IN ARBITRATION
BEFORE MARK E. BRENNAN, J.D.

STATE OF ALASKA, **Employer,** **and** **ALASKA STATE EMPLOYEES ASSOCIATION/AMERICAN FEDERATION OF STATE, COUNTY, MUNICIPAL EMPLOYEES, LOCAL 52, AFL-CIO,** **Union.** **(Bi-weekly Pay Period Conversion)**	**ARBITRATOR'S DECISION AND AWARD**

For the Employer:

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For the Union:

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I. INTRODUCTION

This dispute between the State of Alaska ("Employer" or "State") and Alaska State Employees Association/American Federation of State, County, Municipal Employees, Local 52, AFL-CIO ("Union") concerns a transition from semi-monthly to bi-weekly pay periods under the parties' 2019-2022 collective bargaining agreement ("Agreement"). The parties agreed during the hearing that the matter was properly before the Arbitrator for decision. The Union contends the Employer violated Article 21.07(a) of the Agreement by not properly recalculating employee pay as well as other conditions based upon a semi-monthly pay cycle to a bi-weekly pay cycle. The State responds that it has properly calculated employee pay and all other conditions to reflect conversion from a semi-monthly to bi-weekly pay cycle, and, thus, has not violated Article 21.07(a).

At a hearing held through video conference on July 23 and 24, 2020, the parties had full opportunity to present evidence and argument, including the opportunity to cross examine each other's witnesses. I took notes, which were supplemented by a recording of the hearing. I reviewed both along with the admitted exhibits to analyze the evidence. The representatives electronically provided me with written briefs on August 24, 2020. At that point, the record was closed. Having carefully considered the evidence and argument in its entirety, I am now prepared to render the following Decision and Award.

II. STATEMENT OF THE ISSUE

The parties agreed on the following issues:

1. The Union alleges that, in implementing a bi-weekly pay cycle on June 1, 2020, the State is violating Article 21.07(a) of the collective bargaining agreement between the parties. Specifically, that employee pay as well as other conditions previously based on a semi-monthly pay cycle have not been properly recalculated to reflect conversion to a bi-weekly pay cycle. The State asserts that it has properly calculated employee pay and all other

conditions to reflect conversion from a semi-monthly to a bi-weekly pay cycle and consequently has not violated Article 21.07(a) of the contract. If so, what is the appropriate remedy?

2. If the Union is correct as to item 1, what is the appropriate remedy?

3. Will costs be borne by the losing party in accordance with Article 16.03 of the Agreement?

III. FACTS

The State and Union have been parties to a collective bargaining agreement covering State employees in the General Government Unit ("GG Unit") for many years. There are currently over 8,000 employees in the GG Unit, performing work throughout Alaska, in many different positions and pay grades. The GG Unit includes full- and part-time employees. Eighty-seven percent of GG Unit employees are full-time.

The GG Unit is one of about eleven bargaining units composed of State employees. The GG Unit is by far the largest. Four of those bargaining units were paid bi-weekly. The others, including the GG Unit, were paid semi-monthly.

The Agreement's Article 21.01, titled wages, contains three separate wage schedules. Part A covers Class Two and Three employees, whose normal workweek consists of 37.5 hours per week. Part B covers Class One employees, whose normal workweek consists of 37.5 hours per week. Part C covers Class One employees, whose normal workweek consists of 40 hours per week.[1] Two-thirds of GG Unit employees fall under Part A.

[1] AS 23.40.200(a) defines State public employees into three classes. Class One employees perform "services which may not be given up for even the shortest period of time." Class Two employees perform "services which may be interrupted for a limited period but not for an indefinite period of time." Class Three employees perform "services in which work stoppages may be sustained for extended periods without serious effects on the public." AS 23.40.200(b)-(d) set forth the types of positions in each of the three classes. Pertinently for this matter, Class One employees are prohibited from striking and in lieu thereof may submit disputes over collective bargaining to so-called interest arbitration.

Each of the three wage schedules contain pay ranges numbered from 5 through 27, inclusive, and steps A through G, in each range. For each range and step, a semi-monthly pay rate and an hourly rate are listed in the printed schedule contained in Joint Exhibit 1, the Agreement. Provided employees receive a mid-acceptable or greater rating in their yearly evaluation, they move up a step each year. After reaching step G, employees move up a step every two years.

The printed wage schedule covers primarily Anchorage employees, who comprise a large majority of GG Unit employees. GG Unit employees who work outside of Anchorage in higher cost-of-living locations receive a geographical differential under Article 21.03. That differential ranges from 3% in Fairbanks (and other locations) to 60% in Dutch Harbor (and other locations).

With the many ranges and steps, and the geographical differential GG Unit employees fall into more than 2,700 rates. The median rate is Class 200, Range 15, step B, set forth in the Agreement's Article 21.01(A).

The printed wage schedule contained in Joint Exhibit 1 was effective July 1, 2019. New schedules, effective June 1, 2020 and July 1, 2020 are published on the State's website, referenced in Article 21.01. http://doa.alaska.gov/dof/payroll/sat_sched.html The June 1, 2020, schedule was changed to reflect the straight time pay per pay period for each range and step after the conversion of semi-monthly pay to bi-weekly pay at the heart of this matter. The July 1, 2020, schedule was changed to reflect a 1% wage increase, effective on that date, under the Agreement's Article 21.02.

For many years GG Unit employees were paid twice per month at the contractual semi-monthly pay rates set forth in the Agreement based upon their class, pay range and step. For work performed between the first of the month and fifteenth day, employees were paid the last day of the month. For work performed between the sixteenth day and the last day of the month, employees were paid on the fifteenth day of the following month. Under that pay system, an

employee's actual hourly rate during each pay period varied based upon the regular hours worked during each pay period divided into the contractual semi-monthly rate. Under the Agreement, employees accrued either annual and sick leave under Article 25 or Personal Leave under Article 26 on certain amounts per the semi-monthly pay periods.

