

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES' COMMISSION

In the Matter of the Petition of	)	
WASHINGTON STATE FERRIES for	)	MEC Case No. 24-97
A Declaratory Ruling.	)	
	)	Decision No. 177 - MEC
	)	
	)	DECISION & ORDER
_____	)	

Davies, Roberts and Reid, attorneys, by Kenneth J. Pedersen and Michael R. McCarthy, attorneys at law, appearing for and on behalf of District No. 1, Marine Engineers Beneficial Association and the Puget Sound Metal Trade Council.

Schwerin, Campbell and Barnard, attorneys, by Elizabeth Ford, attorney at law, appearing for and on behalf of the Inlandboatmen's Union of the Pacific.

Steven N. Ross, attorney at law, appearing for and on behalf of the Masters, Mates and Pilots Union.

Christine Gregoire, Attorney General, by Stewart A. Johnston, Assistant Attorney General, appearing for and on behalf of the Washington State Ferries.

THIS matter came on regularly before the Marine Employees' Commission (MEC) on July 14, 1997, when the Washington State Ferries (WSF) filed a Petition for a Declaratory Ruling pursuant to WAC 316-02-500. The WSF cited the applicability of RCW 47.64.120—Scope of negotiations, as amended by the Washington State Legislature in 1997; RCW 47.64.190(1)—Marine Employees' Commission review of compliance with fiscal limitations—effective date of agreements and arbitration orders; and Substitute Senate Bill 6062, §714, Salary cost of living adjustments, Subsection 3.<sup>1</sup> The original Petition named the Marine Engineers Beneficial Association (MEBA) as the

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<sup>1</sup> In its Amended Petition and Closing Brief, WSF cites to Substitute Senate Bill 6062, Operating Budget, 1997-1999, § 714, published in Laws of 1997, Chapter 149, § 714, as the legislative authorization which provides funds sufficient to fund a 3.0 percent salary cost of living adjustment to ferry workers. For purposes of clarity, we note here that §714 of Substitute Senate Bill 6062 was vetoed by Governor Gary Locke. Subsequent to that veto, the legislature passed, and Governor Locke signed, Engrossed Substitute House Bill 2259, Operating Budget 1997-1999—Supplemental Operating Budget 1995-1997, §703, published in Laws of 1997, Chapter 454, §703, which authorized funds sufficient to fund a 3.0 percent salary cost of living adjustment for state ferry employees.

only party which would be affected by a ruling by MEC. WSF subsequently amended its Petition to include all ferry employee bargaining units, including: MEBA; Inlandboatmen's Union of the Pacific (IBU); Office of Professional Employees' International Union Local 8 (OPEIU); Service Employees International Union Local 6 (SEIU); International Brotherhood of Electrical Workers Local 46 (IBEW); General Tamers Local 174, General Teamsters Local 117; Boilermakers Local 104; Masters, Mates & Pilots; Shipwrights Local 1184; Sheet Metal Workers Local 66; Plumbers & Pipefitters Local 32; and International Association of Machinists & Aerospace Workers Local 79.

WSF maintained in its Petition that contradictions presented in the cited statutes created an uncertainty as to whether WSF must pay the appropriated wage increase effective July 1, 1997, or whether it is permissible, or required, to pay the wage increase at the concluded negotiations of each and every ferry employee bargaining unit. WSF noted that the implementation of the wage increase was pending a ruling by the MEC. WSF further noted that the uncertainty surrounding the due date of the appropriated wage increase was impeding the progress of MEBA contract negotiations; WSF contended that resolution of this uncertainty would restore WSF's and MEBA's ability to conduct collective bargaining.

In response to the filing of WSF's Petition, MEBA submitted to the MEC that the Petition failed to mention that MEBA and WSF had negotiated and executed an agreement in resolution of an unfair labor practice charge filed in 1996 by MEBA against WSF as a result of the ferry system's failure to timely pay legislative appropriated cost of living adjustments authorized by appropriation of the legislature in 1995. In the settlement agreement of MEC Case No. 14-96, WSF committed to payment to MEBA members, of legislatively appropriated wage increases on their effective dates in July of each odd-numbered year, rather than withholding the raises until every WSF union had concluded a comprehensive collective bargaining agreement. MEBA maintained in its response that the issue to be decided by MEC

was whether chapter 47.64 RCW forbids WSF to comply with its promise to MEBA that it would timely pay appropriated wage increases.

