

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION OF
THE PACIFIC

and

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION, FERRIES
DIVISION

MEC IMP NO. 2-10

DECISION NO. 586 - MEC

DECISION AMENDING FINAL
IMPASSE ISSUES FOR 2011-
2013 INTEREST ARBITRATION

APPEARANCES

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

Robert McKenna, Attorney General, by *Don Anderson*, Assistant Attorney General, appearing for the Washington State Department of Transportation, Ferries Division (WSF).

INTRODUCTION

The Inlandboatmen's Union of the Pacific (IBU) and the Washington State Department of Transportation, Ferries Division (WSF) engaged in bargaining for the 2011-2013 Collective Bargaining Agreement from February through May of 2010. The above matter arose from a dispute between the parties over the final impasse issues submitted to the Marine Employees' Commission (MEC) to be certified for interest arbitration, pursuant to RCW 47.64.300.

On July 27, 2010, in accordance with WAC 316-55-500, Chairman John Swanson and Commissioner John Cox conducted a hearing to decide whether or not to certify all issues submitted by the IBU and WSF for interest arbitration.

RECORD BEFORE THE COMMISSION

1. IBU's list of disputed issues and final proposals for interest arbitration, dated July 12, 2010.
2. WSF's list of disputed issues and final proposals for interest arbitration, dated July 16, 2010.
3. July 19, 2010 letter from IBU Counsel Robert Lavitt, contesting four items from WSF's final list of disputed issues and declaring them inappropriate for certification.

4. MEC's Certification of Issues for Interest Arbitration .
5. July 22, 2010 letter from WSF Counsel Don Anderson requesting the MEC certify all issues for arbitration , or hold a hearing if necessary to make that determination.
6. July 23, 2010 letter from IBU Counsel Robert Lavitt to clarify and supplement IBU's list of disputed impasse items contained in IBU's July 19 letter.
7. Notice of Scheduled Hearing (July 27, 2010)
8. Transcript and Exhibits from July 27, 2010 MEC hearing.

FINDINGS OF FACT

1. The Legislature has mandated specific requirements that must be complied with involving negotiations for 2009-2011 biennium and subsequent biennia in RCW 47.64.170, 47.64.210 and 47.64.300 through 47.64.320. Also, RCW 47.64.200 must allow final resolution of the parties' agreement by negotiations or arbitration by October 1st of each even numbered year.
2. As required by RCW 47.64.300(1), the Marine Employees' Commission received impasse items from the Union (IBU) on July 12, 2010. The MEC received impasse items from the Employer (WSF) on July 16, 2010.
3. MEC certified the items for arbitration by letter to the parties and the Arbitrator on July 22, 2010
4. Prior to MEC certification, upon receipt of correspondence from the Union on July 19, 2010, stating that Rules 17, 19, 24 and Appendix A, Rule 5 had never been advanced by the Employer and were never discussed, and therefore were inappropriate as impasse items .
5. In its certification to the parties, MEC excluded items identified by WSF as
 - Item 5. Rule 17 Classification and Rates of Pay
 - Item 7. Rule 19 Seniority and Assignments
 - Item 8. Rule 24 Compensated Holidays
 - Item 10. Appendix A, Rule 5 Deck Department Personnel-Relief Deck Department
6. After the MEC certified impasse items were sent to the parties and the Arbitrator on July 22, the Commission received additional correspondence from the Union identifying Items 11 and 12 (Addendums H and I) of the Employer's list of impasse items as having never

been proposed by WSF or even seen by the Union until the Union received the Employer's final proposals.

7. Both parties used what has been identified as "placeholders" which were used to indicate future proposals on rules the parties wanted to discuss. The Union position was that on Rule or Contract Issues where they notified the Employer they had a "placeholder," if the Union did not make a proposal, the matter was dropped. They concluded on those issues identified by the Employer where the Employer used a "placeholder" on Rules or Contract Issues, if the Employer did not offer a proposal, then that Rule or Contract Issue had been dropped by the Employer.

8. On March 25, 2010, the Employer identified Rule 17 as one of its future items for discussion by using a "placeholder." The Union had in previous discussions, as part of their proposals, raised Rule 17 as an item for discussion. The parties continued discussion on Rule 17 on May 18, 2010.