For some time, the collective bargaining agreements between the parties contained the following language set out in Article 21.07 of the Agreement:

> **21.07 Pay Procedures.**
> A. Payday.
>
> 1. As soon as feasible, payday shall be on a bi-weekly basis with direct deposit on Thursday or Friday. The parties agree that when a bi-weekly pay schedule is implemented, it will be done through a Letter of Agreement. Leave accrual and other conditions or benefits calculated based on a semi-monthly pay cycle will be recalculated to reflect conversion to a bi-weekly cycle. Until such time, payday shall be the fifteenth (15th) day of the month and the last day of the month. If the payday falls on a Saturday, Sunday or holiday, then the last working day before such Saturday, Sunday or holiday shall be the payday. All checks postmarked or deposited by payday shall be considered timely. The parties agree that when a bi-weekly pay schedule is implemented through a Letter of Agreement, leave accrual and other conditions or benefits calculated based on a semi-monthly pay cycle will be recalculated to reflect conversion to a bi-weekly pay cycle.

The State moved to a new record-keeping, payroll and time-keeping computer data base and software program sometime in 2019. The new software could be reprogrammed to bi-weekly payroll periods. The State decided to convert the bargaining units paid semi-monthly to bi-weekly sometime in spring 2019. In June 2019, he State put together a task force composed of Divisions of Finance and Personnel and Labor Relations to make the change.

On August 22, 2019, State Director of Labor Relations Jared Goecker, sent an email to Jake Metcalfe, the Union's Executive Director, with a proposed Letter of Understanding covering "[t]he State['s intention] to change from a semi-monthly pay schedule to a bi-weekly pay schedule

for all employees," attached. U-3, p. 2. The proposed Letter of Understanding did not contain an effective date. It proposed to modify Article 21.07 (A)(1) as follows:

> ~~As soon as feasible, p~~ Payday shall be on a bi-weekly basis with direct deposit on ~~Thursday or~~ Friday. ~~The parties agree that when a bi-weekly pay schedule is implemented, it will be done through a Letter of Agreement. Leave accrual and other conditions or benefits calculated based on a semi-monthly pay cycle will be recalculated to reflect conversion to a bi-weekly cycle.~~ ~~Until such time, payday shall be the fifteenth (15th) day of the month and the last day of the month.~~ If the payday falls on a holiday, then the last working day before such holiday shall be the payday. ~~on a Saturday, Sunday or holiday, then the last working day before such Saturday, Sunday or holiday shall be the payday.~~ All checks postmarked or deposited by payday shall be considered timely. ~~The parties agree that when a bi-weekly pay schedule is implemented through a Letter of Agreement, leave accrual and other conditions or benefits calculated based on a semi-monthly pay cycle will be recalculated to reflect conversion to a bi-weekly pay cycle.~~

It also proposed modifications to the accrual rates for annual, sick, and personal leave, set forth in Articles 25 and 26 from semi-monthly to bi-weekly accrual rates.

Goecker had been the Deputy Director of labor relations since April 2020. Before that he had no labor relations experience**.** Metcalfe had earlier worked as the Executive Director for another public sector union in Alaska and as Associate and General Counsel for IBEW, Local 1547 in Alaska for many years.

When Metcalfe received Goecker's August 22, 2019 email, he was involved in a disputes with the State that led to litigation over dues deduction authorization, arising from the United States Supreme Court's decision in Janus v. American Federation of State, County, and Municipal Employees, Council 31, et al, 585 U.S. ___ (more) 138 S. Ct. 2448 (2018. His involvement in that dispute lasted through early October 2019. Metcalfe, therefore, assigned three Union Representatives to deal with the State, over the pay cycle conversion.

After a conference call with the State on October 7, 2019, those representatives reported to Metcalfe that the State wanted to implement the change December 16, 2019. According to

Metcalfe this was the first time the State told the Union that it was looking at December 16, 2019, as the implementation date.[2] The dates that made sense for conversion were limited to the times when the starts of semi-monthly and bi-weekly pay periods coincided. December 16, 2019 was one of those dates. with the start of a bi-weekly pay period. The next one was June 1, 2020.

On October 10, 2019, the State sent a notice to GG Unit and other State employees that it was exploring a change to bi-weekly schedules in December 2019. Goecker sent Metcalfe a copy of the notice by email on that date.

According to Metcalfe, the State's notice to employees about the payroll change greatly concerned unit employees, resulting in the Union being inundated with contacts from those employees worried about loss of leave and pay. The range of pay rates for GG Unit employees is broad. Employees in the lower ranges and steps are among the lowest paid employees in State government. Many GG Unit employees budgeted monthly living expenses based upon the receipt of two semi-monthly pay cycles. Receiving two smaller bi-weekly payments would stress their budgets.

On October 11, 2019, Metcalfe contacted State Division of Personnel and Labor Relations Director Kate Sheehan and relayed GG Unit employees' concerns to her. Representatives of the parties communicated through conference calls and in person throughout October 2019. In late October 2019, Metcalfe asked the State to postpone implementation from December to some later date.

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[2] Goecker testified that he told Metcalfe the State wanted to implement the change on December 16, 2019, during a telephone call on August 30, 2019. Metcalfe testified that he did not recall such a telephone conversation and after hearing Goecker's testimony he reviewed his email history around that date. There was no email between Metcalfe and his staff about notice from the State for a December 16, 2019 conversion. Metcalfe credibly testified that he would have emailed the union representatives he had assigned the changeover about such a notice from the State. To the extent it is germane I find that the State did not adequately notify the Union until October 7, 2019, that it wanted to implement the changeover on December 16, 2019.

