

STATE OF WASHINGTON

BEFORE THE MARINE EMPLOYEES' COMMISSION

BOILERMAKERS LOCAL 104)	MEC Case No. 7-96
on behalf of DAVID STERN,)	
)	DECISION NO. 159 - MEC
Grievant,)	
)	
v.)	DECISION AND ORDER
)	
WASHINGTON STATE FERRIES,)	
)	
Respondent.)	
_____)	

Michael Anderson, union representative, appearing pro se, for and on behalf of Boilermakers Local 104, and David Stern, appearing pro se.

Christine Gregoire, Attorney General, by Gretchen Gale, Assistant Attorney General, appearing for and on behalf of Washington State Ferries.

THIS MATTER came on regularly before the Marine Employees' Commission (MEC) on June 7, 1996, when Boilermakers Local 104 filed a request for grievance arbitration on behalf of David Stern. In its grievance arbitration request, Boilermakers asserted that Washington State Ferries (WSF) has paid wages to employees in foreperson and leadperson positions based on incorrect wage rates from Schedule A of the 1995-1997 WSF/Metal Trades Collective Bargaining Agreement. The union further asserts that only individuals in journeyman positions have been paid the four percent

cost of living adjustments for ferry employees, appropriated by the Legislature, which became effective July 1, 1995.

Boilermakers has certified that the grievance procedures in the WSF/Metal Trades Collective Bargaining Agreement have been utilized and exhausted. Boilermakers has also certified that the arbitrator's decision shall not change or amend the terms, conditions or application of said collective bargaining agreement and that the arbitrator's award shall be final and binding.

The request for grievance arbitration was docketed as MEC Case No. 7-96 and assigned to Chairman Henry L. Chiles Jr. to act as arbitrator pursuant to WAC 316-65-070. The parties agreed that the MEC would arbitrate this matter pursuant to the dispute provisions of the 1991-1993 WSF/Metal Trades Agreement.

A prehearing conference was scheduled in this matter pursuant to WAC 316-02-210 on Tuesday, July 23, 1996. Commissioner John P. Sullivan was assigned to preside over the prehearing conference. The prehearing was held, the issue was fully discussed, but the matter was not settled.

A hearing in this matter was scheduled pursuant to RCW 47.64.150 and 47.64.280 and chapter 316-02 and 316-65 WAC for Wednesday, August 21, 1996. On August 15, 1996 WSF counsel Gretchen Gale requested a continuance of the previously scheduled August 27, 1996

hearing. Ms. Gale stated that WSF's primary witness, former employee Dale Edwards (who had relocated to San Diego) would not be available to testify until after the Labor Day Holiday. Ms. Gale contacted MEBA Attorney Ken Pedersen, counsel for Boilermakers Local 104, who agreed to a continuance. The hearing was rescheduled to Wednesday, September 25, 1996.

On September 24, 1996 the MEC received a facsimile from Attorney Ken Pedersen indicating that Boilermakers Local 104 was withdrawing from the case and he would not appear in behalf of David Stern. Mr. Pedersen advised the MEC that Mr. Stern wanted to proceed with the grievance and would represent himself.

The hearing was conducted as scheduled on September 25, 1996. Assistant Attorney General Gretchen Gale represented WSF. Michael Anderson, Business Manager of Boilermakers Local 104, appeared on behalf of the local and David Stern represented himself.

On October 25, 1996 WSF filed a post-hearing brief; also on that date, Boilermakers Local 104 and David Stern filed a post-hearing brief. The briefs filed were carefully considered by the MEC.

POSITIONS OF THE PARTIES

Position of Boilermakers Local 104 and David Stern

Before negotiations for the 1995-1997 labor agreement began, the Washington State Legislature mandated a cost of living adjustment for ferry workers effective July 1, 1995. Sufficient funds were included to fund a four percent cost of living adjustment. It is the opinion of Boilermakers Local 104 and David Stern, Welding Shop Foreman, that the cost of living adjustment should have been implemented as in the past. Previously, WSF applied mandated cost of living adjustments across the board; each WSF employee received the cost of living adjustment on top of the wage he or she had been receiving.

In 1995, a new wage premium was negotiated for Leadperson, Foreperson and General Foreperson. This new premium rate should have been paid on top of the four percent cost of living adjustment. As it is now applied, persons working as leadpersons, foreperson and as general foreperson are now being paid at an improper rate. The rate is lower than would have been paid if the four percent cost of living adjustment had been applied as in the past. Mr. Stern seeks to correct the base rate of pay for Leadpersons, Foreperson and general Forepersons, and seeks a make whole award.

