

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

DISTRICT NO. 1 – PACIFIC COAST DISTRICT)	
NATIONAL MARINE ENGINEERS')	MEC CASE NO. 8-85
BENEFICIAL ASSOCIATION, AFL-CIO,)	
)	DECISION NO. 18 - MEC
Grievant,)	
)	
v.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
WASHINGTON STATE FERRIES,)	AND ORDER
)	
Respondent.)	
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Durning, Webster and Lonquist, Attorneys at Law, by James H. Webster, appeared on behalf of the Marine Engineers' Beneficial Association.

Kenneth Eikenberry, Attorney General, by Robert M. McIntosh, appeared on behalf of Washington State Ferries.

INTRODUCTION

Although Washington State Ferries (WSF) had required its deck and dock-side employees to wear uniforms for several years, Licensed Engineers had not been so required. Licensed deck officers are represented by the Masters, Mates and Pilots International Union. All other deck personnel and dock-side personnel are represented by the Inlandboatmen's Union of the Pacific (IBU). Such required uniforms were purchased by the foregoing personnel who were compensated therefore by means of a "uniform allowance."

In 1983 and 1984, when WSF decided to require its Licensed Engineers also to wear uniforms, it chose to furnish the uniforms directly to the Licensed Engineers and the other Engineering and Deck Departments personnel through a single-source vendor (Pacific Outfitting Co.), but later chose to continue the "uniform allowance" for the licensed deck officers.

WSF Licensed Engineers are represented by the Marine Engineers Beneficial Association (MEBA).

Members of MEBA are required to be measured/fitted at either Anacortes or Seattle and later to pick up and sign for their uniforms at Pacific Outfitting in Seattle. Because their watch assignments prohibited them from complying with these WSF directives while on duty, many of the Engineer Officers were obliged to report for measuring/fitting and/or pick-ups during off-duty hours. All but those terminating or residing in Seattle were required to make at least one trip to Seattle.

Many members of MEBA submitted claims for overtime (or "call-in"), travel time and mileage. Such claims were rejected by WSF.

MEBA filed a grievance on behalf of all WSF Licensed Engineers on December 5, 1985.

This matter came on for hearing before Commissioner Donald E. Kokjer, acting as assigned Hearing Examiner. Hearing was held in the "Spike" Eikum Conference Room, Colman Dock, Seattle, Washington on April 2, 1986. Commission Chairman Haworth and Commissioner Stewart did not participate in the hearing, but all Commissioners have read the entire record, including the transcript of the hearing, the exhibits submitted and the briefs of the parties.

Positions of the parties and the issues are summarized as follows:

POSITIONS OF THE PARTIES

GRIEVANT'S POSITION

MEBA contends that WSF made the unilateral decisions to provide and require Engineer Officers to wear uniforms for WSF purposes, to select a single-source vendor, to require Engineer Officers to report for measurements and for uniform pick-up and

signatures therefore. MEBA contends that the MEBA/WSF Agreement specifies that if an Engineer Officer is required to work on a regularly scheduled day off, he/she shall receive one (1) day's pay at the overtime rate (double-time).

MEBA also contends that Licensed Engineers must be compensated for the travel time and mileage involved under said Agreement.

MEBA further contends that when WSF announced the decision to require uniforms to be worn by the Engineer Officers, MEBA pointed out during contract negotiations that overtime pay would be expected if the fitting, etc. could not be done during regular watches.

MEBA also contends that several alternative less-costly procedures for obtaining the uniforms were proposed, but that WSF flatly refused to discuss the matter, except to assert that obtaining and wearing uniforms would be a condition of employment and that WSF would not pay for time or travel involved.

MEBA requests that MEC retain jurisdiction "over this matter to determine how much is owed to each individual engineer officer in the event the parties are unable to agree on compliance with the determination that's issued."

RESPONDENT'S POSITION

WSF contends that obtaining and wearing uniforms is a "condition of employment" for Licensed Engineers, just as obtaining the Marine Engineer's license from the U.S. Coast Guard is a "condition of employment", and it is up to the individual Licensed Engineer to satisfy these "conditions of employment." WSF contends that the WSF/MEBA Agreement lists the specific activities for which travel time, mileage, and overtime are payable, but trying on and picking up uniforms is not such an activity and therefore is not compensable.