By email dated October 29, 2019, Goecker explained that a postponing would not be in GG Unit employees' best interest. According to Goecker, December 16 was chosen, in part, because the semi-monthly and bi-weekly pay periods would overlap on that date, which they would not do so again until June 1 or November 16, 2020 and waiting for those later dates would result in employees being paid less wages in 2020. U-5

Metcalfe responded to Goecker by letter dated November 1, 2019. In that letter, Metcalfe noted that Article 21.07(A)(1) required in two separate sentences that any change to a bi-weekly pay schedule must be "done through a Letter of Agreement." U-6 Metcalfe explained that a '"Letter of Agreement' is a negotiated document" and it appeared the State had no interest in negotiating to agreement with the Union. *Id.*

On November 1, 2019, the State sent an email to all State employees. In that email, the State responded to "[o]ne question some have asked [-- namely], **Can we postpone this change?**" U-7 (emphasis in original) The State answered: "We looked into it, but it quickly became clear postponing not only wasn't possible, but also was **not best for employees**." *Id.* In that regard, the State explained that delaying implementation would "result in lower total wages for 2020 – **potentially several hundred dollars per employee**." The State explained that it valued its employees and " a short-term time convenience should not come at a significant financial cost to" employees. *Id.*

Metcalfe responded to the State's November 1 email to all employees by email later that evening. He reminded the State that the Union was the exclusive representative for GG Unit employees and that implementation of any change to bi-weekly payroll required a negotiated Letter of Agreement with the Union. U-8

The parties continued to discuss the conversion through mid-November. Thereafter, the parties agreed to mediation in an effort to resolve implementation date and pay issues. They did not successfully resolve their dispute. Additional emails were exchanged in early December, but no agreement was reached.

The State did not convert to bi-weekly payroll on December 16, 2019, without the Union's agreement. Because the State runs a single payroll system for all State employees, other than those employed in the governor's office and the State judiciary and legislative branches, it could not convert to a bi-weekly payroll for State employees represented by other unions, even those unions that had agreed to a conversion on that date.

The parties continued discussions through February 2020 but could not reach agreement. On March 5, 2020, the State filed an unfair labor practice charge, alleging the Union with refusing to bargain over a Letter of Understanding to modify the Agreement to change to bi-weekly payroll. A Hearing Officer for the Alaska Labor Relations Authority dismissed the State's charge on May 18, 2020.

On May 21, 2020, the parties entered agreed to a Letter of Dispute/Grievance Resolution about Bi-weekly Pay ("LDR"). E-1 The LDR provided pertinently:

1. The State could implement its last best offer, sent to the Union on February 10, 2020, and attached to the LDR on June 1, 2020;

2. The parties will proceed "to interest arbitration on the remaining issue in dispute between the parties" – namely, issue 1 set forth above in Part II; and

3. The parties agree to be bound "by the decision of the interest arbitrator with respect to all [GG Unit] employees."

In the State's last best offer attached to the LDR, the parties agreed to certain levels of leave accrual, with the Union retaining the right to seek relief for any error in the State's recalculation of the accrual rates, wage schedule, or other conditions and benefits. The leave

accrual rates were substantially similar to those proposed by the State initially on August 22, 2019, with less than half of the rates going down one minute each pay period.[3] However, active full-time employees will receive a one-time upward adjustment in the second pay period of January 2021, equal to the difference between an employee's then current yearly accrual rate and the sum of the twenty-six times that pay period accrual rate.

Under the State's implemented offer, GG Unit employees will receive less pay during calendar year 2020. GG Unit employees will receive pay during calendar year 2020 for work performed between December 16, 2019 and December 13, 2020. GG Unit employees were paid for work performed between December 16 and 31, 2019, on January 15, 2020. For work that will be performed between December 13 and 31, 2020, GG Unit employees will be paid on January 8, 2021 (covering December 14-27) and January 22, 2021 (covering December 28-31, along with work performed January 1-10, 2021).

At the median wage rate, Class 2, Range 15, Step B, employees will receive $157 less in pay in calendar year 2020 than they would have if there had have been no conversion and employees stayed on the semi-monthly pay schedule. Class 1, Range 15, Step B employees will receive $164 less. The scope in pay loss throughout the GG Unit is between slightly less than $100 to nearly $700. It equals roughly six hours of pay for full-time employees.

For the next several years, employees are paid about the same amounts under the bi-weekly pay schedule as they would have received under the semi-monthly schedule. At some point, either

[3] Goecker testified that all accrual rates went down one minute in the final proposal, with language providing for a one-time adjustment, or "round-up." A review of Employer Exhibit 1 that contained the State's last proposal with Union Exhibit 3, the State's initial proposal, shows Goecker was not correct. For example, in Article 21.09(A)(a)1)(a), the accrual rates for employees with five to ten years and over ten years of service are the same in both documents.

2025 or 2027, the bi-weekly pay schedule will result in substantially more being paid to GG Unit employees during the calendar year.[4]

In contrast, GG Unit employees earn more on hours worked during each calendar year after the conversion to bi-weekly pay cycles than they would have earned if they had remained on semi-monthly pay cycles.

IV. PERTINENT CONTRACT PROVISIONS.

ARTICLE 16 - Grievance – Arbitration

16.01 Procedure.

A. A grievance shall be defined as any controversy or dispute involving the application or interpretation of the terms of this Agreement arising between the Union or an employee or employees and the Employer. The parties agree that they will promptly attempt to adjust all grievances arising between them. The Union or the aggrieved employee or employees shall use the following procedure as the sole means of settling grievances, except where alternative dispute resolution and appeal procedures have otherwise been agreed to in this Collective Bargaining Agreement, in which case the applicable alternative procedure shall be the exclusive appeal process available to the employee or employees.

