 10 of money. We think, in both the cases, it is.

11 With regard to shift differential for LPN's,
 12 first, both LPN's and RN's get basic shift differential,
 13 so if you look in the contract, there's language that
 14 has the basic shift differential. They both get it.
 15 However, there's something called supplemental shift
 16 differential, and only the RN's get that. What you
 17 heard is that elsewhere in the State, LPN's receive the
 18 same differential as the DOC LPN's. There's apparently,
 19 and I think Ms. Mitchell told us about this, only one
 20 place in the state, and it's a WFSE contract, that has
 21 RN's and LPN's in the same agreement, and there the
 22 language is exactly the same as we have in ours; that
 23 is, they both get the basic and the main shift
 24 differential. Only the RN's get the additional shift
 25 differential.

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1 are not -- have not adopted the F.D.R.'s line from -- or
 2 song from 1932 of "Happy Days Are Here Again." They
 3 have a very, very different tune that they are sending.
 4 We've heard the Teamsters talk about wanting
 5 to terminate, or end, geopay. As a practical matter, we
 6 don't see any way this can be done this time, given the
 7 financial limitations. We understand the issue and the
 8 concern that they have, but we don't see how there's any
 9 way, given the financial constraints, to do that without
 10 the correction officers who are receiving it ending up
 11 getting hardly any, if any, raise and/or perhaps even
 12 having a cut. We think that would be inappropriate. We
 13 don't think that's the right thing to do. We recognize
 14 that there is a time, and there will be a time, to give
 15 the unit a bump. We don't think that time is now,
 16 however.

17 As you evaluate the evidence, we're going to
 18 ask you to do four things: First, keep the State's
 19 financial condition, especially as viewed through the
 20 prism of OFM, firmly in mind.

21 Second, keep in mind that there was another
 22 group, that is the federation, that had interest
 23 arbitration with the State and agreed on a 1.3 percent
 24 for correction-unique and whatever is negotiated at the
 25 general government table.

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1 At the hearing, the testimony about this dealt
 2 primarily with an underfill situation, where an LPN
 3 comes in and basically fills the job of an RN. The
 4 proposal goes way beyond that. It's not limited to
 5 underfills. It's anytime that the LPN would work under
 6 the terms provided for in the supplemental shift
 7 differential.

8 With regard to even an underfill, the
 9 testimony was clear that there are limits. There's
 10 licensure limits. And while it's true they may be
 11 performing some of the duties of an RN, they're not
 12 performing all the duties of the RN, because of the
 13 licensure issues.

14 Again, in summary, we recognize that DOC work,
 15 and particularly those in custody and some of the
 16 corrections-unique and healthcare positions, is
 17 difficult and potentially dangerous work.

18 We agree that some of the classifications are
 19 somewhat behind the market. We disagree that they are
 20 behind the market to the extent the Teamsters have
 21 suggested.

22 These are tough times at the State of
 23 Washington. There's a sense of: We're coming out of
 24 the recession, revenues are starting to come in, sort of
 25 think it's gangbusters time. In fact, the folks at OFM

1 We would ask you, third, to keep in mind the
 2 internal and external splatter impact the way any
 3 increase is awarded.

4 And, finally we'd ask you, as you review the
 5 evidence and look at the proposals, to keep in mind that
 6 the burden is on the Union to establish their case.

7 Thank you very much. We appreciate your time,
 8 your patience, and your willingness to be flexible as we
 9 tried to make the schedules work.

10 ARBITRATOR: Thanks, Otto.

11 Anything else, gang?

12 MR. SWEDLOW: I don't think so.

13 ARBITRATOR: We're done. The record is
 14 closed.

15 Wait. The record is not closed. I want to
 16 make it clear that I propose to take notice of the other
 17 interest arbitration awards that are collected on the
 18 PERC Web site, since both sides have urged me to pay
 19 attention to some of those. I will just take sweeping
 20 notice of the entire collection.

21 I also propose to take notice of McCleary and
 22 the other cases that have been cited, and to the
 23 continuing developments in those cases that happen
 24 between now and the time I drop it in the mail or press
 25 the "Send" button, as the case may be.

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1 MR. THAL: When are you pressing the
2 "Send" button?
3 ARBITRATOR: Well, OFM whines when you
4 talk about dates that are later than the 25th, and I
5 hate to hear an agency whine, so I will try really hard
6 to get it in by the 25th. I can't guarantee that, but I
7 have hopes.

8 And now I think we really are closed.
9

10 ARBITRATION CONCLUDED: 3:57 p.m.
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1 C E R T I F I C A T E
2

3 STATE OF WASHINGTON)
4) SS
5 COUNTY OF PIERCE)

6 I, Karen M. Grant, Washington Certified Court
7 Reporter, pursuant to RCW 5.28.010, authorized to
administer oaths and affirmations in and for the State
of Washington, do hereby certify:
8 That the foregoing arbitration was taken
stenographically before me and thereafter transcribed
9 under my direction, the transcript prepared pursuant to
WAC 308-14-135 guidelines;
10

11 That the transcript of the arbitration is a
full, true and correct record, to the best of my
ability, of the testimony, including questions and
answers and all objections, motions, stipulations, and
exceptions of counsel made and taken at the time of the
foregoing examination;

12 That I am neither attorney for, nor a
relative or employee of any of the parties to the
action; further, that I am not a relative or employee of
any attorney or counsel employed by the parties hereto,
nor financially interested in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set my
hand this 1st day of September, 2014.
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23 KAREN M. GRANT, CCR NO. 2155
State of Washington, residing
24 at Edgewood.
Certification expires 4/19/15.
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19 (Pages 1017 to 1018)