

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

In Arbitration
Before Commissioner John P. Sullivan

DISTRICT NO. 1 MARINE ENGINEERS)	MEC Case No. 7-00
BENEFICIAL ASSOCIATION on behalf)	
of WILLIAM N. SCHWEYEN,)	
)	DECISION NO. 242 - MEC
Grievant,)	
)	
v.)	
)	DECISION AND AWARD
WASHINGTON STATE FERRIES,)	
)	
Respondent.)	
_____)	

Mario Micomonaco, MEBA/WSF Union Representative, appearing for and on behalf of District No. 1, Marine Engineers Beneficial Association and William N. Schweyen. (Mr. Schweyen attended the hearing).

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 District No. 1, Marine Engineers Beneficial Association (MEBA) filed a request for grievance arbitration on behalf of William N. Schweyen, asserting that Washington State Ferries (WSF) denied Mr. Schweyen placement on the Engineers' Seniority List, also known as the Oilers Promotional Roster or List.

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 application of said collective bargaining agreement, and that the Arbitrator's award shall be final and binding.

The parties' agreement as to the parameters of the dispute to be resolved by said Arbitrator is binding on them and on him. Such agreement is accepted, therefore, as the test for determining the rights, in the material circumstances of the parties here, including those of Mr. Schweyen.

A hearing of this matter was conducted on July 11, 2000. At the outset of the hearing, Assistant Attorney General David Slown moved to dismiss the grievance on the grounds that: 1) it is untimely; and 2) it is absolutely disposed of by MEC Decision No. 238, issued in the McLaughlin grievance (MEC Case No. 3-00). Arbitrator Sullivan ruled on both motions at the conclusion of the hearing.

Arbitrator Sullivan heard oral argument of counsel for the respondent, Washington State Ferries, and counsel for the grievant, District No. 1, Marine Engineers' Beneficial, as well as testimony from Mr. Schweyen, himself.

In addition, the Arbitrator considered the exhibits that were admitted, including:

1. Request for Grievance Arbitration and Attachments, filed 5/8/00.
2. Letter concerning McLaughlin's sea service, dated 12/20/89.
3. Letter concerning McLaughlin's sea service, dated 9/14/92.
4. Letter concerning McLaughlin's sea service, dated 5/14/95.
5. Letter from Stephen Olson re: his licenses, dated 7/10/00
6. Licensed Engineers 1991-1993 CBA, cover page, page 6.
7. Copy of Kenneth Floyd Irish USCG License, dated 4/26/89.
8. Unlicensed Engine room Employees CBA 1991-1993, cover page, page 15.
9. WSF Service Record of Mr. Schweyen from 5/5/93 to 2/5/97.
10. Letter concerning McLaughlin's sea service, dated 11/1/90.
11. Decision and Award in MEC Case No. 3-00, Decision No. 238-MEC, issued June 28, 2000, pertaining to Floyd McLaughlin.

The Arbitrator considered the oral argument of counsel and the testimony of the grievant and all the exhibits presented in arriving at this decision.

The hearing transcript was filed with the MEC on August 3, 2000.

THE ISSUES

When Mr. Schweyen was hired as an Oiler by WSF on May 5, 1993, he possessed a United States Coast Guard (USCG) License, Issue Number 1-1 as a Licensed Engineer. This USCG License permitted him to sail as Third Engineer on steam vessels of any horsepower.

In considering the application of the 1991-93 MEBA/WSF Unlicensed Engine Room Employees' Collective Bargaining Agreement (CBA) Rule 21-"Seniority and Assignments", along with the 1991-93 MEBA/WSF Licensed Engineer Officers, Agreement Section 6(i) the issue to be decided is:

Did the USCG License held by Mr. Schweyen on May 5, 1993—the date he was hired by WSF—qualify him to be placed on the Engineers' Seniority List/Oilers Promotional Roster or List as of that date?

POSITION OF THE PARTIES

Position of MEBA

Mr. Schweyen was hired by WSF as an Oiler on May 5, 1993. At the time he was hired, Mr. Schweyen held a USCG Marine Engineers License as a Third Assistant Engineer and could serve on any steam vessel of any horsepower. He was placed on the Engineers' Seniority List/Oilers Promotion Roster or List as of the date he was hired.

Mr. Schweyen was wrongfully removed from the Engineers' Seniority List on or about May 1994 or January 1995 and he should be reinstated as of May 5, 1993 on the list, which was his hiring date.