B. Any grievance must be brought to the attention of the Employer, consistent with the procedures set forth in this Article, within fifteen (15) working days of the effective date of the disputed action or inaction or the date the employee is made aware of the action or inaction, whichever is later.

C. If the Employer fails to render a decision in the allotted time frame, the grievance may be advanced to the next step of the procedure by the Union.

D. Allotted time frames may be extended by mutual agreement. Deadlines for submission of a grievance at Step Two and above shall be counted from the date of receipt of an e-mail or fax response from the Employer, or the date the response is due, whichever is earlier. Date of receipt of a grievance or response shall be the work day in which received if received before close of business or the following work day if received after close of business or on a weekend or holiday recognized in Article 24. All mailed material relating to Steps Two, Three, and Four of a grievance shall be accomplished through a proof of receipt method.

E. Grievances shall be processed on forms provided by the Employer. The grievance shall state the facts giving rise to the grievance, the provisions of the Agreement that have been violated, and the remedy requested.

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[4] The calculations done by the parties did not consider the yearly wage adjustments set forth in Article 21.03.

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16.03 Authority of the Arbitrator

A. Questions of procedural arbitrability shall be decided by the arbitrator. The arbitrator shall make a preliminary determination on the question of arbitrability. Once a determination is made that the matter is arbitrable or if such preliminary determination cannot reasonably be made, the arbitrator shall then proceed to hear the merits of the dispute.

B. The parties agree that the decision or award of the arbitrator shall be final and binding. The arbitrator shall have no authority to rule contrary to, amend, add to, subtract from, or eliminate any of the terms of this Agreement. The arbitrator shall have no power to modify a penalty or other management action except by finding a contractual violation.

C. Expenses incident to the services of the arbitrator shall be borne as designated by the arbitrator. Normally, the losing party shall be expected to pay the arbitrator's expenses. If neither party can be considered the losing party, the arbitrator shall apportion expenses using the arbitration decision as a guide.

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ARTICLE 18 - Performance Evaluations and Incentives

18.01 Performance Evaluations

A.

1. and at the completion of the probationary period. Permanent employees not in probationary status in a job class shall receive written evaluations on their merit anniversary date. Evaluations shall be limited to a period no greater than the preceding twelve (12) months.

   Permanent employees: Evaluations shall become due thirty (30) calendar days after the merit anniversary date. The Employer will make every effort to see that the evaluations are received in a timely manner.

   Probationary employees: Evaluations shall become due fifteen (15) calendar days prior to the mid-probationary period and completion of probation. The Employer will make every effort to see that the evaluations are received in a timely manner.

2. The fact that an evaluation is late shall not delay the transition from probationary to permanent status.

3. It shall be the responsibility of the Employer to provide for uniformity of the application of standards by different rating officers by providing the "Rater's Guide" to raters who have the responsibility for evaluating bargaining unit members. The State will provide a copy of the "Rater’s Guide" to the Union when revisions have been made.

4. Prior to signing and finalizing an evaluation, the rater will discuss the evaluation in draft form with the employee, in part to assist the employee in understanding the degree to which he or she is meeting the requirements of the position. Upon receipt the employee will be given two (2) working days to review the draft before any discussion of the evaluation with the rater is required. Employees will not be required to concur with the performance evaluation report.

5. An employee who is dissatisfied with any written performance evaluation may, within ten (10) working days of discussing the evaluation with the rater and prior to finalization of that evaluation, make a written rebuttal to it which will be attached to the evaluation and become a part of the employee's personnel record.

18.02 Performance Incentives.

Performance incentives shall be based upon the appointing authority's evaluation of an employee's performance. Unless the Employer takes an affirmative action to deny a merit increase through a performance evaluation, an employee shall be granted a merit increase to be effective on their merit anniversary date.

A performance incentive of one (1) step in the salary range may be given to an employee who has received an overall performance evaluation of "mid-acceptable" or better on the employee's merit anniversary date. The first day of the pay period following completion of the probationary period shall constitute an employee’s merit anniversary date and when the employee enters the pay range above the minimum rate of pay, the merit anniversary date shall be the first day of the pay period following completion of one (1) year of service in the position.

Steps (B), (C), (D), (E), (F) and (G) of the salary range shall be used for performance incentives where an employee has demonstrated satisfactory service of a progressively greater value to the State.

The merit anniversary date does not change when a performance incentive is not granted. If the employee's standard of performance reaches mid-acceptable levels later in the merit year, the step increase may be granted effective the first day of any pay period and no change in the merit anniversary date will result.

When an employee's level of work performance becomes less than "mid-acceptable," an interim performance evaluation may be prepared. When such an evaluation is prepared, and the level of performance does not reach "mid-acceptable" within the subsequent thirty (30) day period, one (1) salary step may be withdrawn on first day of the pay period following completion of the thirty (30) day period, provided the employee's salary is not the entry step of the salary range. No more than one (1) salary step may be withdrawn in a twelve (12) month period. Before a personnel action withdrawing a salary step is prepared, the employee shall be notified in writing that the performance has not improved. If the employee's level of performance subsequently reaches "mid-acceptable," the salary step may be restored effective the first day of any pay period the month

following preparation of a performance evaluation report confirming the improved level of performance. Employees on pay increments steps are not subject to the provisions of this rule.