Position of Washington State Ferries

WSF asserts that the 1995-1997 agreement was clearly and fully negotiated by the parties; the contract language accurately

reflects that agreement. The contract includes an intentional departure from past contracts. The contract provided for a four percent raise for Journeyman and a new percentage increase over Journeyman for the supervising Leadpersons, Foreperson and General Forepersons.

In past years, wages may have increased by an across the board raise given by the Legislature. Because of past across the board increases, the premium paid to supervisors, which was aid as cents-per-hour, grew disproportionately larger than the ferry system thought appropriate.

The 1995-1997 contract attempted to correct this difference. Labor and management agreed to a four percent increase for Journeyman, but set forth premium percentage rates above that for the three supervisor classes. This had the effect of establishing for now and in the future the premium percentage to be paid supervisors.

There were other changes negotiated in the contract as well. The contract was ratified by the bargaining unit and back wages were "made whole." In effect, the new wage rate has been paid retroactively to July 1, 1995.

There is no dispute between management and union negotiating representatives that the contract reflects the agreement they

Reached. The contractually established wages and premium percentages are being correctly applied.

STATEMENT OF THE ISSUE

Is the Washington State Ferries properly applying the four percent cost of living adjustment approved by the Washington State Legislature effective July 1, 1995 to Leadpersons, Forepersons and General Forepersons' wages pursuant to the 1995-1997 WSF/Metal Trades Agreement?

Having read and carefully considered the entire record, including the request for arbitration, the transcript of the hearing, and post-hearing briefs in MEC Case No. 7-96, the Marine Employees' Commission now hereby enters the following findings of fact.

FINDINGS OF FACT

1. David L. Stern is employed by Washington State Ferries as Welding Shop Foreman at the Eagle Harbor Repair Facilities. He is represented by Boilermakers Union Local 104.
2. WSF and the Metal Trades Council, including Boilermakers Local 104, are parties to a 1991-1993 collective bargaining agreement, effective July 1, 1991 for the unit involved.

The agreement specifies MEC as the arbitrator of unresolved allegations of contract violations.

3. The 1993-1995 WSF/Metal Trades Agreement set a rate of pay per hour for Journeyman, Leadperson, Foreperson and General Foreperson.¹ Schedule A of that agreement sets forth the rates of pay:

SCHEDULE A - STRAIGHT TIME HOURLY WAGE RATES

<u>Position</u>	<u>Effective 1/1/94</u>
Journeyman (all crafts)	\$18.53
Leadperson	\$19.09
Foreperson	\$19.42
General Foreperson	\$19.92
Helper - starting rate	\$11.60
After 2000 hours	\$12.76

. . .

4. The 1993-1995 WSF/Metal Trades Agreement, at Article V, Section 2 of the contract sets forth a Leadperson premium and Foreperson premium:

Section 2. The compensation for Foreperson and Leadperson shall be no less than seventy cents (\$.70) and

¹ The 1993-1995 WSF/Metal Trades Agreement was ratified by union members; Metal Trades representatives signed off on the agreement in January, 1995. For reasons unrelated to this case, the Washington State Transportation commission has not yet publicly ratified all of the 1993-1995 contracts between WSF and state ferry employee unions as required by RCW 47.64.190. By mutual agreement, however, the 1993-1995 Agreement was implemented by and between the parties.

forty-five cents (\$.45) per hour, respectively, **over the wage of the craft they are supervising**, as set forth in Schedule A.

(Emphasis added.)

5. Premiums actually being paid to WSF shipyard employees were in excess of the contract amounts. A previous cost of living adjustment mandated by the legislature for state ferry employees had been given to shipyard employees across the board, in a misapplication by WSF pursuant to the Metal Trades Agreement. The mistaken amounts being paid were brought to management's attention by the WSF Payroll Office and former WSF Operations Director, Armand Tiberio. The effect of the misapplication of the cost of living adjustments across the board created a disparity between the journey and premium pay rates. Management and union representatives sought to correct this practice in their 1995-1997 contract negotiations.

6. During negotiation of the 1995-1997 agreement, union and management representatives additionally sought to negotiate more compensation for shipyard foremen due to increased duties assigned to them. The negotiators agreed to pay foreman a percent premium over and above journey wages. They were aware that forepersons' wages may be initially lower, but intended that over a period of time, foremen would receive more compensation.

7. The parties negotiated new premiums in the form of fixed percentages to be paid to lead persons, forepersons and general-forepersons. The fixed percentage increase for each position was to be paid over the journey rate. The unions agreed to this change in the method of calculating premium rates because they believed there was a long-term advantage to having rates clearly set forth. The premium rates were established in Article V, Section 2 of the 1995-1997 Agreement:

Section 2. The compensation for Foreperson and Leadperson shall be five percent (5%) and three percent (3%) respectively, **over the wage of the craft they are supervising**, as set forth in Schedule A.

(Emphasis added.)

