

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES COMMISSION

In Arbitration
Before Commissioner John P. Sullivan

In the Matter of:)	MEC Case No. 7-99
INLANDBOATMEN'S UNION OF)	
THE PACIFIC on behalf of H-)	
WATCH ANACORTES,)	DECISION NO. 224 –MEC
)	
Grievant,)	DECISION AND AWARD
)	
v.)	
)	
WASHINGTON STATE FERRIES,)	
)	
Respondent.)	
_____)	

Schwerin, Campbell and Barnard, attorneys, by Nancy Maisano, appearing for and on behalf of the Inlandboatmen's Union of the Pacific.

Christine Gregoire, Attorney General, by David Slown, Assistant Attorney General, appearing for and on behalf of the Washington State Ferries.

This matter came on regularly before John P. Sullivan of the Marine Employees' Commission (MEC) when the Inlandboatmen's Union of the Pacific (IBU) filed a request for grievance arbitration on behalf of the six crewmembers on H-watch sailing out of Anacortes, Washington on the spring schedule from February 14, 1999 to June 19, 1999. Commissioner Sullivan was assigned to act as arbitrator, to hear and decide this dispute between the parties.

IBU has certified that the grievance procedures in the IBU/WSF collective bargaining agreement have been utilized and exhausted. IBU 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 arbitrator conducted a hearing in this matter on November 18, 1999.

THE ISSUES

There is no disagreement between the WSF and IBU as to the questions to be resolved by these proceedings before the designated arbitrator. In considering the application of the 1997-1999 IBU/WSF Collective Bargaining Agreement (CBA), "Appendix A Deck Department Personnel, Rule 1.04 - Vessel Shift Changes," the parties agree that the issue to be decided is:

Does the contract require the ferry system to have rebid the Anacortes run, pursuant to Rule 1.04 of Appendix A, prior to its implementation of the spring 1999 vessel watch schedule?

The parties' agreement as to the perimeters of the dispute to be resolved is binding on them and on the arbitrator. Such agreement is accepted as the test for determining the rights, in the material circumstances of the parties here, including those of the six members of H-watch.

POSITIONS OF THE PARTIES

Position of IBU

The H-watch worked the 1998 fall deck schedule from September 27, 1998 through February 15, 1999. They worked five (5) morning watches and five (5) afternoon watches in their fourteen-day schedule for a total of eighty hours in a two-week period.

The 1999 spring schedule ran from February 14, 1999 through June 19, 1999. There was a change in the deck work schedule from the fall of 1998 to the spring of 1999; however, there was no meeting between IBU and WSF pursuant to Rule 29.05 of the CBA.

The change in the spring deck schedule working hours, from the fall, resulted in the morning watch starting 5 minutes later and ending 45 minutes later. The spring afternoon watch started 45 minutes later and ended 5 minutes later than in the fall. The overall work schedule remained the same, working 10 days in a fourteen-day schedule for 80 payable hours.

The change in the schedule was a daily change of 50 minutes for the 10 working days which amounts to 500 minutes (8 hours and 20 minutes) for the two-week deck work schedule.

Appendix A of the CBA, Rule 1.04 - Vessel Shift Changes, requires a rebid by seniority when a vessel's watch is changed by 3 hours or more. In this case the change was 8 hours and 20 minutes and WSF refused to rebid or pay overtime for the time worked in the 1999 spring schedule that was outside the 1998 fall schedule worked by H-watch. WSF is in violation of the collective bargaining agreement and the grievance should be sustained.

Position of WSF

Rule 1.04, Vessel Shift Changes, of the 1997-1999 CBA, Appendix A, refers to rebid of jobs when there is a daily watch change of more than 3 hours.

The daily change in H-watch in the spring of 1999, in both the morning and afternoon watch was 50 minutes for each watch. This change of 50 minutes does not qualify for a rebid because a watch is not changed by 3 hours or more.

Rule 1.04 applies to a watch, not the addition of slight changes in the watch added together for the entire two-week deck schedule to equal more than 3 hours.

DISCUSSION

The sections of the CBA applicable to this arbitration are as follows:

RULE 1 – DEFINITIONS

SPECIFIC DEFINITION: Unless the context of a particular section of this Agreement clearly dictates otherwise, the following terms shall have the following meanings:

...

OTHER DEFINITIONS AND TERMS. Unless the context of a particular section in question indicates otherwise, all other words and terms used in this agreement shall be given their common and ordinary meaning.

APPENDIX A DECK DEPARTMENT PERSONNEL

The following rules are in addition to Rule 1 through Rule 36 and apply to Deck Department and Shoregang employees.