The Employer will not establish a quota or percentage system to determine the number of performance incentive increases granted, but the parties agree to accept the standards (incorporated as Appendix A) and all subsequent written decisions issued by the neutral third (3rd) party pursuant to the performance incentive appeal process under this and prior agreements, for determining the granting or not granting of performance incentives.

* * *

18.03 Appeal Procedures.

In instances in which an employee has not been awarded a performance incentive or pay increment, the following shall be the sole and exclusive method for resolution:

* * *

Level Three:

In the event that the Director does not grant the appeal, the Union may advance the appeal to the neutral third (3rd) party selected in accordance with the procedures below by submitting a written request to the Director of the Division of Personnel and Labor Relations within fifteen (15) working days after receipt of the denial at Level Two. The request may include additional argument in support of the Union's position, to which the Director may make a written response; neither party shall submit new evidence in conjunction with these written statements. The Director shall forward copies of the Level Two and Three appeals and responses to the neutral third (3rd) party within fifteen (15) working days of receipt of the Union's request. The submission shall include all documents and written arguments reviewed by the Director at Level Two. Any dispute concerning the admissibility or relevance of performance related documents shall be resolved by the neutral third (3rd) party at such time as the appeal is forwarded for final decision.

The neutral third (3rd) party shall render a written decision and rationale within thirty (30) calendar days after receipt of the appeal. The decision shall be binding and nonreviewable. Costs associated with the neutral third (3rd) party shall be borne equally by the parties.

ARTICLE 21 –Wages

21.01 Wages.

Wage tables can also be found at the Division of Finance website. ASEA General Government wage tables are located midway on the webpage: http://doa.alaska.gov/dof/payroll/sal_sched.html

A. The following shall be the wage schedule for bargaining unit members who are subject to AS 23.40.200(a)(2) and (3) (Class Two and Three) occupying positions which are assigned to a normal workweek of thirty-seven and one-half (37:30) hours. Range

Range	Step A	Step B	Step C	Step D	Step E	Step F	Step G
5	1,091.00	1,120.00	1,152.00	1,183.50	1,220.50	1,252.00	1,288.50
	13.43	13.78	14.18	14.57	15.02	15.41	15.86
6	1,152.00	1,183.50	1,220.50	1,252.00	1,288.50	1,326.00	1,368.00
	14.18	14.57	15.02	15.41	15.86	16.32	16.84
7	1,220.50	1,252.00	1,288.50	1,326.00	1,368.00	1,410.50	1,452.00
	15.02	15.41	15.86	16.32	16.84	17.36	17.87
8	1,288.50	1,326.00	1,368.00	1,410.50	1,452.00	1,495.00	1,545.50
	15.86	16.32	16.84	17.36	17.87	18.40	19.02
9	1,368.00	1,410.50	1,452.00	1,495.00	1,545.50	1,589.00	1,636.00
	16.84	17.36	17.87	18.40	19.02	19.56	20.14
10	1,452.00	1,495.00	1,545.50	1,589.00	1,636.00	1,686.00	1,743.00
	17.87	18.40	19.02	19.56	20.14	20.75	21.45
11	1,545.50	1,589.00	1,636.00	1,686.00	1,743.00	1,796.50	1,859.50
	19.02	19.56	20.14	20.75	21.45	22.11	22.89
12	1,636.00	1,686.00	1,743.00	1,796.50	1,859.50	1,923.00	1,988.00
	20.14	20.75	21.45	22.11	22.89	23.67	24.47
13	1,743.00	1,796.50	1,859.50	1,923.00	1,988.00	2,062.00	2,136.00
	21.45	22.11	22.89	23.67	24.47	25.38	26.29
14	1,859.50	1,923.00	1,988.00	2,062.00	2,136.00	2,216.00	2,287.00
	22.89	23.67	24.47	25.38	26.29	27.27	28.15
15	1,988.00	2,062.00	2,136.00	2,216.00	2,287.00	2,373.00	2,460.50
	24.47	25.38	26.29	27.27	28.15	29.21	30.28
16	2,136.00	2,216.00	2,287.00	2,373.00	2,460.50	2,548.00	2,636.00
	26.29	27.27	28.15	29.21	30.28	31.36	32.44
17	2,287.00	2,373.00	2,460.50	2,548.00	2,636.00	2,726.00	2,816.00
	28.15	29.21	30.28	31.36	32.44	33.55	34.66
18	2,460.50	2,548.00	2,636.00	2,726.00	2,816.00	2,921.00	3,013.50
	30.28	31.36	32.44	33.55	34.66	35.95	37.09
19	2,636.00	2,726.00	2,816.00	2,921.00	3,013.50	3,123.00	3,218.00

	32.44	33.55	34.66	35.95	37.09	38.44	39.61
20	2,816.00	2,921.00	3,013.50	3,123.00	3,218.00	3,336.00	3,441.00
	34.66	35.95	37.09	38.44	39.61	41.06	42.35
21	3,013.50	3,123.00	3,218.00	3,336.00	3,441.00	3,566.00	3,684.00
	37.09	38.44	39.61	41.06	42.35	43.89	45.34
22	3,218.00	3,336.00	3,441.00	3,566.00	3,684.00	3,822.00	3,947.50
	39.61	41.06	42.35	43.89	45.34	47.04	48.58
23	3,441.00	3,566.00	3,684.00	3,822.00	3,947.50	4,096.00	4,234.00
	42.35	43.89	45.34	47.04	48.58	50.41	52.11
24	3,684.00	3,822.00	3,947.50	4,096.00	4,234.00	4,375.50	4,538.50
	45.34	47.04	48.58	50.41	52.11	53.85	55.86
25	3,947.50	4,096.00	4,234.00	4,375.50	4,538.50	4,708.00	4,879.50
	48.58	50.41	52.11	53.85	55.86	57.94	60.06
26	4,096.00	4,234.00	4,375.50	4,538.50	4,708.00	4,879.50	5,062.50
	50.41	52.11	53.85	55.86	57.94	60.06	62.31
27	4,234.00	4,375.50	4,538.50	4,708.00	4,879.50	5,062.50	5,240.50
	52.11	53.85	55.86	57.94	60.06	62.31	64.50

[Parts B and C have similar tables for Class One – thirty-seven and one-half hour and Class One – forty-hour employees, respectively]

D. Pay Increments.

An employee who has served two years at Step G within the given range will advance to pay increment J, if at the time the employee becomes eligible for the increment, the employee's current annual rating by the employee's supervisor is rated as mid-acceptable in the "Overall" category.