WSF relies upon Chatfield Paper Corp., 46 LA 530, in arguing that the absence of a

collective bargaining provision requiring payment for an unusual type of employee activity done outside the normal working day gives rise to no pay or overtime liability on the part of the employer.

WSF further contends that the absence of a contract provision requiring payment for uniform fitting and pickup is significant since the parties discussed this issue during collective bargaining for the 1983-1985 WSF/MEBA Agreement and although the matter was not resolved it was not included in the interest arbitration process.

WSF cites Section XXX of said Agreement in arguing that WSF has “the right and duty to manage its business, including the right to adopt regulations governing the appearance, dress, conduct, and work procedures of its employees as are reasonably required... (emphases in WSF brief).”

WSF further argues that, even if the WSF/MEBA Agreement were ambiguous, past practices do not support payment of overtime, travel time, and mileage for uniform try on and pick up. WSF asserts that no WSF engineer has ever been paid for trying on or picking up a uniform, just as “no WSF engineer has ever been paid for his trip to the Coast Guard to renew his license . . . , (and) no member of any other WSF bargaining unit has ever been paid more than \$25 for trying on or picking up a uniform . . .”

Finally, WSF contends that contract interpretation must be “reasonable,” arguing that paying an employee more than \$800 for trying on and picking up a uniform would be an unreasonable interpretation of the WSF/MEBA Agreement.

ISSUES

- I. At issue is the question of whether or not WSF Licensed Engineers are entitled to overtime pay, travel pay and mileage compensation in connection with their compliance with WSF directors to be measured for and later to pick up and sign for their uniforms, under the WSF/MEBA Collective Bargaining Agreement; and

- II. If so, shall MEC retain jurisdiction to determine how much is owed to each Engineer Officer in the event the parties are unable to agree on compliance with the MEC decision?

The Marine Employees' Commission having read the hearing transcript, examined the exhibits, and read the parties' briefs now enters the following findings of fact.

FINDINGS OF FACT

- I. On July 3, 1984, WSF issued a directive for "all MM&P, MEBA and IBU Employees" to be measured for uniforms. (NOTE: Only Licensed Engineers ("MEBA Employees") are hereinafter considered.) That schedule in pertinent part required Licensed Engineers to report, as follows:

... in order to ensure that every person may have his/her uniform tailored to fit, the following schedule for uniform measurement is pomulated (sic).

Tailor's (sic) will be available at the Anacortes ferry terminal on July 9, 10, 11, & 12, from 10:00 a.m. until 6:00 p.m. each day and July 19, 20, & 21 again from 10:00 a.m. to 6:00 p.m. each day. Tailor's (sic) will also be available at the company store located at 421 South Michigan, Seattle from 9:30 a.m. to 5:30 p.m. Monday thru Saturday, from now until July 31.

...After July 31st, the store in Seattle will be available to take measurements at the same time and days as already given. However, anyone who is unable to have their uniform measurements taken no later than August 15th, assumes the risk of not having uniforms ready when they are required to be worn. ...

Pick-up times, dates and places for the new uniforms will be published at a later date, ...

2. On February 14, 1985, WSF issued a directive for Licensed Engineers to pick up their uniforms:

Dear Employee:

The long awaited uniform program is now ready for implementation. We have a target date of March 18, 1985 for our first day in the new uniform.

However, because of certain limitations of the vendor, I ask your cooperation in picking up your uniform. You are scheduled to pick up your uniform between the dates of February 19, 1985 and March 5, 1985. Please make every effort to pick up your uniform during these dates to help assure a smooth and orderly transition.

With your cooperation, we can have everyone in the new uniform by the target date.