Position of WSF

The Schweyen grievance is untimely and should therefore be dismissed. Mr. Schweyen was on the Engineers' Seniority List/Oilers Promotion Roster or List as of January 1994 but he was not on the list in June 1995, which would indicate he was removed sometime between those dates.

While Mr. Schweyen did complain to his union (MEBA) Business Agent Mark Austin when he was removed from the list, his union never accepted the reported grievance or grieved it to the employer, WSF. It was not until May 8, 2000 that his union filed a "Request for Grievance Arbitration".

The Schweyen grievance, as stated, is absolutely disposed of by the decision in MEBA v. WSF (McLaughlin), MEC Case No. 3-00, Decision No. 238-MEC (issued by the Marine Employees' Commission on June 28, 2000). The same issue in the present case was ruled on in the McLaughlin case: An Oiler must possess a USCG Marine Engineers License to qualify to serve on a WSF vessel that carries an Assistant Engineer, to be placed and remain on the Engineers Seniority List/Oilers Promotional Roster or List.

McLaughlin was held to not be qualified and neither should Schweyen, as he also did not possess a license that qualified him to be on the Seniority List.

FINDINGS OF FACT

Timeliness

1. Mr. Schweyen was hired by WSF as an Oiler on May 5, 1993 and at that time he had a USCG Marine Engineers License that enabled him to serve on steam vessels of any horsepower and he was placed on the Engineers Seniority List/Oilers Promotional Roster or List at that time.

Mr. Schweyen was a member and covered by the Agreement between MEBA and WSF for Unlicensed Engine Room Employees.

2. It was in May 1994 , or possibly January 1995, when Port Engineer Mark Nitchman removed Mr. Schweyen from the Engineers Seniority List because he did not have a license for "motor" vessels and all WSF vessels are motor vessels; none are steam vessels.

3. RCW 47.64.150 which governs marine employees' grievance procedures requires that "ferry system employees shall follow ...the grievance procedure provided in the collective bargaining agreement, and that those 'procedures' shall provide for the invoking of arbitration only with the approval of the employee organization." The statute further states that only if no such grievance procedures are provided by an agreement may marine employees submit their grievances directly to the MEC. The labor agreement negotiated by WSF/MEBA for Unlicensed Engine Room Employees does provide such procedures, "Rule 16--Disputes", and some applicable sections are noted.

RULE 16--DISPUTES

16.01 It is the purpose of this Rule to provide the parties with an orderly and effective method of achieving consideration of the settlement of any grievance, as hereinafter defined, which may arise during the duration of this Agreement.

16.02 A grievance is defined as any dispute which may arise between the parties involving the interpretation, application, or alleged violation of any provision of this Agreement.

...

16.04 It shall be the firm intention of the parties to resolve any grievance at the local level. The term "local level" as herein used means "Union Representative and Employer Representative."

The grievance procedures of this Agreement shall be the exclusive remedy with respect to any dispute arising between the Union and Employer, and no other remedies may be utilized by any person with respect to any dispute involving this Agreement until the grievance procedures herein have been exhausted. If a grievance is being processed pursuant to this Rule and an employee or the Union pursues the same grievance through any other channel

or method, then the Union and the employee agree that the grievance shall be considered to have been abandoned.

STEP 1 - INFORMAL

1. In the event of a dispute arising out of the interpretation of this Agreement, the aggrieved employee, the Union or the Union Steward shall as soon as possible, but in no event more than sixty (60) calendar days after the facts and circumstances actually become known, or in the exercise of reasonable care should have become known, orally present the grievance to the employee's supervisor or his designee.

2. If the grievance is not resolved within five (5) days after such notification when the Union and/or employee may submit the matter to Step II as hereinafter provided.

STEP II - FORMAL

1. Within fifteen (15) days of original notification the Union and/or employee may file a written statement of the grievance to the Director of Employee Relations, or his designee. Said grievance statement will contain the following information: a detailed explanation of the grievance including all the facts surrounding the grievance, the specific provisions of the Agreement alleged to be violated, and the specific remedy requested to resolve the dispute.

...

STEP III - ARBITRATION

1. Within ten (10) days of the receipt of the Employer's decision if the matter has not been satisfactorily resolved the Union may submit the matter to arbitration by as herein provided.