RULE 1 - HOURS OF EMPLOYMENT, OVERTIME AND ASSIGNMENT

1.01 The principal of the eight (8) hour day is hereby established. For all practical purposes, eight (8) consecutive hours shall constitute one (1) workday. Forty (40) hours shall constitute a workweek, and eighty (80) hours shall constitute a two-week work schedule. The following work schedules shall be observed:

- A. Five (5) consecutive eight (8) hour days followed by two (2) consecutive days off; or
- B. Ten (10) consecutive eight (8) hour days followed by four (4) consecutive days off.
- C. Operating crews assigned to extra service vessels may be required to work four (4) consecutive ten (10) hour days followed by three (3) consecutive days off.
- D. Deck employees on Anacortes-San Juan Islands and Sidney routes may be scheduled to work up to ten hours in one day or eighty hours in a two week schedule on touring watches as defined in Rule 1.16 of this labor agreement, without incurring an over-time pay obligation.

In cases where running schedules of vessels will not permit relieving of crew members at port of embarkation within the eight (8) hour day, the overtime penalty will not be incurred; provided, however that no employee shall work more

than nine (9) hours in one (1) day or eighty (80) hours in a two week work schedule.

...

1.04 Vessel Shift Changes. When any vessel watch schedule is changed by three (3) hours or more and/or the employees' days off assigned to said vessel are changed by at least one (1) day or the vessel's home terminal is changed, all assignments will be subject to bid by seniority on that run. Only the most senior year around employees assigned to that run may bid on the assignment.

The fall deck schedule for H-watch (consisting of 6 individuals) ran from September 27, 1998 through February 13, 1999. In a two-week period, the H-watch worked 10 days out of the 14 days. The crew worked a morning watch from 0550-1350 for 5 days and an afternoon watch from 1350-2150, followed by 4 days off which makes up the two-week or fourteen-day deck schedule.

The deck schedule for spring 1999 was a morning watch from 0555 to 1435 for 5 days and an afternoon watch from 1435 to 2155 for 5 days with 4 days of work in the two-week period. H-watch, morning watch started 5 minutes later and ended 45 minutes later than the fall 1998 schedule. The spring afternoon watch started 45 minutes later and ended 5 minutes later than in the fall.

H-WATCH

	Morning Watch	Afternoon Watch
Ex. 4-Spring 1999	0555 to 1435	1435 to 2155
Ex. 3-Fall 1998	0550 to 1350	1350 to 2150
Ex. 7	5 45 Diff./Minutes	45 5 Diff./Minutes

In both the fall 1998 deck schedule and the spring 1999 deck schedule, H-watch earned 80 hours in 10 work days during their two-week schedule sailing out of Anacortes, pursuant to Appendix A of the CBA. The difference between fall 1998 and spring 1999 morning and afternoon is 50 minutes for each watch. With 10 days in a two-week work

schedule, this amounts to 500 minutes, or 8 hours and 20 minutes, which is more than 3 hours change or difference in the work schedule.

IBU claims the WSF violated Rule 29.05 of the CBA which states:

Before the Employer changes any vessel running schedules, the Employer will meet with the Union, if requested to do so, to advise and discuss the changes with the Union.

There was a preponderance of testimony that there was more than one meeting between the IBU and WSF prior to implementing the 1999 spring schedule. There was discussion regarding, not only the sailing schedule, but the “vessel’s watch schedule,” stating the hours the deck crew would work. The meetings were attended by Dave Black, Mike Manning, Dave Remagen and Dennis Conklin.

Members of the H-watch on the Anacortes run for spring 1999, from February 14 to June 19, were: 1. Erling Biggness, 2. Pat Bennett, 3. James Garner, 4. Gregg Linn, 5. Holly Manz and 6. Pete Moe.

Erling Biggness is an experienced seaman and licensed officer, whose service includes Port Captain for the Skagit County Guemes Ferry. He is also certified by the U.S. Coast Guard as a Captain or Master, Near Coastal, up to 1600-ton vessels and Inland Mates, any limit or any gross tons. He has the time and experience to take the U.S. Coast Guard license examination for Unlimited Master Inland which he is planning to do in December 1999.

Mr. Biggness has been with WSF for six and a half years as an able bodied seaman in the Deck Department with his name on the Mates Seniority List, waiting for an opening so he can sail on his license.

As part of his duties, Mr. Biggness has on occasion made entries in the deck log in the wheelhouse of the vessel when a “new watch” starts and ends, which is a daily Coast

Guard requirement. He used the term “watch” to refer to an eight-hour block of time which starts on one day and ends the same day. This watch would be one work shift of 10 work shifts or days plus 4 non-working shift days or vacation days which cover the two-week period called the deck schedule.

Mr. Biggness testified there is a deck schedule covering a two-week period which indicates the daily watch or shift worked, starting time and ending time. The deck schedule is also referred to as the “vessel’s running schedule.” The “published schedule” is when the vessel leaves port and arrives in port, and is distributed to the general public. He also felt that the “vessel watch schedule” was the same as the deck schedule and running schedule.