Store address and hours are:

0900-1700 Monday through Saturday

PACIFIC OUTFITTING

421 South Michigan

Phone: 763-2200

Sincerely,

(s)
O.D. Sisson
Operations Officer

3. Having received optional dates for their uniform measurements and pick-ups, those individual Engineer Officers residing or terminating in the Anacortes or Seattle areas then exercised an option as to whether or not to be measured and/or pick up their uniforms during an extension of (i.e., immediately preceding or following) assigned watches, which some did, or whether to do so on their days off, which others did.
4. WSF Licensed Engineers work 8- and 12-hour watches, changing at various times, e.g., the day watches start from 5:00 a.m. to 8:00 a.m. (NOTE: Engineers on 12-hour watches rotate between day and night watches.)

5. WSF Licensed Engineers begin and terminate their watches at Lofall, Fauntleroy and Pier 52 (Seattle), Edmonds, Mukilteo, Anacortes, Port Townsend and Tahlequah.
6. The assigned watch hours and terminals permitted Licensed Engineers to be measured and/or to pick up their uniforms during a simple extension of time before starting or after completing a watch.
7. The record is not clear as to whether MEBA proposed alternative procedures during collective bargaining. The record is clear, however, that MEBA and/or individual Engineers did propose alternatives during the actual process, including but not limited to (1) delivery of uniforms to terminals and/or vessels, which would have eliminated the second trip to Pacific Outfitting in Seattle, and (2) requests to have one Engineer pick up uniforms for the other Engineers on a watch/vessel. WSF rejected these proposals on the grounds that uniforms had to be tried on for fit and that Engineers must sign for their uniforms.
8. Engineers were not required by the February 14, 1985 schedule (See Finding No. 2) nor were they required in actual practice to try on their uniforms before accepting delivery, but were only required to sign for the uniforms.
9. WSF required personal signatures at Pacific Outfitting in Seattle at the insistence of the contract vendor, Pacific Outfitting, "for billing purposes."
10. WSF regularly delivers supplies and other items to terminals and vessels and does require signatures from the receiving person.
11. On March 11, 1985, MEBA by letter requested prompt payment of mileage, travel time, and overtime claims submitted by Licensed Engineers for their uniform measurements and pick-ups in accordance with the WSF/MEBA Agreement.

12. MEBA's right to grieve actions of WSF is specified in Section 1 of the WSF/MEBA Agreement as follows:

SECTION 1 – RECOGNITION

The Employer hereby recognizes the Union as the sole and exclusive Representative of all Licensed Engineer Officer employees, hereinafter referred to as "Engineer Officers", for the purpose of collective bargaining in all matters pertaining to wages, hours, and other conditions of employment, including the adjustment of all disputes or grievances involving the interpretation or the application of the provisions of the Contract.

13. Section VI(d), (e) and (g) and Section IX in its entirety of the WSF/MEBA Agreement govern the payment of overtime. In the interest of brevity these Sections are incorporated into these Findings and are appended to this Decision.
14. Payment of mileage and travel pay in this case is governed by Section XII (a) and (e) of the WSF/MEBA Agreement:

SECTION XII – MILEAGE AND TRAVEL TIME

(a) When travel pay is authorized under any rule of this Agreement, it shall be paid at the straight-time rate of pay for the appropriate travel time indicated in Schedule A, attached hereto. If the employee furnishes transportation under such circumstances he shall be reimbursed for the appropriate number of miles only for travel actually performed as indicated in Schedule A, attached hereto. The mileage rate shall be that allowed by the State Official Program Planning and Fiscal Management for use of private automobiles. (NOTE: Schedule A was not submitted as evidence with the 1983-1985 Agreement. Schedule A was attached to the 1977-80 Agreement and is presumed to remain unchanged.)

...

(e) Payment will be made for travel and mileage actually performed from the terminal closest to the employee's residence to the temporary relieving terminal, or from the normal relieving terminal to the temporary relieving terminal, whichever is less.

...

15. Payment for “call-in” or “call-back” is governed by Section XIII of the WSF/MEBA Agreement:

SECTION XIII – MINIMUM CALL

All Engineer Officers, when called to work as a member of the crew, shall receive a minimum of eight (8) hours pay. Work time shall start at the time they are called for assignment. (Emphasis added.)