The matter was docketed as MEC Case No. 24-97. On July 31, 1997, MEC served WSF and all ferry employee bargaining representatives with a Hearing Notice. Hearing was scheduled for August 21 and 22, 1997; parties were notified that the Commission would hear the dispute en banc, and that post-hearing briefs would be due on or before September 5, 1997 in order to expedite a decision, as was previously requested by the parties.

Hearing was held on August 21 and 22, 1997. All parties were accorded an opportunity to be heard. Briefs were timely filed on September 5, 1997.

#### STATEMENT OF ISSUES

1. Does RCW 47.64.190(1) prohibit WSF from paying salary cost of living adjustments authorized by legislative appropriation to members of individual ferry employee bargaining units, prior to the conclusion of contract negotiations or arbitration procedures with each and every bargaining unit?
2. Is WSF required to pay legislatively authorized salary cost of living adjustments to all ferry employees immediately upon the effective date of the appropriation, without regard to the status of contract negotiations?
3. Must WSF abide by its agreement with MEBA or any other union, to pay legislatively appropriated salary cost of living adjustments in advance of the ratification of all collective bargaining agreements for employees at WSF?

Having read and carefully considered the entire record, the Marine Employees Commission now hereby enters the following findings of fact.

#### FINDINGS OF FACT

1. Prior to 1995, funds granted by the state legislature for cost of living increases for state ferry system employees were included as part of the overall department of transportation appropriation. The parties did not bargain these raises, but incorporated raises given by the legislature and the governor into the wage tables of the collective bargaining agreements. Without challenge from any source, WSF paid legislatively appropriated cost of living wage increases to WSF bargaining unit employees on the dates specified by statute, in advance of the ratification of all collective bargaining agreements by each bargaining unit, pursuant to “economic adjustment agreements” negotiated by and between the parties. The economic adjustment agreements included language which specified that union members agreed to pay back any economic adjustments made pursuant to those agreements if so ordered by the MEC or by a court of competent jurisdiction (in conformance with RCW 47.64.180).
2. In 1995, the legislature departed from previous practice. The State Operating Budget approved “funds sufficient to fund a 4.0 percent cost-of-living adjustment effective July 1, 1995 for ferry workers,” classified employees, and exempt employees. Funds for compensation of state ferry employees were funded separately in the 1995-1997 transportation budget.
3. Also in 1995, the Washington State Ferries departed from their practice of paying legislatively authorized wage adjustments on the effective date, pursuant to negotiated economic adjustment agreements. In late June, 1995, WSF Human Resources Director Jim Yearby notified WSF employee union representatives that WSF did not

intend to adjust wages, pursuant to wage adjustments authorized in the 1995-1997 biennium budget, until the 1995-1997 collective bargaining agreements were ratified.

4. WSF's departure in 1995 from this established practice generated a charge of unfair labor practice against WSF from the Marine Engineers Beneficial Association. In its charge, filed on October 25, 1996, docketed as MEC Case No. 14-96, MEBA alleged that Governor Mike Lowry had ordered a 4.0 percent wage increase to all state employees effective July 1, 1995, but that WSF had refused to pay the raise. MEBA further alleged that despite WSF management's repeated contention to MEBA that wages were not a bargaining subject, WSF conversely made the payment of the cost of living increase appropriated in the State Operating Budget contingent upon MEBA's capitulation on management demands for contract concessions.
  
5. In April, 1996, Dale Edwards, WSF Labor Relations Director and Dennis Conklin, Inlandboatmen's Union of the Pacific (IBU) Business Agent, asked for MEC's informal guidance with respect to when the 1995-1997 IBU/WSF contract would become effective. IBU members had ratified the contract, but after a prolonged period of time, agreements and arbitration orders were not yet concluded between WSF and all other bargaining units for 1993-1995 contracts or 1995-1997 contracts. MEC responded by telephone communication between MEC Director Janis Lien and Misters Conklin and Edwards. The response is memorialized in the MEC's Meeting Minutes of April 26, 1996.

... RCW 47.64 requires MEC to encourage bilateral collective bargaining. To that end, and in consideration of the fact that the [ferry employee labor] contracts are three years behind, Chairman Chiles stated that the parties should be able to implement a contract as soon as they reach agreement, not forgetting the proviso in the statute which requires wages to be rolled back if they exceed the state appropriation.