Pay increments computed at the rate of 3.25% of the employee's base salary, shall be provided after an employee has remained in pay increment J within the given range for two years, and every two years thereafter, if, at the time the employee becomes eligible for the increment, the employee's current annual rating by the employee's supervisor is designated as "mid-acceptable or better service." If a pay increment is delayed due to an untimely performance evaluation, upon receipt of the evaluation with an annual rating of "mid-acceptable or better", the pay increment will be granted retroactive to the employees pay increment anniversary date.

E. Bargaining unit members may continue to utilize options available under the State of Alaska Deferred Compensation Plan as a means to provide supplemental retirement income and/or defer income and corollary tax deductions until a later date.

21.02 Wage Adjustments.

A. Effective July 1, 2019, the wages in effect on June 30, 2019 will increase by three percent (3%).

B. Effective July 1, 2020, the wages in effect on June 30, 2020 will increase by one percent (1%).

C. Effective July 1, 2021, the wages in effect on June 30, 2021 will increase by one percent (1%).

D. For purposes of monetary term implementation, effective dates referenced above, or referenced in any other provision of the agreement, do not serve as a basis for retroactive implementation or application of monetary terms in the agreement absent a ratified and approved successor agreement before July 1, 2019. In the absence of a ratified and approved agreement before July 1, 2019, monetary term implementation or application dates will be established by mutual agreement of the parties.

* * *

ARTICLE 37 - Conclusion of Collective Bargaining

A. This Agreement is the entire agreement between the Employer and the Union. The parties acknowledge that they have fully bargained with respect to all terms and conditions of employment and have settled them for the duration of this Agreement. This Agreement terminates all prior Agreements and understandings either verbal or in writing except as provided at B below, and concludes collective bargaining for the duration of this Agreement.

B. Letters of Agreement or other contract modifications in effect at the time of signing of this agreement shall remain in effect for the duration of this Agreement unless cancelled under their own terms or by mutual agreement.

C. Prior to enacting any change in the terms and conditions of employment as established by a specific provision of this Agreement, the Commissioner of the Department of Administration shall obtain the agreement of the Union in the form of a Letter of Understanding or Agreement. Prior to enacting any change in any mandatory subject of bargaining which is not established by a specific provision of this Agreement and which was not a subject of a negotiations proposal, the Union shall be notified in advance of the proposed change thereby enabling them to negotiate on that change.

V. PARTIES' POSITIONS

A. The Employer.

This arbitration is based upon a stipulated issue – namely, whether the State violated Article 21.07(a) by not properly recalculating pay during the conversion from semi-monthly to bi-weekly pay cycles. The Union, thus, must show that the State's recalculation was improper or otherwise did not conform to the Agreement.

There was no miscalculation or a violation of the Agreement. The Employer used the hourly rates of pay set forth in the Agreement.

The Union did not dispute the hourly rates of pay. Instead, it argued about the timing of paydays. It argues that if employees' bank accounts have more money in them from the State at midnight on December 31, 2020 under the semi-monthly pay cycle than under the bi-weekly cycle, employees have been underpaid for 2020.

In 2020, the last payday under a semi-monthly pay cycle would fall on December 31, 2020, covering 11 workdays between December 1 and 15, 2020. The last payday under the adopted bi-weekly schedule will fall on December 24, 2020, covering 10 workdays between November 30 and December 13, 2020.

The timing of the paydays follows necessarily, logically, and unavoidably from the transition. The timing of bi-weekly paydays is set forth in Article 21.07(a). Nothing supports paying employees outside of the contractually agreed payday timing.

The Union cannot show any other violation of Article 21.07(a). That provision provides pertinently (1) "[a]s soon as feasible, payday shall be on a bi-weekly basis with direct deposit on Thursday of Friday . . . ," and (2) "when a bi-weekly pay schedule is implemented through a Letter

of Agreement, leave accrual and other conditions or benefits calculated based on a semi-monthly pay cycle will be recalculated to reflect conversion to a bi-weekly pay cycle . . . ."

The State honored the "as soon as feasible" section. To move paydays, accelerate the last pay day of 2020 or to advance money not yet due would violate the language in this section.

The State did not miscalculate pay rates. The State implemented it last best offer under the parties' Letter of Dispute Resolution. The Union does not take issue with the conversion of the leave or other benefit accruals. By using the hourly rates set out in the Agreement, the Employer did not and could not have miscalculated pay rates.

No yearly wage is established anywhere in the Agreement. The Union's contention otherwise is without merit. The Agreement simply specifies semi-monthly and hourly wages. Without any yearly guaranteed earnings language, the Union is focused on money deposited by December 31, 2020. This focus is arbitrary. Nearly 70% of the time throughout 2020, employees will have received more money under the bi-weekly pay cycle than under the semi-monthly cycle.