16. The individual Engineer Officers in this instance were not called as members of crews. Nor were they called for immediate reporting to a crew. Rather, they were given a series of optional dates for measuring and a separate series of optional dates for uniform pick ups. (See Findings of Fact 1 and 2, supra.)
17. MEBA did raise the issue of compensation and mileage for Engineer Officers if measurements were not taken and uniforms delivered during assigned duty hours, during the collective bargaining process. WSF did insist that the uniform requirement was a “condition of employment”, comparable to the licensure requirement, and not compensable for overtime, travel time or mileage. During negotiations MEBA did not withdraw the insistence on such compensation and mileage, but did assert that Engineer Officers would be filing claims for payment.
18. Procedures for disputes arising from the application or interpretation of the WSF/MEBA Agreement, governed by Sections XXII and XXX, are not contested. It is the finding herein that the procedures set forth were utilized, and inclusion of the text is omitted in the interest of brevity.
19. “Work” is defined as follows:

Work. To exert one’s self for a purpose; to put forth effort for the attainment of an object; to be engaged in the performance of a task, duty, or the like. The term covers all forms of physical or mental exertions, or both combined, for the attainment of some object other than recreation or amusement. Black’s Law Dictionary, 5th Ed., (1979) at 1439.

20. “Condition of employment” is defined as follows:

Condition of employment. Qualification required for a particular job; circumstances under which employment may be secured. See also Probation. Black’s Law Dictionary, 5th Ed., (1979) at 267.

Probation. The evidence which proves a thing; the act of proving; proof; trial; test. Used in the latter sense when referring to the initial period of employment during which a new, transferred, or promoted employee must prove or show that he is capable of performing the required duties of the job or position before he will be considered as permanently employed in such position. ...ibid., at 1082.

21. Typically, the time for actual uniform measurements and for actual pick-ups required 15 to 45 minutes each.

Based upon the foregoing findings of fact, the Commission now enters the following conclusions of law.

CONCLUSIONS OF LAW

1. The Marine Employees’ Commission has jurisdiction over the parties and the subject matter. (Section XXIII of the WSF/MEBA Agreement; Chapter 47.64 RCW)
2. The 1983-1985 Agreement by and between District 1 – Pacific Coast District, National Marine Engineers’ Beneficial Association (MEBA) and Washington State Ferries (WSF) is the governing document in this case.
3. MEC may only interpret said Agreement as it applies to the issue, and shall not change or amend the terms, conditions, or applications of said Agreement (RCW 47.64.150).
4. The requirement that Engineer Officers wear certain uniforms is a valid exercise of WSF management’s rights (Section XXX, WSF/MEBA Agreement), and was agreed to by MEBA (Section XXI, ibid.)

5. When the meaning of the Agreement is clear, no construction is necessary; and MEC is prohibited from construing said Agreement “to give effect to the intent of the parties when it was made and the circumstances existing at the time it was made to ascertain the intent (Allied Industrial Workers v. General Electric Co., 82 LRRM 2416, 2420 (1973)).” However, because the contract is silent regarding compensation specifically for obtaining uniforms, MEC must determine the intent. The withdrawal of MEBA’s demand during contract negotiations of a proposal to specify payment for acquiring uniforms during off-duty hours cannot be held to be an admission that such a right did not already exist without such a clause. (See Elkouri and Elkouri, How Arbitration Works, 3rd Ed., 315 (1983)). WSF, confronted by MEBA’s notice of intention to enforce payment of claims, did not itself seek to insert specific language providing for non-payment of such claims. WSF as well as MEBA can and should take the initiative to seek contract language to ensure its intent. The fact that WSF did not so do here indicates that WSF believed its interpretation of the Agreement would prevail, just as MEBA was willing to seek enforcement of claims with the Agreement as it stood. (Courier-Citizen Co. v. Lowell Typographical Union No. 310, 42 LA 269, 271, 272 (1964))
6. Requiring Marine Engineers to have current valid U.S. Coast Guard licenses is a prerequisite of the U.S. Coast Guard, whether or not such licenses are also required by WSF regulations; therefore such requirement is a “condition of employment.” Black’s Law Dictionary, 5th Ed., (1979) at 267. See Finding of Fact No. 20.)
7. Requiring WSF Engineer Officers to report for uniform measurements and pickups has not been and is not a prerequisite for employment as an Engineer Officer and does not fit the definition of “condition of employment.” (Black’s Law Dictionary, ibid., See Finding of Fact No. 20.) Even if such reporting during off-duty hours were a “condition of employment” by WSF interpretation, Section 1 of the WSF/MEBA Agreement makes “conditions of employment” subject to

adjustment as “disputes or grievances involving the interpretation or the application of the provisions of the Contract.” (See Finding of Fact No. 12, supra.)