The MEC determined that the parties' efforts at concluding negotiations and implementing agreements would serve to foster improved collective bargaining relationships between the parties, which reflects the public policy of chapter 47.64 RCW. MEC further noted that the parties could sign a side agreement agreeing to implement contracts subject to later ratification of all bargaining agreements by the Transportation Commission pursuant to chapter 47.64 RCW.

6. The unfair labor practice charge contained in MEC Case No. 14-96 was finally resolved in March, 1997, by means of a settlement agreement signed by MEBA Branch Agent Bud Jacque and Jim Yearby, WSF Human Resources Director. To resolve that dispute, in paragraph #2 of the settlement agreement, Washington State Ferries committed to:

Payment of future wage increases per the authorization in legislative appropriations (including the effective date for the wage increase), unless contravened by rule, statute, court or Marine Employees' Commission order interpreting the provisions of RCW 47.64.190(1) to preclude said payment.

The parties further agreed to petition the MEC for a declaratory ruling on the applicability of RCW 47.64.190(1) on the payment of legislatively appropriated wage increases on the effective date specified in the appropriation. On the basis of the settlement agreement in this case, MEBA withdrew the unfair labor practice charges contained in MEC Case No. 14-96. The MEC reviewed the settlement agreement between the parties and dismissed the charges on April 8, 1997. Order Dismissing Adjusted Complaint No. 165-MEC.

7. Settlement of MEC Case No. 14-96, and ratification of the MEBA contracts by its members, signaled the conclusion of all WSF/ferry employee union collective bargaining agreements for the period of 1993-1995 and 1995-1997. MEC takes official notice that the Transportation Commission ratified those contracts on March

- 4, 1997. Washington State Ferries, did, however, pay members of each bargaining unit their 4.0 percent cost of living increase, retroactive to July 1, 1995, as each collective bargaining agreement was ratified by each bargaining unit.
8. The 1997-99 State Operating Budget, Laws of 1997, Chapter 454, §703, passed by the Washington State Legislature and approved by Governor Gary Locke, independently appropriated a 3.0 percent salary cost of living adjustment for classified employees and non-classified or “exempt” employees. Section 703(3) of the 1997 State Operating Budget also included funds sufficient to fund a 3.0 percent salary increase effective July 1, 1997 for ferry workers consistent with the 1997-1999 Transportation Act. Section 703 specified that the appropriation be expended solely for the purposes designated and be subject to the conditions and limitations in this section. Under the terms of the 1997 State Operating Budget and the 1997 Transportation Budget, WSF has no authority to use these funds for any other purpose than granting a 3.0 percent salary increase to ferry employees effective July 1, 1997.
  9. A separate piece of legislation, the 1997-99 Transportation Budget, Engrossed Substitute House Bill 6061, Laws of 1997, Chapter 457, §226(2), appropriated funds for the compensation of ferry employees, and noted that the salary increase or decrease dollar amount that shall be allocated from the governor’s compensation appropriations (contained in Laws of 1997, Chapter 454, §703(3), as quoted above) is in addition to the appropriation contained in the Transportation Budget for ferry employee compensation (emphasis added).
  10. Chapter 47.64 RCW sets forth procedures for collective bargaining between the Washington State Ferries and unions representing ferry employees.
  11. RCW 47.64.120(1) **Scope of negotiations** states, in part:

Ferry system management and ferry system employee organizations, through their collective bargaining representatives, shall...negotiate in good faith with respect to wages, hours, working conditions, insurance and health care benefits...and other matters mutually agreed upon...

**12. RCW 47.64.190(1) Marine employees' commission review for compliance with fiscal limitations—Effective date of agreements and arbitration orders states at section (1):**

(1) No negotiated agreement or arbitration order may become effective and in force until five calendar days after an agreement has been negotiated or an arbitration order entered for each and every ferry employee bargaining unit.

13. To date, Washington State Ferries has not paid a 3.0 percent salary cost of living adjustment to ferry employees who are members of bargaining units. On the record, counsel for WSF noted that in the event MEC orders WSF to pay the legislatively appropriated salary cost of living adjustments, WSF will honor that order and pay the bargaining unit members in accordance with that ruling.

14. All WSF non-bargaining unit employees received a 3.0 percent salary cost of living adjustment effective July 1, 1997, pursuant to Section 703 referenced above, the same section of the State Operating Budget which included funds to grant a 3.0 percent salary cost of living adjustment for ferry employees who are bargaining unit members.