Dennis Conklin, IBU, has had hands-on experience as he was a WSF deckhand from June 1979 to February 15, 1991, at which time he became an official in the IBU handling grievances and unfair labor practices and contract negotiations on behalf of IBU members with WSF.

Mr. Conklin testified that the change from the fall schedule to the spring schedule was in excess of the 3 hours as stated in Rule 1.04 and assignments should have been rebid or paid overtime for the time worked in the 1999 spring daily deck watch schedule that was different than the fall deck watch schedule.

It is Mr. Conklin's position that there was 1999 spring schedule for two weeks that covered the 10 work days and that each daily watch change from the 1998 fall schedule should be totaled for the 10 days which would exceed the 3 hours and thus require a rebid of the jobs.

Mr. Conklin believes the comparison of the 1998 fall schedule with the 1999 spring schedule for the H-watch, indicates there is a daily change in each daily watch or work shift of 50 minutes; 5 minutes at one end and 45 minutes at the other end, for 10 watches

or shifts. It would be a total of 500 minutes or 8 hours and 20 minutes and this brings into force Rule 1.04.

It is Mr. Conklin's position that a "vessel watch schedule" referred to in Rule 1.04 is the same as the "deck schedule" which lists the daily watches H-watch would work in a two-week period. The position of the WSF is that a "vessel watch schedule" is the hours a deck person would work in a daily watch on one day.

Mr. David Black, Manager of Marine Operations has been with WSF since October 1, 1970 in various managerial positions and has participated in contract negotiations since joining WSF. Mr. Black testified that Rule 1.04 became part of the IBU/WSF contract in the late 1970's and has continued to be part of the contract to the present time without any change.

Mr. Black testified that if a daily morning or afternoon watch changed more than 3 hours as stated in Rule 1.04, all assignments are subject to rebid by seniority and that has happened in the last 4 or 5 years. According to Mr. Black, if the morning watch is changed so it starts later and ends later by a total of 50 minutes, this falls way short of the 3-hour change that would require a rebid on all watches, and all vessels on the Anacortes run. The "vessels watch schedule" is what the crew works in one day or one work shift.

Mr. Black testified that Appendix A, Rule 1.04 had been negotiated by IBU and WSF and became part of the CBA in the late 1970's. When ferry schedules have been changed to accommodate passenger needs, it follows that the daily watch schedule or daily shift of the deck crew members also changes.

When a daily watch or work shift has been changed 3 hours or more, that would trigger Appendix A, Rule 1.04 requiring a rebid. Mr. Black testified this is something management is always concerned about and tries not to make such a change unless it is absolutely necessary. In this case, there was no 3-hour change in the vessel's daily watch schedule.

The change from the fall schedule to the spring schedule that amounted to a 50 minute change in the daily watch schedule was required as WSF was improving their Anacortes schedule for the benefit of their customers and the vessels available to work that sailing route. The spring schedule did not include anything that required union approval according to Mr. Black.

Mr. Michael J. Manning, WSF Labor Relations Manager, testified that at the request of Dennis Conklin, IBU Business Agent, he had a meeting on February 12, 1999 after the 1999 spring schedules were reviewed which included the changes in schedules for San Juan, Bainbridge and Edmonds routes. At that time, Mr. Conklin raised no concern about the changes in the San Juan-Anacortes deck schedules. They also talked about the changes and the 3-hour rule; if the vessel watch schedules for one day shift changed three hours or more they would have to rebid. Mr. Manning pointed out the vessel watch schedule did not change 3 hours or more per watch or shift, therefore Rule 1.04 never became applicable. Mr. Conklin's theory was that on a cumulative basis, the time change in the daily shift should be added together, over 10 work shifts or watches, and if that exceeded 3 hours, the deck schedule would have to be rebid.

Mr. Manning pointed out that the "vessel watch schedule" is a schedule within the deck schedule. The deck schedule is the sum of the various vessel watch schedules. The whole is the deck schedule and the parts are the watches. A "vessel watch schedule" is a shift and the deck schedule is all of the shifts.

There is no definition of a "vessel watch schedule" in CBA Rule 1, so we must look to the last paragraph of the rule, which states:

OTHER DEFINITIONS AND TERMS. Unless the context of a particular section in question indicates otherwise, all other words and terms used in this agreement shall be given their common and ordinary meaning.

Appendix A, Rule 1.04 identifies that rule as “vessel shift changes.” The word “shift” was used by all witnesses to describe the work done in a single day. It is also noted that the word “shift” was used in the CBA between these parties in referring to work done in a single day, in Rules 11 and 12.

Applying “the common and ordinary” rule to the word “watch” is it commonly understood to mean part of a single day?

WHAT IS A WATCH?