8. Comparing the circumstances in the foregoing WSF decision to those of an employer who orders a truck driver to get a medical check up when the employer has cause to believe the truck driver may be incompetent should be rejected. Ordering such a medical check up as a “condition of employment” might be validly compared with ordering a check on the validity of a U.S.C.G. license, but not with a decision to start wearing uniforms. (See WSF reliance on Chatfield Paper Co., supra.)
9. Requiring WSF Engineer Officers to report for uniform measurements and pick-ups meets the definition of “work” (Black’s Law Dictionary, ibid., at 1439. See Finding of Fact No. 19.) and therefore falls within the scope of the WSF/MEBA Agreement.
10. Requiring WSF Engineer Officers to report requires WSF to pay compensation, and, if such activity is outside regular assigned hours, said Engineer Officers must be compensated accordingly (Sections VI, IX, and X, WSF/MEBA Agreement.)
11. When more than one interpretation of the WSF/MEBA Agreement is possible, MEC as the arbitrator is required to pick the most “reasonable” interpretation. Therefore, in ordering compensation for overtime, MEC should delineate the most “reasonable” parameters within the intent of the WSF/MEBA Agreement by which the Engineer Officers should be compensated. (See IBU v. WSF, Decision No. 1165-MRNE, PERC Case No. 3057-A-80-254 (1981); William C. Orr Co. v. International Brotherhood of Teamsters, Local 249, 48 LA 1359 (1967); et al.)

12. When WSF provided Engineer Officers two series of optional dates for reporting for uniform measurements (See Finding of Fact No. 1), and when WSF gave blanket options of thirteen business days for uniform pick-ups (See Finding of Fact No. 2.), WSF did enable Engineer Officers to exercise their own independent judgment as to when to report within those dates. Engineer Officers could report before or after their regularly assigned watches as simple extension of their work days. Or they could elect to report on their regularly scheduled days off. Some Engineer Officers elected the latter option. Even though WSF rejected all alternatives suggested by Engineer Officers and/or MEBA, WSF should not be compelled to compensation Engineer Officers on the most expensive option. Therefore, MEC should award compensation on the basis of Section VI (e) of the WSF/MEBA Agreement (minimum payment for overtime work) rather than Section VI(g) for work on a regularly scheduled day off.
13. No evidence was presented showing that Engineer Officers in this matter were “called-in” to work as members of vessel crews. Nor were they called to report immediately. Therefore, no WSF Engineer Officer appears to be eligible for a mandatory 8-hour minimum-call pay under Section XIII, WSF/MEBA Agreement.
14. A reasonable interpretation of the WSF/MEBA Agreement should preclude “double-dipping” or “pyramiding” of overtime and travel time; therefore, where overtime is required for an Engineer Officer for an assignment which includes a trip, WSF should not also be compelled to compensate the same person for travel time under Section XII.

Based upon the foregoing findings of fact and conclusions of law, the Marine Employees’ Commission enters the following order.

