

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES' COMMISSION  
In Arbitration  
Before Chairman John Swanson

INLANDBOATMEN'S UNION  
OF THE PACIFIC,

Grievant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC CASE NO. 57-04

DECISION NO. 473 - MEC

DECISION AND AWARD

**APPEARANCES**

Schwerin Campbell Barnard, by *Robert Lavitt*, appearing for the Inlandboatmen's Union of the Pacific (IBU).

Rob McKenna, Attorney General, by *David Slown*, Assistant Attorney General, appearing for the Washington State Ferries (WSF).

**ISSUE**

Did Washington State Ferries violate the Labor Agreement involving process and pay procedures in the establishment of the Anacortes E-Watch schedule in December of 2003?

If so, what is the appropriate remedy and in what way is the remedy applicable?

**NATURE OF THE PROCEEDINGS**

This case comes before the Commission as a result of a schedule change alleged by the Union to violate the CBA.

In the winter of 2004 on the Anacortes/San Juan ferry route, service reductions were made which were necessary because of funding limitations. As a result of the service reductions,

Washington State Ferries (WSF) adjusted ferry employees' schedules. A number of schedules were considered and after deliberations, the schedule that is in dispute was adopted. The schedule is referred to as Anacortes E-Watch schedule. The schedule requires employees to work 9-hour days and 7-hour, twenty minute days in a two-week schedule. The schedule also requires employees, on certain days, to work more than sixteen (16) hours in a twenty-seven (27) hour period.

## **RELEVANT CONTRACT PROVISIONS**

### **PREAMBLE**

The rules contained herein constitute an Agreement between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, an agency of the State of Washington, operating Washington State Ferries, hereinafter referred to as the "Employer", and the INLANDBOATMEN'S UNION OF THE PACIFIC, MARINE DIVISION OF THE INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, hereinafter referred to as the "Union", governing wages, hours and other conditions of employment of employees as classified.

All of the following Rules shall apply to the entire Agreement uniformly. Should any Rules in the subsequent Appendices, which by this reference are incorporated herein, modify these rules, such subsequent Appendices shall take precedent and apply only to those employees and/or conditions covered by the Appendix.

### **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:

**1.01 AGREEMENT.** The term "agreement" shall refer to the present contract, of which this section is a part, as it presently exists between the Employer and the Union.

**1.17 TOURING WATCH.** A "touring watch" is a watch to which the employee is assigned where he/she is on duty for two successive work shifts not to exceed a total of sixteen (16) working hours separated by a minimum of six (6) hours off between watches during a maximum period of twenty-seven (27) hours. The overtime provisions of this Agreement shall apply if these watches are varied.

(Emphasis added.)

1.20 WORK WEEK. The term “work week” shall be seven (7) consecutive days.

1.21 TWO WEEK WORK SCHEDULE. The term “two week work schedule” is fourteen (14) consecutive calendar days in which an employee is scheduled working days and days off.

#### RULE 2 – RECOGNITION

2.01 The Employer recognizes the Union as the representative of all employees as classified herein and the sole collective bargaining agency for the purpose of acting for the employees in negotiating and interpreting the Agreement and adjusting disputes.

#### RULE 4 – MANAGEMENT RIGHTS

4.01 Subject to the specific terms and conditions of this Agreement, the Employer retains the right and duty to manage its business, including but not limited to the following: the right to adopt regulations regarding the appearance, dress, conduct of its employees, and to direct the work force consistent with work procedures as are necessary to maintain safety, efficiency, quality of service and the confidence of the traveling public. The Union reserves the right to intercede on behalf of any employee who feels aggrieved because of the exercise of this right and to process a grievance in accordance with Rule 16. The existence of this clause shall not preclude the resolution of any such grievance on its merits.

#### RULE 6 – SCOPE

6.01 This Agreement shall apply to all vessels and facilities of the Employer engaged in the transportation of passengers, automobiles and freight on Puget Sound and adjacent inland waters, the Straits of Juan de Fuca and the waters adjacent to the San Juan Islands and ports in British Columbia. This Agreement shall apply to all unlicensed employees assigned to the Deck, Terminal, Information Departments and Shoreside maintenance.

6.02 The parties agree that the provisions of this Agreement constitute the complete agreement between the parties, provided that, any prior understanding executed by the parties and contained in a letter or memorandum of understanding will be continued during the duration of the Agreement unless the subject matter contained in the letter or memorandum of understanding has been subsequently amended, modified, changed or altered in any way by a term or provision of the Agreement. Also, it is expressly understood and agreed upon that no term or provision of this Agreement may be amended, modified, changed or altered except by a written agreement executed by the parties. This clause does not constitute a waiver by either party of its duty to bargain pursuant to RCW 47.64.

RULE 29 – WORKING CONDITIONS (GENERAL)

29.05 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.

(Emphasis added.)

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APPENDIX A  
DECK DEPARTMENT PERSONNEL

The following are in addition to Rule 1 through Rule 36 and apply to Deck Department and Shore-gang employees.

RULE 1 – HOURS OF EMPLOYMENT, OVERTIME AND ASSIGNMENT

1.01 The principle of the eight (8) hour day is hereby established. For all practical purposes, eight (8) consecutive hours shall constitute one (1) work day. Forty (40) hours shall constitute a work week and eight (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 [sic] of this labor agreement, without incurring an over-time pay obligation.

(Emphasis added.)