8. The 1995-1997 budget approved by the Washington State Legislature included a four percent cost of living increase for state ferry employees. As a result, the journeyman rate in the 1995-1997 contract increased to \$19.27 per hour. Pursuant to Article V, Section 2, this dollar amount constituted the base wage rate for leadpersons, forepersons and general-forepersons.
9. Schedule A of the 1995-1997 Agreement set forth the hourly amounts to be paid all shipyard trade positions:

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SCHEDULE A

STRAIGHT TIME HOURLY WAGE RATES

<u>Position</u>	<u>Effective</u> <u>7-1-95</u>
Journeyman (all crafts)	\$19.27
Leadperson (3% over Journeyman)	19.85
Foreperson (5% over Journeyman)	20.23
General Foreperson (7.5% over Journeyman)	20.71

. . .

10. Contrary to how the cost of living adjustment had been previously applied by WSF, David Stern did not receive an across-the-board four percent cost of living adjustment to the foreperson's rate he was receiving, as he believed he was entitled. Instead, he received the new rate that the parties negotiated: the increased journey rate (\$19.27/hour), which included the four percent cost of living adjustment, plus the newly-negotiated foreperson premium rate of 5% over the journeyman's rate, for a total of \$20.23/hour.

11. Union and management negotiators who were present at the 1995-1997 contract negotiations intentionally changed Article V, Section 2 and Schedule A of the 1995-1997 Agreement to correct an imbalance in the supervisor premium paid in the past and to establish a specified rate of premium pay.

12. The 1995-1997 Agreement was ratified by the members of the unions which form the Metal Trades bargaining unit.²
13. All eligible employees have been paid the new Journeyman rate and premium percentages retroactively to July 1, 1995.

The Commission having entered the foregoing findings of fact now hereby enters the following conclusions of law.

CONCLUSIONS OF LAW

1. The Marine Employees' Commission has jurisdiction over the parties and subject matter in this case. Chapter 47.64 RCW; especially RCW 47.64.150 and 47.64.280.
2. The MEC may not change or amend the terms, conditions or applications of the Metal Trades Council/WSF Collective Bargaining Agreement. RCW 47.64.180.
3. The language of Article V, Section 2 and Schedule A of the 1995-1997 Agreement is clear and unambiguous. Contract language which is found to be clear and unambiguous will

² For reasons unrelated to this matter, the 1995-1997 agreements between WSF and state ferry employee unions have not yet been publicly ratified by the Washington State Transportation Commission. The parties have mutually agreed to implement the 1995-1997 Agreement.

not be given some other meaning by the arbitrator and should be enforced as written. Elkouri and Elkouri, How Arbitration Works, pp. 348-349, 4th Ed. (1988).

4. Although cost of living adjustments appropriated by the state legislature for ferry employees may have been misapplied in the past by the Washington State Ferries, evidence of past practice cannot override clear contract language. How Arbitration Works, supra, at 454-455. "Past practice, no matter how well established that practice may be, cannot alter the terms of a contract whose clear and unambiguous terms establish what amounts to negotiated mutual promises by the parties to a contract." 1985-1989 Supp. How Arbitration Works, 85-86 (Volz and Goggin, eds., 4th ed. (1991), citing 82 LA 193 (Alsher, 1984).

5. "In determining the intent of the parties, inquiry is made as to what the language meant to the parties when the agreement was written. It is this meaning that governs" How Arbitration Works, supra, at 348. Here, the intent of union and management negotiators was to establish premium rates for leadpersons, forepersons and general forepersons to be applied "over the wage of the craft they are supervising." The journey rate and premium rates specified in the 1995-1997 Agreement were those intended by its negotiators who so testified at the hearing.

6. Bargaining representatives have the right to make reasonable distinction between employees as long as they maintain standards. "A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." *Ford Motor Company v. Huffman*, 345 U.S. 330, 338 (1953).

Having read and carefully considered the entire record, including the initial grievance, the hearing transcript and exhibits, and the post-hearing briefs, this Commission now hereby enters its decision and order.

ORDER

1. Grievant David L. Stern and Boilermakers Local No. 104 did not prove by a preponderance of evidence that WSF has misapplied the four percent cost of living adjustment appropriated by the Washington State Legislature, in violation of the collective bargaining agreement.

Forepersons, including Mr. Stern, are being paid the rate of pay negotiated and agreed to by the parties. Therefore, the instant request for grievance arbitration should be denied and dismissed.

2. The grievance Boilermakers Local 104 v. WSF (David Stern), docketed as MEC Case No. 7-96, is hereby dismissed.

DATED this 20th day of November 1996.

MARINE EMPLOYEES' COMMISSION

/s/ HENRY L. CHILES, JR., Chairman

/s/ JOHN P. SULLIVAN, Commissioner