ORDER

1. Effective immediately, Washington State Ferries (WSF) shall compensate those Engineer Officers who reported at Anacortes and/or Seattle in response to WSF instructions for uniform measurements and/or pick-ups outside of regular work hours, for an extension “beyond the regular assigned work day,” in accordance with Section Vi(e) of the 1983-1985 WSF/MEBA Agreement; provided that
 - (a) Engineer Officers who terminate their watches or reside in or near Seattle and/or Anacortes for the purpose of uniform measurement shall be compensated at the rate of two times one hour added on to the wage for a regular watch; and
 - (b) Engineer Officers who terminate their watches or reside in or near Seattle and who reported to Seattle Outfitting for uniform pick-up and signature shall be compensated on the same basis as in (a) above; and
 - (c) Engineer Officers who do not terminate their watches or reside in or near Seattle or Anacortes and who reported for uniform measurement and/or pick-up and signature shall be compensated at two times the time required for each necessary round trip to Seattle or Anacortes, whichever is nearest, and based upon driving times established in Schedule A of the Agreement, for uniform measurements and to Seattle for uniform pick-up and signature, in increments of one hour, to a maximum of four hours; and
 - (d) Because (a) through (c) above include payment for travel, no additional payment shall be awarded under Section XII of the Agreement; and
 - (e) Out-of-pocket costs for mileage shall be paid in accordance with Schedule A of the Agreement; and
 - (f) Each Engineer Officer shall be entitled to show extenuating circumstances which caused extraordinary extension of time required over and above the standards established by (a) through (c) above, and may file his/her protest with MEBA within ten (10) days from the date he/she became aware of such determination. MEBA and WSF shall process any such protest in accordance with Section XXIII of the Agreement.

2. No compensation for the foregoing purposes shall be awarded for minimum “call-in”, under Section XIII of the Agreement.
3. MEC shall retain jurisdiction in this matter for a period not to exceed ninety (90) days and shall remain available for consultation as needed. Unless extended by further action of MEC, this case shall be closed on the 27th day of October, 1986.

DATED at Olympia, Washington, this 28th day of July, 1986.

MARINE EMPLOYEES' COMMISSION

/s/ DAVID P. HAWORTH, Chairman

/s/ DONALD E. KOKJER, Commissioner

/s/ LOUIS O. STEWART, Commissioner

EXCERPTS FROM AGREEMENT BY AND BETWEEN WASHINGTON STATE FERRIES AND
MARINE ENGINEERS' BENEFICIAL ASSOCIATION , 1983-1985

SECTION VI – WAGES & OVERTIME

...

(d) Overtime compensation shall be at the rate of two times the base rate in each classification. All overtime requests must be approved and authorized by the Port Engineer, except that, in emergency cases, overtime pay must be approved by the Staff Chief Engineer or Chief Engineer on watch. The Staff Chief or Chief Engineer shall forward an accurate record of all authorized Engine Department overtime to the Operations Department in a timely manner.

(e) Minimum payment for any overtime work performed shall be periods of one hour, except as follows: When work is extended fifteen (15) minutes or less beyond the regular assigned work day, such time shall be paid at the overtime rate for one quarter of an hour. Should work be extended by more than fifteen (15) minutes, the time worked beyond the regular assigned work day shall be paid at the overtime rate in increments of one (1) hour. If the extended assignment exceeds four (4) hours, pay for such work shall be at the overtime rate with a minimum of eight (8) hours. Such extended work shifts shall not be scheduled on a daily or regular basis. Work performed during the third eight (8) hours shift without a break shall be paid for at triple time, unless a 6 hour break has been granted. Exceptions to this subsection are specified in Section IX.

...

(g) Management will endeavor to see that all Engineer Officers receive schedule days off, but Engineer Officers returning to work on a regularly scheduled day off shall receive one (1) day's pay at the overtime rate.

SECTION IX – HOURS

(a) The principle of eighty (80) hours per two-week period is hereby established. For all practical purposes, eight (8) or twelve (12) hours shall constitute one days pay. No one who is a permanently employed Engineer Officer shall receive less than eighty (80) hours pay per two-week period. The Employer agrees that the eight (8) or twelve (12) hour day will be adhered to depending upon the vessel's schedule, and that normal watch schedules will be arranged so that Engineer Officers do not work in excess of eighty (80) hours per two week period.

(b) The Employer agrees that vessels running sixteen (16) or more hours per day will be manned by Engineer Officers working under the following work schedules:

(1) Seven (7) days on duty followed by seven (7) days off duty. It is understood the overtime provisions of this Agreement, except as provided in the next paragraph, shall not be applicable to schedules operated under this provision, and that any such schedule shall conform to Coast Guard Regulations. Further, it is understood that these schedules are not to increase the Employer's cost.