15. The language in the State Operating Budget pertaining to other “general government, legislative and judicial employees exempt from merit system rules whose salaries are not set by the commission on salaries for elected officials” is exactly the same as the language pertaining to ferry employees. There was no evidence presented at hearing that other state employees, who by definition of the State Operating Budget were to receive a 3.0 percent salary cost of living adjustment on July 1, 1997, were denied that increase effective July 1, 1997.



Having entered the foregoing findings of fact, the Marine Employees' Commission now hereby enters the following conclusions of law.

### CONCLUSIONS OF LAW

1. The Marine Employees' Commission has jurisdiction over the subject matter and the parties involved in this case pursuant to chapter 47.64 RCW generally, and specifically 47.64.280, 34.05.240, and WAC 316-02-500 through 520. Orders of the Marine Employees' Commission are final and binding upon ferry employees or their representative affected thereby and upon the department of transportation. RCW 47.64.280(3).
2. MEC Case No. 24-97 is a special , expedited arbitration of the dispute between the Washington State Ferries and all ferry employee bargaining units. Washington State Ferries and all labor unions representing ferry employees were served with a proper notice of the proceedings to be held herein, and have been accorded an opportunity to be heard. As indicated in pleadings, a substantial and actual dispute exists; there is a justiciable controversy between WSF and the ferry employee unions. Therefore, the adjudicative proceedings held herein are within the meaning of WAC 316-02-500 through 520.
3. RCW 47.64.190(1) validly pertains to negotiated agreements and arbitration orders by and between WSF and ferry unions. It has no applicability to Chapter 454, Section 703, Laws of 1997, the free standing statute referenced above, which appropriated a 3.0 percent salary cost of living adjustment for all state employees, including ferry workers. The State Operating Budget is not conditioned by nor subordinate to chapter 47.64 RCW in any way.

4. RCW 47.64.190(1) does not prohibit WSF from paying salary cost of living adjustments authorized by legislative appropriation to members of ferry employee bargaining units prior to the conclusion of contract negotiations or arbitration awards with each and every bargaining unit. Salary cost of living adjustments are given by the state legislature to all state employees.
5. The 1997-99 State Operating Budget (Laws of 1997, Chapter 454, Section 703,) does not abolish or amend the terms of RCW 47.4.190(1) which sets forth MEC's review for compliance with fiscal limitations of the department of transportation funds, spending or budget. The terms of Section 703 of the State Operating Budget simply do not apply to RCW 47.64.190(1).
6. As such, WSF is required to pay independently appropriately, legislatively authorized salary cost of living adjustments to all bargaining unit ferry employees immediately upon the effective date of the appropriation.
7. The settlement negotiated by the parties in MEC Case No. 14-96 is a valid collective bargaining agreement. Inasmuch as MEC has concluded that RCW 47.64.190(1) has no applicability to Chapter 454, Section 703, Laws of 1997, it follows that RCW 47.64.190(1) does not apply to paragraph #2 of the settlement agreement negotiated by WSF and MEBA in MEC Case No. 14-96, in which WSF committed to timely payment of cost of living increases appropriated by the state legislature. By its failure to pay the approved 3.0 percent cost of living adjustment to MEBA members, Washington State Ferries has not complied with the agreement freely negotiated with MEBA. The parties are duty bound to honor this agreement as concluded hereinabove.

Having read and considered the entire record including, but not limited to, the Petition for a Declaratory Ruling, as amended, MEBA's response thereto, the hearing transcript, the

Exhibits and briefs, and having entered its findings of fact and conclusions of law, this Commission hereby enters the following order.

### ORDER

1. Washington State Ferries is ordered to pay the 3.0 percent salary cost of living adjustments appropriated in the 1997-1999 State Operating Budget to all WSF bargaining unit employees, retroactive to July 1, 1997, and must include any interest earned by the state on the funds wrongfully withheld from the bargaining unit employees.
2. Within 30 days of the entry of this Order, the Washington State Ferries shall inform MEC in writing of the steps they have taken to comply with this order.
2. The Marine Employees' Commission will retain jurisdiction over this matter until all bargaining unit employees have been paid as ordered.

DONE this 19<sup>th</sup> day of September, 1997.

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

/s/ JOHN P. SULLIVAN, Commissioner

/s/ DAVID E. WILLIAMS, Commissioner