9. On March 25, 2010, the Employer identified Rule 19 as one of its items for discussion by using a "placeholder." Neither the Employer nor the Union had any discussions or proposals as related to Rule 19 at any time before impasse was initiated by the parties.

10. On March 25, 2010, the Employer identified Rule 24 as one of their items for discussion by using a "placeholder." The Union had in previous discussions regarding Rule 24, raised the item with regards to the accumulation of compensatory time.

11. On April 29, 2010, the Employer identified Appendix A, Rule 5A as one of its items for discussion. The Employer stated its position on Rule 5A. "It is certainly a big issue, but we are not ready to discuss it today." State Ex. 6. After day 5 of negotiations, the Employer never discussed or offered any proposal to the Union regarding any change, modification or amendment to Appendix A, Rule 5A. The Union had not received any additional information on this item until receipt of the Employer's list of disputed issues for interest arbitration.

12. The Employer did not in any of its proposals or offers to the Union indicate there were "place holders" on Addendums H and I. No "placeholder" or proposal was ever given to the Union identifying the Employer's position on Addendum H or I until the Union received the July 16, 2010 list of disputed issues for interest arbitration sent to the IBU and the Arbitrator by Assistant Attorney General Anderson, who was not a participant in the negotiations.

DISCUSSION

The evidence produced in the hearing along with the ongoing severe economic conditions presently in force in the State, which can only be attributed to facts and circumstances locally and nationally, not attributable to any recent action of the maritime workers. These circumstances have made bargaining for both parties extremely complicated and difficult. It appears from the deliberations that much of the demands of the parties is an effort by the Union to protect senior workers, while the efforts of the State is to reduce costs which are directly related to and effect seniority employees. It appears the Employer believes the most savings can occur related to senior employees.

It is important to note that WSF negotiating procedures, while complicated by the State economic conditions were disingenuous when it failed to provide the Union with specific written proposals on items of concern to the State under the guise that they had to wait for the budget forecast.

In reviewing the record, none of the Employer's proposals could have had any impact on the budget except to improve WSF's bottom line because even the most cursory examination of the Employer's proposals could only be viewed as reduced benefits for IBU represented employees.

The parties are fortunate to have retained a very experienced, credible Arbitrator to assist in the resolution of the matters before her. Her extensive labor management relations provide her with the integrity, knowledge and understanding of an extensive body of law as it relates to the elements of impasse. Whether a bargaining impasse exists is a matter of judgment. The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, whether the parties have been open and straight forward in their representations, the experience and contemporaneous understandings of the parties and the state of negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed.

CONCLUSIONS OF LAW

1. After a comprehensive, albeit expedited analysis of the record, it is clear that based on the specific evidence and testimony in the record, limited and insufficient discussion to find agreement or solutions did take place with regard to Employer's Item 5 – Rule 17; Item 7 – Rule 19; and Item 8 – Rule 24.

2. The Employer while identifying Appendix A, Rule 5A as a big issue never had any offer or discussion on this item with the Union during the seven-day meeting, except to say on April 29, 2010, "We are still working on it."

3. Addendum H and I were never identified by "placeholders" or ever matters of proposal or discussion and the Union only received notice of them being items when they received the List of Final Disputed Issues dated July 16, 2010.

DECISION

The Marine Employees' Commission amends its Certification of Issues for Interest Arbitration to include the following Employer items from WSF's July 16 list of disputed issues as certified for interest arbitration:

Item 5 - Rule 17

Item 7 – Rule 19

Item 8 – Rule 24

The following items from the Employer's list of disputed issues are not certified for interest arbitration, as there was no evidence that impasse was reached:

Item 10 – Appendix A, Rule 5

Item 11 - Addendum H

Item 12 - Addendum I

RECONSIDERATION

Pursuant to the provisions of RCW 34.05.470, any party may file a petition for reconsideration with the Commission within ten days from the date this final order is mailed. Any petition for reconsideration must state the specific grounds for the relief requested. Petitions that merely restate the party's previous arguments are discouraged. A petition for reconsideration does not stay the effectiveness of the Commission's order. If no action is taken by the Commission on the petition for reconsideration within twenty days from the date the petition is filed, the petition is deemed to be denied, without further notice by the Commission. A petition for reconsideration is not a prerequisite for seeking judicial review.

DATED this 29th day of July 2010.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN SWANSON, Chairman

/s/ PATRICIA WARREN, Commissioner

/s/ JOHN COX, Commissioner