(2) When working under this "seven (7) days on, seven (7) days off" concept, an employee shall receive overtime for work performed beyond any scheduled shift until the employee has worked sixteen (16) hours continuously from the start of the employee's shift. If the employee works continuously beyond the sixteen (16) hours, the employee shall be compensated for that additional time at the triple-time rate unless a six (6) hour break has been granted.

(3) When an employee works fifteen (15) minutes or less beyond the employee's scheduled shift, the work will be compensated for at the overtime rate for one quarter (1/4) of an hour.

(c) Vessels running less than sixteen (16) hours per day will be manned by Engineer Officers working under either the above twelve (12) hour schedule or the eight (8) hour schedule. When working eight (8) hour schedules, the work week shall consist of five (5) consecutive eight (8) hour days followed by two (2) consecutive days off. If any vessel is changed from its present length of shift, the Union shall be given as much advance notice as is practicable, but in no case less than two (2) weeks, except in an emergency. In emergency situations, the Employer shall give such notice as the circumstances allows. Engineer Officers affected by any such change shall have first preference to open positions in the schedule of their choice.

(d) The following exception to the regular work week are permissible:

(1) The four (4) days per week, ten (10) hours per day schedule may be put into effect by mutual agreement on non-scheduled or seasonal vessels only.

(2) Employee work schedules on any vessel may be arranged so as to result in an average of forty (40) hours per week during the scheduling cycle; provided, however, such schedules shall not result in a normal expectancy of overtime for employees. Overtime shall not be payable for normal time under such schedules, but shall be paid whenever the employee performs work in excess of the scheduled shift.

(3) Engineer Officers working under the “seven days on, seven days off” eighty-four (84) hour work week schedule will be paid for eighty (80) hours and will have the extra four (4) hours of work accrued and credited as compensatory time.

(4) A Regular Relief Engineer Officer shall work according to the following schedule: His work scheduling cycle shall run from the last two-week period of the previous quarter to the end of the last two-week period in the current quarter, and so forth.

For each two-week period, the Regular Relief Engineer Officer shall submit his “Pay Order” showing actual time worked as a Relief on regularly schedule watches as well as any hours worked as “Penalty” or overtime beyond the regularly scheduled watches he was relieving. He shall be paid eighty (80) hours straight time for each two (2) week period plus penalty time and overtime for work performed outside of the regularly scheduled watches.

At the end of each quarterly scheduling cycle, only upon the request of the Regular Relief Engineer Officer, the Pay Orders submitted by such Regular Relief Engineer Officer, for the period shall be reviewed by the Port Engineer to determine if such Regular Engineer Officer has worked in excess of an average eighty (80) hours per two-week period, excluding overtime, for relieving regularly scheduled watches. If such was the case, then eighty (80) hours times the number of two-week periods in the scheduling cycle shall be subtracted from such Regular Relief Engineer Officer’s hours worked and not paid for in that

period, and the difference, if any, shall be paid to him as overtime with his next paycheck.

Recognition shall be made of pay increases becoming effective during scheduling cycles.

(e) When engine room watches are maintained in a lay berth or a repair yard, the Engineer Officers assigned to stand those watches will be allowed mileage and travel time if actually traveled to their regular watch relieving terminals, as set forth in Schedule A.

(f) (1) The Employer shall continue the practice of having the Staff Chief Engineers make up schedules for the Engine Department Employees subject to the approval of the Port Engineer.

(2) In scheduling of Employees under this Section, Employee Work Schedules for any vessel may be arranged so as to result in an average of eighty-four (84) hours per two-week period during a scheduling cycle of not more than four (4) two-week periods (eight (8) calendar weeks); PROVIDED, HOWEVER, such schedules shall not result in a normal expectancy of overtime for employees. If a schedule violates this principle, overtime shall be paid for the excess hours. Overtime shall not be payable for normal work time under such schedules, but shall be paid whenever Employees perform work in excess of the scheduled hours in accordance with Section IX. Paid leave time shall be computed as time worked. If a vessel schedule changes, all overtime incurred shall be paid.

(3) Employees shall be paid for eighty (80) hours per two-week period; but shall report the actual number of hours and minutes worked. Payment shall be subject to adjust for overtime worked outside of the work schedule and for schedule changes.