

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES' COMMISSION

MARINE ENGINEERS BENEFICIAL	)	MEC Case No. 8-94
ASSOCIATION, DISTRICT NO. 1,	)	
	)	DECISION NO. 127 - MEC
Grievant,	)	
	)	
v.	)	DECISION AND ORDER
	)	
WASHINGTON STATE FERRIES,	)	
	)	
Respondent.	)	
_____	)	

Davies, Roberts and Reid, attorneys, by David Ballew, attorney at law, appearing for and on behalf of Marine Engineers Beneficial Association, District No. 1.

Christine Gregoire, Attorney General, by Anne L. Spangler, Assistant Attorney General, appearing for and on behalf of Washington State Ferries.

THIS matter came before the Marine Employees' Commission (MEC) on May 26, 1994 when the District No. 1 Marine Engineers Beneficial Association (MEBA) filed a request for grievance arbitration. MEBA alleged that "WSF has failed and refusing to schedule certain of its vessel crews so as to relieve them between 0500 and 0900" which constitutes a breach of the terms of the settlement agreement signed by the parties to MEC Case No. 2-93 on December 17, 1993. MEBA alleges the breach of Section 1(3) of this settlement agreement has been continuous since December 17, 1993 and involves at least four WSF vessels and their engineroom crews."

MEBA has certified that the grievance procedures in the MEBA/WSF collective bargaining agreement have been utilized and exhausted. MEBA has also certified that the arbitrator's decision shall not

change or amend the terms, conditions or applications 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. 8-94 and assigned to Chairman Henry L. Chiles, Jr. to act as arbitrator pursuant to WAC 316-65-070.

Pursuant to WAC 316-65-080, notice of hearing was sent to all parties scheduling a grievance arbitration hearing on July 27, 1994. The parties agreed to use the July 27 date to explore settlement. The hearing was continued to September 8, 1994. This date conflicted with the arbitrator's schedule and it was necessary to reschedule hearing in this matter to September 12, 1994.

Briefs were filed on October 5, 1994 and have been carefully considered by the MEC.

#### BACKGROUND

In early 1993, MEBA filed a grievance, docketed as MEC Case No. 2-93, alleging that WSF did not pay for overtime worked due to vessel route reassignments. A series of proposals were exchanged between the parties in an attempt to settle the case. A settlement agreement was reached and signed by the parties on December 17, 1993. The request for arbitration was withdrawn.

The settlement agreement covered three issues: I. Rules Applicable to all Vessels; II. Vessels on Regular Routes That Have Been Transferred to a Temporary Route Assignment; and III. Relief Vessels. Issue I, Rule 1 required overtime for any time worked over 12 ½ hours in a day. Issue I, Rule 3 set a window period to relieve crews. Ben Davis, WSF Port Engineer, Robert McIntosh, Assistant Attorney General, Ken Pedersen, MEBA's Attorney and Mark Austin, Branch Agent for MEBA agreed that the ferry system would

"make every effort to schedule 0500-0900 as the relief period." Although the settlement agreement was effective when signed, the parties agreed to work together towards an orderly implementation process.

After his return from his Christmas holiday, Ben Davis discovered that contrary to the terms of the agreement, engineering crews on the Seattle-Bremerton and the Edmonds-Kingston run were submitting overtime requests. Without contacting the union, Davis issued a directive to all engineroom personnel: to avoid the need to pay overtime on a daily basis, all routes could be brought into compliance with the settlement agreement, except Edmonds and Bremerton.

Thereafter, the shift change times on the Edmonds route were rescheduled to be within the window period with a shift of less than 12 ½ hours.

On the Bremerton route, one of the two boats was crewed for 16 hours, and one for 24 hours. The No. 1 boat relieved at 0635, but had a shift in excess of 12½ hours. No. 2 boat relieved at 0410, outside the window period, but this complied with the 12½ hour shift time so that overtime did not occur. Upon WSF's review, it was determined that it was possible for one, but not both boats to relieve in the window period. (To their credit, MEBA and WSF reached a compromise to allow both boats to relieve during the window period; overtime would be waived until a decision was made in this case.)

David Remagen, WSF Service Planning Manager, set up the 1994 Summer Sailing Schedule for the Seattle-Bremerton schedule. In setting the schedule, he had considered the number of hours the legislature funded for service on the route, advice from Ferry Advisory Committee members, results of surveys and comments and complaints as well as public comments from riders.