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.

1.02 The Union and the Employer may agree to establish touring watches on vessels where the running schedules make such watches more practical. When touring watches are established, the employees involved shall be paid at straight time pay for not to exceed five (5) consecutive tours, followed by not less than

two (2) consecutive tours off duty. This rule does not apply to designated relief personnel.

(Emphasis added)

### **RECORD BEFORE THE COMMISSION**

The MEC has the following record before it:

1. Agreement by and between Washington State Ferries and Inlandboatmen's Union of the Pacific—July 1, 1999 through July 30, 2001.
2. Transcript of the October 19, 2005 hearing.
3. Exhibits entered into evidence at the hearing.
4. Letters from the parties requesting extensions in the time schedule for filing of briefs.
5. Post-hearing briefs of IBU and WSF.

### **FINDINGS OF FACT**

On the basis of the evidence and record of proceedings, the Arbitrator makes the following findings of fact:

1. As a result of service reductions, WSF established a new work schedule during the winter season from December 28, 2003 through March 20, 2004.
2. The new work schedule was comprised of four (4) nine (9) hour shifts and six (6) seven hour, twenty minute shifts in a two (2) week work period.
3. The seven hour, twenty minute shift was paid seven hours twenty minutes of straight time pay.
4. The nine (9) hour shift was paid nine (9) hours of straight time pay.
5. Unless the employees were held over or called in prior to the start of their respective shifts, they were paid eighty (80) hours of straight time pay for the two (2) week work period.

6. As a result of the E-watch schedule on specific days, an employee, after completing his work day, is required to return to his following shift and work in excess of sixteen (16) hours in a twenty-seven (27) hour period referred to in Rule 1.17.

7. Overtime pay or penalty pay has not been added to the employee's pay when the employee is scheduled to be on the job in excess of sixteen (16) hours in a twenty-seven (27) hour period referred to in Rule 1.17.

8. As a result of service schedules and other factors, WSF has historically scheduled employees to work variable hours to meet ferry schedules, customer and service requirements. These schedules are intended to provide eighty (80) hours straight time pay in a two (2) week work period.

9. There is no evidence in the record that there has been another schedule anywhere in the service that has provided nine (9) hour shifts combined with seven hour, twenty minute shifts.

10. WSF management testified that the Union (IBU) had agreed to the E-watch schedule knowing employees would work in excess of sixteen (16) hours in a twenty-seven (27) hour period without overtime or penalty pay being required.

11. The record and grievances support the conclusion that all rules of the CBA applicable to WSF's schedule change as it relates to Anacortes E-watch employees are subject to this hearing.

12. There has been no evidence or testimony in the record that would indicate that the employees on E-watch schedule are other than employees defined in Rule 1.11.

13. a) Testimony by management indicates the Employer may have communicated the E-watch schedule with Mr. Pete Jones of the Union; however, Mr. Jones retired in December of 2002, a year prior to the establishment of the schedule in dispute. (TR 107-108)

b) There is no evidence that the Employer contacted Mr. Engels, who was the Regional Director from December 2002 until March of 2004, or Patrolman Conklin.

c) There also is no evidence or testimony in the record that the E-watch Anacortes schedule was established according to Appendix A, Rule 1.02. There are no minutes or agreement in the record to conclude that the Union agreed to or participated in the establishment of the schedule.

14. The CBA allows employees to be scheduled for other than eight (8) hour days for compelling, operational requirements. It is also specific as to how such operating schedules/work schedule changes are to be accomplished as referred to in Rule 29-29.05 and Appendix A, Rule 1.02 – 1.04. The record is incomplete as to how or whether the CBA rules were followed in this regard.

### **CONCLUSIONS OF LAW**

On the basis of the evidence and record of proceedings, the Arbitrator makes the following conclusions:

1. The parties' 1999-2001 contract remains in full force and effect past its stated expiration date by operation of law (RCW 47.64.170).

2. The Arbitrator has jurisdiction over the parties and the dispute (RCW 47.64.280).

This case is properly before the Arbitrator for decision.

3. WSF does have numerous system-wide schedules that allow work assignments of more and less than eight (8) hour days or forty (40) hour weeks providing the schedule provides the employee eighty (80) straight time hours in a two (2) week period.

4. In this case, WSF did not properly communicate with the Union as contemplated by the CBA regarding the establishment of Anacortes E-watch scheduling.

5. The Employer cannot, under any circumstances evidenced in this record, require an employee to be on duty or work more than sixteen (16) hours in a twenty-seven (27) hour period without incurring an overtime penalty.

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**AWARD**

1. Regarding the Anacortes E-watch schedule:

a) The claim that employees on duty nine (9) hours should be paid eight (8) hours straight time and one (1) hour overtime is denied.

b) The claim that employees on duty seven (7) hours, twenty (20) minutes should be paid eight (8) hours straight time is denied.

2. WSF will pay all employees on the Anacortes E-watch schedule December 28, 2003 until March 20, 2004 overtime for the time they worked in excess of sixteen (16) hours in a twenty-seven (27) hour period as required by Rule 1 Definitions, 1.17 and Appendix A, Rule 1.01 D.

3. The Arbitrator will retain jurisdiction until the decision is implemented.

DATED this 23rd day of March 2006.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN SWANSON, Arbitrator

Approved by:

/s/ JOHN SULLIVAN, Commissioner

/s/ ELIZABETH FORD, Commissioner