2. In the event either party decides to submit the matter to arbitration, it will notify the other party of this action and will refer the dispute to the Marine Employees' Commission for a final resolution.

...

4. The arbitrator's decision shall be final and binding on the Union, affected employee(s) and the Employer.

4. Mr. Schweyen made a complaint to the Senior Port Captain Ben Davis, but it is unknown when the complaint was made or if it was made within the 60 days as set out in Step I. Ben Davis told Mr. Schweyen he was not going to put him back on the list.

5. There was no evidence that Step II was completed, which required a written statement to the WSF by the Union and/or Employee.
6. The Union, MEBA, never accepted Mr. Schweyen's grievance and never grieved it to WSF. The MEBA Business Agent Mark Austin, according to Mr. Schweyen, told him there was nothing he, Mark Austin, could do for him.
7. Grievance machinery embodied in Step III, paragraph 1, expressly provides that only the union may invoke arbitration, but first Step III must be reached, which was never accomplished.
8. There is no evidence that Mr. Schweyen's grievance was approved or accepted by the MEBA or acted upon when first reported to the MEBA.

Sometime during the year 2000, Mr. Schweyen once again took his seniority grievance to his Union. During the period from 1995 to 2000, MEBA had had several personnel changes, i.e. Business Agents and Patrolmen. On this occasion, MEBA accepted and processed the instant grievance pursuant to the dispute procedures in the CBA, filing a request for grievance arbitration with the MEC on May 8, 2000. This is some five years or more after the incident of removal from the seniority list took place.

The Unlicensed MEBA CBA places the Union in control of any grievance as they have the procedure set out in the CBA, the three-step method of handling grievances. The Washington State Courts have stated: "According to the plain language of RCW 47.64.150, a ferry employee must pursue a grievance through the procedures established by his or her employee organization (here the IBU) unless "no such procedures are so provided". *Hill v. Transportation*, 76 Wn. App. 631, 887 P.2d 476, rev. denied 126 Wn.2d 1023, 896 P.2d 63 (1995).

WSF claims the MEC Case No. 3-00, Decision No. 238 issued by the Marine Employees' Commission June 28, 2000 concerning the same parties, MEBA and

WSF, except that case concerned Floyd McLaughlin while the present case concerning William N. Schweyen applies the basic same set of fact and that the ruling in the McLaughlin case disposes of Schweyen's present case.

Both McLaughlin and Schweyen were USCG Licensed Marine Engineers who wished to be placed and retained on the Engineers Seniority List/Oilers Promotional Roster or List as of their date hiring by WSF as Oilers.

Comparison

9. Agreement for Unlicensed Engine Room Employees By and Between District 1-Marine Engineers Beneficial Association and Washington State Ferries. (MEBA/WSF CBA).

a) Schweyen was hired by WSF as an Oiler under the 1991-1993 MEBA/WSF CBA on May 5, 1993.

b) McLaughlin was hired by WSF as an Oiler under the 1997-1999 MEBA/WSF CBA on April 28, 1998.

10. "Rule 21-Seniority and Assignments."

21.01 The Employer recognizes the principle of seniority in the administration of promotions, transfers, layoffs and recalls. In the application of Seniority under this Rule, if an employee has the necessary qualifications and ability to perform in accordance with the job requirements, seniority by classification shall prevail."

a) Exact wording in Schweyen's 1991-1993 MEBA/WSF CBA

b) Exact wording in McLaughlin's 1997-1999 MEBA/WSF CBA

11. Engineer Officer Vacancies

(b) Two (2) out of every three (3) permanent vacancies in the position of Assistant Engineer shall be offered to those WSF Oilers on the promotion list, and those Oilers that obtain their original Assistant Engineers license within the term of the 1991-1993 contract. When the last Oiler, as defined in this provision, has exhausted his/her promotional privilege, then every other permanent vacancy in the position of Assistant Engineer shall be filled by promoting the qualified Oiler, if any, who has the earliest seniority date and has a bid for the position on file. All other permanent vacancies shall be filled in accordance with Section 2(1) of the Licensed Engineer Officers Agreement.

- a) Exact wording in Schweyen's 1991-1993 MEBA/WSF CBA at 21.11 B.,
- b) Exact wording in McLaughlin's 1997-1999 MEBA/WSF CBA at 21.10 (b).

Both refer to a "qualified Oiler" with a proper license.