MEBA did present WSF with a proposed sailing schedule for the Seattle-Bremerton run that would permit relief during the window period. Remagen reviewed a copy of that proposed schedule with Port Engineer Ben Davis to see if it would work and/or to find options. Remagen provided Mark Austin with an outline of the reasons why WSF was rejecting the proposed sailing schedule. WSF thought that some of the time changes were so great they would not be accepted by the riders. Some of the schedule changes did not allow sufficient time to load and offload passengers and cars. As a result, MEBA filed the instant request for grievance arbitration.

#### THE ISSUE

Did the Washington State Ferries violate its December 17, 1993 agreement with the Marine Engineers Beneficial Association to make every effort to set relief times on the Seattle-Bremerton run between 0500 and 0900? If so, what is the remedy?

#### POSITIONS OF THE PARTIES

##### Position of MEBA

This case grew out of MEC Case 2-93, settled by the parties on December 17, 1993. The settlement covered rules for all vessels, vessels transferred to a temporary route and relief vessels. At issue is whether or not WSF has made "every effort" to schedule relief times between 0500 and 0900 on the Seattle-Bremerton route. MEBA alleges that WSF has failed and refuses to schedule certain vessel crews for relief as provided by the settlement and has breached the settlement agreement since the date of signing. MEBA waives all claims to overtime under the agreement and the arbitrator will not make any monetary decision.

## Position of WSF

The WSF feels this case is about the meaning of the terms of the settlement in MEC 2-93. At issue is Provision No. 3 that says, in part, "every effort" shall be made to set times between 5:00 and 9:00. "Every effort" does not mean that this is an absolute requirement. If it is impossible to set a relief time between 5:00 and 9:00, then WSF can set a relief time outside it, so that the watch does not work over 12 ½ hours and not be subject to a grievance. The WSF does not want to pay daily overtime.

The WSF alleges that there were two versions of the language for Provision No. 3, but the proposed language of WSF was accepted and put into the agreement, and that language has been complied with by WSF.

Having read and carefully considered the entire record, including the request for arbitration, the hearing transcript, the exhibits, and the briefs, the Commission now enters the following findings of fact.

### FINDINGS OF FACT

1. WSF and MEBA are parties to a 1991-1993 collective bargaining agreement, for Licensed Engineer Officers, effective July 1, 1991, which specifies MEC as the arbitrator of unresolved allegations of contract violations.
2. The governing document in this case is the Settlement Agreement reached by WSF and MEBA in resolution of a grievance involving payment of overtime. MEC Case No. 2-93, signed December 17, 1993. Specifically, Section I provides:

I. RULES APPLICABLE TO ALL VESSELS

1. Overtime shall be payable, pay period by pay period, for time continuously worked beyond 12 ½ hours.
  2. Overtime shall be payable, pay period by pay period, for time worked beyond the scheduled shift.
  3. For employees working a schedule of seven (7) days on duty followed by seven (7) days off duty, every effort shall be made to set relief times between 0500 and 0900. (Emphasis added.)
  4. When vessels are moved into a maintenance or layup facility, normal cycling shall continue. All straight time hours and minutes actually worked shall be cycled as part of the current cycling period.
3. The evidence is convincing that WSF officials and MEBA representatives worked hard to set relief times between 0500 and 0900 without disrupting ferry schedules with resulting displeasure on the part of ferry riders.

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 the subject matter in this case. Chapter 47.64 RCW; especially RCW 47.64.150 and 47.64.280.
2. MEC may not change or amend the terms, conditions or applications of the MEBA WSF Collective Bargaining Agreement. RCW 47.64.150.

3. Grievant MEBA did not provide by a preponderance of evidence that WSF violated its obligation under Section I(3) of the December 17, 1993 Settlement Agreement to make every effort to set relief times on the Seattle-Bremerton runs between 0500 and 0900. MEC concludes that WSF did make every effort, but was unsuccessful through no fault of its own. Therefore, the instant request for grievance arbitration should be denied and dismissed.

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

DECISION AND ORDER

1. The grievance of MEBA v. WSF, docketed as MEC Case No. 8-94, is hereby dismissed.

DONE this 26<sup>th</sup> day of October 1994.

MARINE EMPLOYEES' COMMISSION

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

/s/ JOHN P. SULLIAN, Commissioner

/s/ LOUIS O. STEWART, Commissioner