IN INTEREST ARBITRATION BEFORE
MICHAEL E. CAVANAUGH, J.D.,
ARBITRATOR

MARINE ENGINEERS BENEFICIAL ASSOCIATION,	:	
	:	INTEREST ARBITRATOR'S
and	:	DECISION AND AWARD
	:	
WASHINGTON STATE FERRIES,	:	PERC No. 130851-I-18 (Licensed)
	:	
(Interest Arbitration, 2019-21 Licensed CBA)	:	
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For the Employer:

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I. INTRODUCTION

More than two years ago, the parties selected me to serve as sole Interest Arbitrator for their 2019-2021 collective bargaining agreement. Shortly before the hearing, scheduled to begin in late August 2018, the Employer ("WSF") filed an unfair labor practice charge alleging that the Union's proposal on Section 26[1] encompassed a subject excluded from interest arbitration under

[1] Section 26 has long required that the Employer make contributions of a specific dollar amount per day worked on behalf of Temporary Marine Engineers (TRE's"). TRE's are dispatched to WSF from the hiring hall when WSF has insufficient numbers of WSF marine engineers to operate the vessels. Section 26 requires contributions on behalf of TRE's to the MEBA Medical and Benefits Plan, a Taft-Hartley Trust, which the record establishes is the only source of health insurance available to TRE's.

RCW 47.64.270(3) and 47.64.320(1). That is so, said WSF, because the statutes prohibit state employees from bargaining for a health insurance plan outside the bargaining that occurs under the auspices of the statewide Health Care Authority ("HCA"). The requirement under Section 26 that the Employer contribute a specific amount per day worked on behalf of TRE's to the MEBA Medical and Benefits Plan allegedly violated that statutory prohibition. In response to the charge, PERC Director Michael Sellars suspended his prior certification of the Section 26 issue for interest arbitration, and the matter proceeded to hearing on the remaining certified issues. I issued my Award with respect to those issues on September 24, 2018.

On a parallel track, the Section 26 unfair labor practice allegations were heard by a PERC Hearing Examiner (who found that Section 26 presented an illegal subject of bargaining), but the Commission itself overruled the Hearing Examiner in a 2-1 decision. After the Commission denied WSF's motions for a stay and for reconsideration, the State filed an action in Superior Court alleging that the Commission's rulings on the merits misapplied the law. My understanding is that legal action awaits a hearing date in the trial court.

The Section 26 issues were returned to me by order of the Director for a hearing on the merits, which was conducted on the Zoom platform on December 15, 2020. The parties had full opportunity to present evidence and argument, including cross examination of witnesses. The proceedings were transcribed by a certified court reporter, and I have carefully examined the transcript in my analysis of the evidence and argument. The parties filed simultaneous written post-hearing briefs which I received on or about January 29, 2021. Having now considered the record in its entirety, I am prepared to render the following Interest Arbitration Award.

II. FACTS

As noted, the PERC Hearing Examiner, Unfair Labor Practice Manager Dario de la Rosa, held for WSF on the unfair labor practice charge, finding that the Union had committed an unfair labor practice by seeking to present a prohibited subject of bargaining in interest arbitration. PERC DECISION 13027 – MRNE, July 5, 2019. The Union appealed, and on August 11, 2020, The Commission, in a 2-1 decision, overruled the Hearing Examiner and found that no unfair labor practice had been committed. PERC DECISION 13027A. The closing paragraph of the majority decision contained the following language:

> . . . the Executive Director is directed to terminate his August 28, 2018, suspension from interest arbitration of the matters involved herein, and to immediately remand the issue or issues to the interest arbitration panel for a ruling on the merits.

WSF filed a motion for a stay on August 21, 2020, which the Commission unanimously rejected by order dated September 3, 2020. *See*, PERC DECISION 13027B. Similarly, the Commission unanimously rejected a WSF Motion for Reconsideration on September 17, 2020. PERC DECISION 13027C. Director Sellars then remanded the Section 26 issue to me, with instructions that echo the Commission's order that the matter be returned "to the interest arbitration panel for a ruling on the merits."

III. DECISION

The current proceedings remain subject to the procedures of RCW Ch. 47.64 which specifies the following factors as the guiding principles for an interest arbitrator's award:

> In making its determination, the arbitrator or arbitration panel shall be mindful of the legislative purpose under RCW 47.64.005[2] and 47.64.006[3] and, as additional

[2] "The state of Washington, as a public policy, declares that sound labor relations are essential to the development of a ferry and bridge system which will best serve the interests of the people of the state." RCW 47.64.005.

[3] "The legislature declares that it is the public policy of the state of Washington to: (1) Provide continuous operation of the Washington state ferry system at reasonable cost to users; (2) efficiently provide levels of ferry service

standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

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

(b) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;

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

(d) Stipulations of the parties;

(e) The results of the salary survey as required in RCW 47.64.170(8);

(f) Comparison of wages, hours, employee benefits, and conditions of employment of the involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved;

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

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

(i) The ability of the state to retain ferry employees;

(j) The overall compensation presently received by the ferry employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefits, and all other direct or indirect monetary benefits received; and

(k) Other factors that are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under this chapter.