There is no discernable remedy because there is no violation or error to fix. Throughout the hearing the Union was unable to explain with any precision the remedy it sought. Instead, it proposed some vague suggestions like an extra holiday or leave accrual, raising the hourly rates slightly above the Agreement's rates, and giving each employee some lump sum. Each of these suggestions would add additional terms to the Agreement. The arbitrator is precluded from doing so under the Agreement's Article 16.03.

The Union's claim must be denied. Under the Agreement's Article 16.03(c), the Union should be required to pay the full costs of this arbitration.

B. The Union.

After the pay cycle conversion, GG Unit employees will suffer a loss in annual pay in comparison to what they would have been paid if the semi-monthly pay cycle remained or if the conversion had have occurred on December 16, 2019. The Agreement's Article 21 is clear that employees would be paid on a semi-monthly basis, twenty-four times per year. Article 21.07(A)(1), requires through any conversion that the State recalculate leave and other benefits so that employees will get no less than they did before. That requires the State to pay employees at least the same amount in wages after the conversion. The State wants to re-interpret the language of Article 21.07(A)(1). It argues that pay does not mean pay but means earnings.

There is no dispute that GG Unit employees will be paid less in 2020 than they would have been paid under the semi-monthly pay roll system. They, similarly, will receive less than if the State had converted to bi-weekly pay cycles on December 16, 2019, as the State warned in an email to employees on November 1, 2019. The Union could not agree to a December 16, 2019, conversion for reasons for which the State was solely responsible.

The State tasked Goecker, a brand-new State employee with no labor relations experience, with getting the Union and other unions to agree upon conditions of conversion. Goecker was immediately distracted by his need to commit all his working hours to deal with a strike by State employees with the Alaska Marine Highway System. He did not send the Union a proposal until August 22, 2019 and did not disclose to the Union that the State wanted to convert on December 16, 2019, until October 7, 2019. Given the complexity of issues surrounding conversion and the push back from members following the State's inappropriate October 10, 2019, communication with employees, it was foreseeable the Union could not agree in two short months.[5]

[5] The Union asserts that the October 10, 2019, and other communications the State sent to employees was unlawful direct dealing. The State asserts, and I agree, that I do not have authority to resolve conduct under the Alaska

The proper question in this case is what employees will be paid in 2020, not what they will earn. The State's reliance on earnings is misplaced. Nowhere in the Agreement are the words "earn" or "earnings." The Agreement talks exclusively in terms of what the State promises to pay GG Unit employees. Article 21.07(A) is titled "payday." "Pay," "payments" or "payday" are used repeatedly throughout the Agreement. Regardless of the context in which they are used, the State has promised to pay each GG Unit employee, on a calendar year basis, the total paid to them under semi-monthly pay. Even if earnings are used as argued by the State, employees do not receive in any calendar year the amount the State claimed at hearing they will earn in 2020.

The parties have always considered the concept of a payroll year. Under semi-monthly that has fun from December 16 of one year to December 15, of the following year. With bi-weekly, the payroll year runs from a fluctuating date in December for 364 days. Nonetheless, the State's obligation remains to pay employees the amount promised during a calendar year. It is only with calendar year 2020 that the State has failed to meet its obligation after the conversion to bi-weekly pay. The following years, the pay received each calendar year through the bi-weekly payroll system will equal that received by employees under the semi-monthly system.

For these reasons, the State must be ordered to pay GG Unit employees the amount they would have received if the conversion had occurred on December 16, 2019.

VI. DECISION

A. The Merits.

This proceeding was held under the LDR the parties agreed to on May 21, 2020. That agreement called for the "interest arbitration" of the dispute between the parties over the State's implementation of a bi-weekly pay schedule.

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labor laws. I do note, however, that communications to employees about matters discussed during negotiations is not considered unlawful direct dealing, in most circumstances.

An arbitrator's function in an interest arbitration proceeding is different from the arbitrator's role in a contract dispute. In the latter role, the arbitrator's role is to determine what the parties agreed to through the words of a collective bargaining agreement. The arbitrator's role in an interest arbitration proceeding is to determine based upon considerations of policy, fairness, and equity what the parties should have agreed upon. Elkouri & Elkouri, *How Arbitration Works,* Ruben ed. (6th Ed, 2003), p. 1358. Here, however, the parties have exclusively argued their respective positions based upon an interpretation of the Agreement.[6]

In the Agreement's Article 27.01(a), the parties agreed "[a]s soon as feasible, payday shall be on a bi-weekly basis . . . ." Thus, the parties agreed that the existing semi-monthly paydays could be changed to bi-weekly paydays. However, certain conditions had to be met before the conversion could occur. Those included (1) it had to be done through a "Letter of Agreement" and (2) "[l]eave accrual and other conditions or benefits calculated based on a semi-monthly pay cycle will be recalculated to reflect conversion to a bi-weekly cycle."

The parties were unable to reach agreement on a Letter of Agreement. Considering that and the "zipper" clause language in Article 37, the State could not have unilaterally implemented a change in payday cycles, even if the parties had reached an impasse. The Union, nonetheless, allowed the State to proceed while it retained the right to assert that the State violated Article 27.01(a)'s requirement by improperly recalculating "leave accrual and other conditions or benefits" through the conversion.

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[6] Under interest arbitration principles, I could be convinced to look at proposed modifications to the Agreement that would fairly and equitably address the issues faced by the parties because of the conversion. One example could be a lump sum payment to employees, with a resulting lowering of the 1% wage increase set to occur July 1, 2021, with a snap back provision. Neither party asked me to undertake such a task and I, therefore, concluded it would not be proper for me to do so.