- 12. USCG Marine Engineers License issued as of the time hired and possessed by:
 - a) Schweyen. Third Assistant Engineer of steam vessels of any horsepower.
 - b) McLaughlin. Second Assistant Engineer on motor vessels of not more than 4000 horsepower; also, Third Assistant Engineer on steam vessels of not more than 6000 horsepower; also, Chief Engineer (Limited-Near Coastal) on steam and motor vessels of not more than 4000 horsepower; also, designated duty engineer on steam and motor vessels of any horsepower.
- 13. USCG License held at the time of hiring as Oilers did not have the endorsements required to serve as an Assistant Engineer on WSF vessels.
 - a) Schweyen 's USCG License covered only steam vessels; WSF does not operate any steam vessels in their fleet.
 - b) McLaughlin had multiple endorsements on his USCG License.

1. The Second Assistant Engineer License did NOT have enough horsepower endorsement to serve on WSF vessels carrying Assistant Engineers.
2. The Third Assistant Engineer License covered only steam vessels; WSF operates only motor vessels.
3. The Chief Engineers License covered a number of WSF vessels, but the Chief Engineer position is filled by promotion from the ranks of working Assistant Engineers per the "Licensed" MEBA/WSF CBA.
4. An endorsement on his USCG Marine Engineers' License as a "Designated Duty Engineer on steam and motor vessels of any horsepower," also noted as "DDE." 46 CFR 15.915(a) states the limitation for this endorsement is limited to vessels of under 500 gross tons. All of the 15 WSF vessels that carry Assistant Engineers are well in excess of 500 gross tons, the least vessel's tonnage is 2475 gross tons.

His license did not permit him to serve on a WSF vessel that carried an Assistant Engineer.

14. At the time of hiring neither Schweyen nor McLaughlin were holders of USCG Marine Engineers Licenses that enabled them to be considered "Qualified" Oilers to work as Assistant Engineers on the WSF ferries that carry Assistant Engineers and to be placed on the Engineers' Seniority List/Oilers Promotional Roster or List.
15. Mark Nitchman, a Port Engineer in management capacity with WSF starting in 1992 and he was subsequently promoted to Director of Maintenance for WSF; he supervises all Engine Room Employees.

- a) Nitchman removed Schweyen from the Engineers Seniority List/Oilers Promotion Roster or List on or about May 1994 or January 1995 when it was noted that Schweyen did not have a an endorsement on his License to work as an Assistant Engineer on WSF motor vessels that carry them.
 - b) While McLaughlin had a variety of USCG endorsements on his License, none of them would permit him to sail on WSF vessels that carried Assistant Engineers; therefore, Nitchman denied his being placed on the Engineers' Seniority List/Oilers Promotional Roster or List.
16. USCG Marine Engineers Licenses endorsements raised or amended:
- a) Schweyen, on May 2, 1995, had his License amended to state "Third Assistant Engineer of Motor Vessels of any horsepower", by the USCG.
 - b) McLaughlin on September 25, 1998 had his license amended to state, "Chief Engineer (Limited-Oceans) Motor Vessels of any horsepower." and "Third Assistant Engineer Motor Vessels of Any Horsepower", by the USCG.
17. When Schweyen received his amended endorsement to his USCG License as a Marine Engineer on May 2, 1995, he was a "Qualified" Oiler and he was placed on the Engineers Seniority List/Oilers Promotional Roster or List as of that date.
18. When McLaughlin received his amended endorsement to his USCG License as a Marine Engineer on September 25, 1998, he was a "Qualified" Oiler and he was placed on the Engineers Seniority List/Oilers Promotional Roster or List as of that date, which was the ruling in MEC Case No. 3-00, Decision No. 238-MEC issued June 28, 2000.

Training

19. The 1991-1993 agreement for Licensed Engineer Officer between MEBA/WSF contained Section 6 (i), which was deleted in the 1993-1995 Licensed MEBA/WSF CBA, which reads as follows:

Section 6 (i) The position of Assistant Engineer Officer shall be part of the manning on the following vessels: HYAK, KALEETAN, YAKIMA, and ELWHA. Qualified Engineer Officers working as Engineer Officers under the jurisdiction of this contract of the Washington State Ferries, upon application, shall be given preference when filling the position and shall receive the rate of pay herein established for Assistant Engineer Officer for the period of the assignment. It is recognized by the parties to this Agreement that the Assistant Engineer Officer classification may be a training position for the Employee who seeks to upgrade the Employee's license to that of Unrestricted Ferry Boat Engineer Officer. Failure on the part of the Employee to attain an Unrestricted Ferry Boat Engineer's License after a reasonable period of time shall be grounds for removing the Employee from this position. It shall be Management's responsibility to fill the position and to determine whether the Employee appointed to the position is making a good-faith attempt at upgrading the Employee's license.