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consistent with trends and forecasts of ferry usage; (3) promote harmonious and cooperative relationships between the ferry system and its employees by permitting ferry employees to organize and bargain collectively; (4) protect the citizens of this state by assuring effective and orderly operation of the ferry system in providing for their health, safety, and welfare; (5) prohibit and prevent all strikes or work stoppages by ferry employees; (6) protect the rights of ferry employees with respect to employee organizations; and (7) promote just and fair compensation, benefits, and working conditions for ferry system employees as compared with public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia in directly comparable but not necessarily identical positions." RCW 47.64.006.

RCW 47.64.320(3).

But despite the clear marching orders I have been given as interest arbitrator to render a ruling on the merits, WSF urges that I instead revisit its legal arguments in support of the unfair labor practice charge, i.e. asks that I reach a different conclusion on the underlying legal issues than the Commission has reached. Not surprisingly, the Union strenuously objects, noting (correctly) that nothing in the statutes gives me authority to overrule the Commission's decision on the law—which as the Union points out is entitled to great deference, not only by an Arbitrator, but also the courts. Therefore, I agree with the Union that I lack authority to do what WSF requests.

That is not to say that the legal issues here are so clear that only one resolution could be supported by the evidence and logic. I note, for example, that within the Commission itself, there are labor relations professionals who have come to opposite conclusions—Commissioners I have known professionally and have respected for several decades. I therefore understand the urgency with which WSF has pursued its vision of the appropriate limits on Ferry System collective bargaining. But the appropriate process for challenging the Commission's interpretation of the statutes as they apply to Section 26 is already underway. It began with a PERC Hearing Examiner, proceeded to the Commission itself, and is now pending in the courts of our state. That is where the dispute belongs, and if I were to inject myself into that process as WSF requests, I would clearly be exceeding my authority.

To repeat, WSF has cited no legal authority in support of the proposition that an interest arbitrator, selected by the parties to hear issues duly certified by the Director, is authorized to review legal conclusions drawn by the Commission and the Director. It would be directly

contrary to the structure of public sector collective bargaining in Washington State for me to arrogate such a power to myself.

Consequently, I must reach the merits of the Union's Section 26 issue as judged according to the normal considerations that apply in interest arbitration, RCW 47.64.320(3), leaving the statutory interpretation issues to the Commission and the courts. On that score, however, WSF has made no argument before me that the Union's current "status quo" proposal on Section 26 should be rejected based on the statutory criteria, i.e. that Section 26 from the prior Agreement should not be rolled into to 2019-2021 CBA as is.[4] The Union argues, and I agree, that WSF's failure to present evidence at the hearing on the traditional statutory criteria, or even to argue those issues in its brief, constitutes an admission that this proposal is consistent with those criteria. Therefore, I will award that the Union's status quo proposal become part of the 2019-2021 CBA for the reasons set forth in the Union's Brief, which I hereby find to be supported by the evidence:

> - The Employer has been paying medical contributions into a Taft-Hartley plan on behalf of Engineers, including Temporary Relief Engineers, since at least 1955.
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> - The primary comparison jurisdiction, the Alaska Marine Highway System, pays into the MEBA plan on behalf of TREs.
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> - The financial impact of MEBA's proposal on the State's budget is *de minimis*. Union Exhibit 3 establishes that payments to the Taft-Hartley trust in 2018, the last complete year of WSF's participation, totaled less than $40,000.
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> - The Employer does not pay medical premium contributions on behalf of TRE's into the State Plan, because they never work long enough to establish eligibility for benefits.
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> - WSF TRE's have never and will never qualify for coverage under the State Plans.

[4] During the original negotiations in 2018, the Union had proposed an increase in the per diem contribution WSF would make to the MEBA Trust Fund on behalf of TRE's, but the Union confirmed on the record at the hearing that it now seeks only the status quo on Section 26.

- To qualify for coverage under the MEBA Taft-Hartley plan TRE's must establish sixty days' worth of contributions within a six-month period for six months' coverage. Despite that they never work this long for WSF, WSF TRE's referred through the MEBA Hall can piggyback their days of WSF contributions with contributions from other employers, mostly in the private sector deep sea industry.

- Losing this ability to accrue service days in the MEBA Taft-Hartley plan when working at WSF makes the WSF temporary jobs even less attractive to qualified Engineers than they currently are.

Union Brief at 6.

INTEREST ARBITRATION AWARD

Having carefully considered the evidence and arguments of the parties, I now render the following Interest Arbitration Award:

The Union's status quo proposal that Section 26, as set forth below, remain part of the 2019-2021 Collective Bargaining Agreement is hereby **AWARDED**:

See Appendix B, Health Care Benefits Amounts;

The Employer agrees to maintain participation in the MEBA Medical and Benefits Plan for Temporary Relief Engineers. The Employer shall contribute $54.00 per day for each day a Temporary Relief Engineer works or is on vacation under this Agreement to the MEBA Medical and Benefits Plan, up to a maximum of $756.00 per month. During any month, once the Employer has contributed the maximum monthly amount on behalf of an individual Temporary Relief Engineer and such employee continues to be on the Employer's payroll during the month, the Employer will deduct from the employee's pay, before taxes, $54.00 (or portion thereof) per day medical contribution to be paid to the MEBA Medical and Benefits Plan. The Employer will notify the Temporary Relief Engineer that the $54.00 (or portion thereof) per day deduction must be made in accordance with this Agreement.

Dated this 10th day of February, 2021

Michael E. Cavanaugh, J.D.
Interest Arbitrator