The Washington State Ferries operates vessels where the majority of the workers are on the vessel for approximately 8 straight hours and where their vessel watch schedule or work shift for each day is finished they go home. WSF vessels operate on the Puget Sound which is considered by the U.S. Coast Guard to be Inland Waters and close to their home.

Vessels that sail coastwise or on foreign voyages are gone from several days to weeks or months. Their vessel watch schedule or work shift for each day for the deck crew is divided into three groups. Each group stands two watches of 4 hours each with a break of 8 hours in between. The two 4-hour watches would equal a workday of 8 hours. There would be three watches in the morning or a.m. and three watches in the afternoon or p.m.

The three watches in one day would work as follows:

1. 0000—0400 → 8-hour break → 1200—1600
2. 0400—0800 → 8-hour break → 1600—2000
3. 0800—1200 → 8-hour break → 2000—2400

The ferry deck crew member works a vessel watch schedule of 8 hours straight without a break after 4 hours.

The term “watch” based upon publications that discuss the term find that the definition used historically and presently refers to a work period or shift as a part of a day. There is no definition or example that covers more than one day and certainly not a two-week schedule as set out in the “deck schedule” for the H-watch in the 1999 Spring Schedule.

Some definitions of a watch include the following:

1. “A period of duty, usually four hours, to which a division of ship’s crew, or a specific number of men is assigned.” W.A. McEwen & A.H. Lewis, Encyclopedia of Nautical Knowledge 592-93, Cornell Maritime Press, Centerville, MD.
2. “The traditional watch schedule followed by most of the world’s fleet, with four hours on and eight off . . .” Crew Size and Maritime Safety, National Research Council, National Academy Press, Washington D.C.
3. “*Naut.* a. Any of the periods of time into which the day aboard ship is divided and during which a part of the crew is assigned to duty. b. the members of a ships crew on duty during a specific watch.” Webster’s II New Riverside University Dictionary, Riverside Publ. Co. 1988.
4. “[A]ny of the periods of time aboard ship into which the day is divided and during which the crew is assigned to duty; the members of a ship’s crew on duty during a specific watch.” American Heritage Dictionary, p 1523.

Having read and considered the entire record, the Arbitrator now enters the following conclusions of law.

CONCLUSIONS OF LAW

1. An arbitrator cannot legislate new language and, in effect, usurp the role of the union and employer.

No party to a Contract may evade the express terms of the Contract on the grounds that such terms are impracticable, unreasonable, or even absurd. The Contract is the Contract, and arbitrators are not free to vary its terms to achieve a more equitable or productive result, or even to suggest to the parties how the Contract ought to be rewritten to do what the parties themselves may have intended. It is the arbitrator's responsibility to read the Contract and tell the parties how it applies to the dispute at hand and this is the limit of his jurisdiction.

Wolf Baking Co., Inc., 83 LA 24, 26 (Marlatt 1984)

The fact that the Agreement may have had consequences not intended by the Union when it signed the Agreement is not sufficient cause to set it aside. The parties were dealing at arms length. There was no showing of fraud. Neither was there any showing that the words involved had any intended meaning other than their clear and usual meaning.

Northwest Packing Co., 80 LA 591, 596 (Hedges).

2. The core of this dispute turns on the meaning of "vessel watch schedule" from the IBU/WSF contract; the common, ordinary meaning or the plain and normal meaning of "vessel watch schedule," as used by seafaring people and those who operate ships, including ferries.
3. When the language is clear and unambiguous, the arbitrator is required to construe the CBA as it was written without in any way changing it, adding to it, or subtracting from it.
4. When construing the CBA as it was written and signed by the parties and its application to the facts, it is clear that the Grievants were not entitled to rebid the assignments on that run, nor entitled to overtime as the result of changes in the vessel watch schedule from the fall 1998 to the spring of 1999.
5. There was no change in the daily vessel watch schedule or daily shift schedule of 3 hours or more that would result in the required rebidding of all assignments on

the Anacortes run. There is nothing in the CBA that would indicate that to exceed the 3-hour limitation they would add up the difference for each day from the fall schedule to the spring schedule for the 10-day period of the deck schedule. The difference is daily, not accumulative when calculating the 3 hours.

6. Pursuant to Rule 29.05 of the CBA, there was a requested meeting held between the IBU and WSF regarding the change in the 1999 spring schedule.

AWARD

1. For the reasons set forth above, the arbitrator finds that the employer, WSF, did not violate the CBA by not rebidding the IBU work assignments on the Anacortes run and did not commit any violation by not paying the overtime requested as the result of the difference between the 1998 fall schedule hours worked and the 1999 spring schedule hours worked.
2. Accordingly, the grievance must be and hereby is dismissed.

DATED this _____ day of February 2000.

MARINE EMPLOYEES' COMMISSION

_____/s/_____
JOHN P. SULLIVAN, Arbitrator

Approved By:

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

_____/s/_____
DAVID E. WILLIAMS, Commissioner