Emphasis added.

The requirements are outlined: You must be a qualified engineer working under the Licensed Engineers CBA. Mr. Schweyen was not qualified and not working under the Licensed Engineers CBA.

The third sentence reads: "It is recognized by the parties to this Agreement that the Assistant Engineer Officer classification may be a training position for the Employee who seeks to upgrade the Employee's license to that of Unrestricted Ferry Boat Engineer Officer".

Mr. Schweyen's license was for "steam" vessels. He first had to obtain a "motor" vessel license and be employed as an Engineer Officer under the Licensed MEBA/WSF CBA to be eligible to seek a training position on the motor vessels "Hyak", "Kaleetan" and "Yakima", all 8,000 horsepower

plus the "Elwha" 10,200 horsepower. This would apply to those Engineer Officers working under the Licensed MEBA/WSF CBA Agreement on WSF motor vessels and wishing to increase their horsepower ratings in a training position on the above four noted motor vessels.

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

CONCLUSIONS OF LAW

1. The USCG regulations set out the requirements for the type and endorsements on the USCG Marine Engineers' License that is necessary to serve on a WSF motor vessel as an Assistant Engineer.
2. Schweyen, when he was hired as an Oiler by WSF, was in possession of a USCG license but it did not have the necessary endorsements to serve as an Assistant Engineer. This was the same situation for McLaughlin, who was hired as an Oiler.
3. Neither Schweyen nor McLaughlin when hired had USCG Licenses that qualified them to serve as Assistant Engineers on WSF motor vessels that carried an Assistant Engineer, and because their licenses were inadequate, they were not qualified to be placed on the Engineers Seniority List or Oilers Promotional Roster or List.
4. When Schweyen was removed from the Seniority List for not being qualified he failed to obtain the support of his Union to proceed with his grievance pursuant to his Union contract, according to Rule 16-Disputes.
5. Schweyen, after numerous changes in the personnel at his Union, MEBA, obtained the support of his Union some five years after he was removed from the List for lack of qualifications.

6. Both Schweyen and McLaughlin obtained more shipboard engineering experience after their hiring and then the USCG amended their licenses so they could serve as Assistant Engineers on WSF motor vessels. They were then placed on the Engineers Seniority List or Oilers Promotional Roster or List.
7. The material facts in the McLaughlin case are identical or substantially similar to those in the Schweyen grievance. The decision or holding in the McLaughlin case, MEC Decision No. 238, is a binding precedent for the Schweyen grievance, in which the facts are prima facie similar.
8. Schweyen testified that his grievance to be placed back on the list is some five years after he was removed from the List. He brought his grievance to the attention of his union business agent at the time it happened, and then he was turned down, and his grievance was not processed pursuant to the CBA Rule 16 "Disputes". The grievance is untimely.
9. The material facts in the McLaughlin case are identical or substantially similar to those in the Schweyen grievance. The decision or holding in the McLaughlin case is a binding precedent for the Schweyen grievance in which the facts are prima facie similar and therefore, the McLaughlin decision is controlling.

The Commission having reached the foregoing findings of fact and conclusions of law now hereby enters the following decision and award.

AWARD

1. WSF's motion to dismiss the Schweyen grievance, on the grounds that it is untimely, is granted.
2. WSF's motion to dismiss the Schweyen grievance, on the grounds that it is disposed of by MEC Decision No. 238, entered in the McLaughlin grievance, is granted.

3. The request for grievance arbitration filed by District No. 1, MEBA, on behalf of William N. Schweyen, to place him on the WSF Engineers' Seniority List or Oilers Promotional Roster or List as of May 5, 1993, is denied.

DATED this ____ day of _____ 2000.

MARINE EMPLOYEES' COMMISSION

JOHN P. SULLIVAN, Arbitrator

Approved By:

JOHN D. NELSON, Chairman

DAVID E. WILLIAMS, Commissioner