There is no dispute that leave accruals were not properly recalculated. The parties appear to agree that "wages" falls within the definition of "other conditions or benefits." The Union asserts that GG Unit employees must receive the same amount of pay during calendar year 2020 after the payday conversion as they would have received if there had been no conversion and employees stayed on semi-monthly pay cycles.

Alternately, the Union asserts, in its post hearing brief, that employees should receive, the same amount of wages they would have received if the conversion had occurred on December 16, 2019. In making this argument, the Union asserts that the State was solely to blame for the parties not reaching agreement to a conversion on that date.

In part, the Union argues that the State representative's inexperience was a major factor. I do not believe it is within my purview to determine the qualifications of either party's representative.

The Union also argues that the short time the State gave it to agree on December 16, 2019, particularly given how long the State had been considering a conversion, makes the State responsible for the parties not reaching agreement. I cannot conclude that either party acted in any manner to be responsible for the parties' failure to agree on a December 16, 2019 conversion.

There is no dispute that GG Unit employees will receive less pay during 2020 under the State's implemented last best offer than they would have received under semi-monthly pay cycles. There also is no dispute that GG Unit employees will earn more in wages during 2020 under the State's implemented last best offer. Parenthetically, I cannot find any reference to payroll year in the Agreement.

The Union argues that through the Agreement, the State promised to pay employees a certain amount for calendar year 2020. It relies upon the Agreement's Article 21.01 wage table

and Article 21.07(A)(1) payday language, along with the ubiquitous use of "payday", "pay" and "payment" throughout the agreement.

I have reviewed the Agreement. Not surprisingly, payday is used almost exclusively in Article 21.07(A)(1) to describe when payday will be or the need to change paydays if the parties agree on a conversion from semi-monthly to bi-weekly pay cycles. Pay is used throughout the Agreement with respect to rates of pay, premium pay and leave of pay. Payment is used with respect to court and military leave, repayment for damaged property and return of an overpayment. The use of these words throughout the Agreement do not manifest an agreement to guarantee the amount of pay GG Unit employees will receive during any calendar year.

The Union asserts the salary numbers in the wage table constitute a promise of the amount GG Unit employees will be paid during each payday in 2020. That number multiplied by 24 paydays, therefore, is the total amount the State promised under the Agreement to pay employees during 2020. Because GG Unit employees will receive less in pay under the State's implemented last best offer, the State did not properly recalculate employee pay, according to the Union.

Contrary to the Union's contention, the wage tables show how much employees will earn each pay period. This is amply shown by reviewing the wage tables set out in http://doa.alaska.gov/dof/payroll/sal_sched.html, specifically referenced in the Agreement. The printed wage table set forth in the Agreement is identified as effective July 1, 2019, on the website (and consistent with the effective date of the Agreement). That is, employees will start earning those wage rates beginning on July 1, 2019. It does not mean employees will be paid those amounts beginning with paydays starting July 1, 2019. The wage schedules posted on the web site for June 1, 2020 and July 1, 2020, similarly, set forth the amount employees will earn effective on

those dates. I cannot conclude that the State promised in the Agreement that employees would receive a certain amount of pay during the calendar year.

The parties did agree in Article 21.07(A)(1) that the pay cycles could be converted to a bi-weekly pay cycle as soon as feasible, with pay days falling on Thursday or Friday, rather than the existing fifteenth and last day of each month. Pay cycles were converted as soon as feasible and the pay days were changed as required by the Agreement. By using the agreed upon hourly wage rate set forth in the Agreement, the State properly converted to a bi-weekly pay cycle. That the total pay received on midnight December 31, 2020, will be slightly less than employees would have received under the semi-monthly system does not violate any provision of the Agreement.

B. Arbitration Costs.

The State relies upon the Agreement's Article 16.03.C to argue that as the losing party the Union should pay the arbitrator's expenses. Article 16.03.C provides pertinently "[n]ormally, the losing party shall be expected to pay the arbitrator's expenses." I do not conclude, however, that language obligates a "losing party" in this matter to bear the arbitrator's full expenses, for at least two reasons.

First, Article 16.03.C is part of the Agreement's provisions on contract grievance resolution. As noted, this matter was held under the LDR's interest arbitration agreement. Elsewhere in the Agreement for disputes not covered by Article 16, the parties agreed to split the arbitrator's costs. *See* Agreement, Article 18. Accordingly, a split would be appropriate.

Second, even if Article 16.03.C did govern this matter, it provides only that "normally" the losing party should be required to pay the full expenses. I conclude that in the circumstances of this matter, equities require that an exception to the normal process should apply.

Here, the State was prohibited by the Agreement from converting from semi-monthly to bi-weekly pay cycles covering GG Unit employees without a Letter of Agreement mutually agreed to by the Union. As the State's payroll specialist explained, as a practical matter the State could not convert other bargaining units' payroll cycles until it reached agreement with the Union on conversion covering GG Unit employees.

That the Union voluntarily agreed to allow the State to implement its last best offer allowed the State to proceed with its desired conversion as to GG Unit and other State employees. That also allowed the State to convert the rest of its payroll. Under these circumstances it would not be equitable to charge the Union the full costs. The costs should be split.

VII. CONCLUSION

As set forth above, I have concluded that the State should be allowed to implement its last best offer without any modifications.

AWARD

Having carefully considered the evidence and argument in its entirety, I hereby render the following Award:

1. The State of Alaska can implement without any modification its last best offer attached to the May 21, 2020, Letter of Dispute/Grievance Resolution, signed by the parties; and

2. The State of Alaska and the Alaska State Employees Association/American Federation of State, County, Municipal Employees, Local 52, AFL-CIO shall each be responsible for one-half of the fees and expenses of the arbitrator in this proceeding.

DATED this 31st day of August 2020

Mark E. Brennan, JD
Arbitrator