

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

INTERNATIONAL ORGANIZATION OF
MASTERS, MATES AND PILOTS

and

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION, FERRIES
DIVISION

MEC IMP NO. 3-11
Deck Officers

DECISION NO. 588 - MEC

DECISION DENYING
CERTIFICATION OF RULE 8.06
FOR 2011-2013 INTEREST
ARBITRATION

APPEARANCES

Garretson, Gallagher, Fenrich and Makler by *Rhonda Fenrich*, Attorney, appearing for the International Organization of Masters, Mates and Pilots (MM&P).

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

The International Organization of Masters, Mates and Pilots (MM&P) and the Washington State Department of Transportation, Ferries Division (WSF) engaged in bargaining for the 2011-2013 Collective Bargaining Agreement from April through July of 2010. This matter arose following the parties' submission of final disputed issues for interest arbitration to the Marine Employees' Commission (MEC) for certification, pursuant to RCW 47.64.300. The MM&P objected to WSF's submittal of Rule 8.06, Relief Assignments.

On August 27, 2010, in accordance with WAC 316-55-500, Chairman John Swanson and Commissioner John Cox conducted a hearing to decide the matter.

RECORD BEFORE THE COMMISSION

1. WSF's list of disputed issues and final proposals for interest arbitration, dated July 30, 2010.
2. MM&P's list of disputed issues and final proposals for interest arbitration, dated August 2, 2010.
3. August 4, 2010 letter from MM&P Counsel Rhonda Fenrich objecting to WSF's submittal of Rule 8.06 for certification for interest arbitration.

4. August 5, 2010 letter from WSF Counsel Morgan Damerow responding to MM&P's objection.
5. August 6, 2010 letter from MM&P Counsel Rhonda Fenrich in reply to WSF Counsel.
6. August 10, 2010 e-mail from MEC to the parties informing them a hearing was necessary and proposing possible dates.
7. August 12, 2010 letter from WSF Counsel, Morgan Damerow, making a request on behalf of the parties concerning the scheduled interest arbitration, the MEC certification hearing and proposing a conditional certification for the disputed impasse item.
8. MEC's Certification of Issues for Interest Arbitration.
9. Notice of Scheduled Hearing (August 27, 2010).
10. Transcript and Exhibits from August 27, 2010 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 47.64.170 requires 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 (MM&P) on August 2, 2010. The MEC received impasse items from the Employer (WSF) on July 30, 2010.

3. An exchange of letters from MM&P and WSF August 4 through August 6, 2010 made it clear that they were in dispute over whether WSF's submittal of Rule 8.06-Relief Assignment should be certified for interest arbitration.

4. On the first day of negotiations, May 19, 2010, WSF was unwilling to consider renewing the current agreement for 2011-2013. WSF indicated to the MM&P that changes in the current agreement were necessary. "You have to give us notice if something does not pass, so we can prepare for arbitration. We want certification before we have to submit articles for arbitration." Ex. S-5.

5. During negotiations on June 14, 2010, WSF's Chief Negotiator notified MM&P negotiators: "I put a placeholder, or submitted a placeholder, on Rule 8." Ex. U-4.

6. During negotiations on July 1, 2010, WSF provided the MM&P with proposals replacing placeholders on Rule 6 Wages, Rule 8-Hours of Employment and Assignment, Rule 9-Overtime and counter proposals and discussions on other issues open between the parties. Ex.S-9. In addition, WSF's proposal of July 1, 2010, except for renumbering current rules, proposed no change in the present current language of Rule 8.06 Relief Assignments.

7. There was never any discussion between the parties specific to the language in Exhibit U-7, which was given to MM&P on July 15, 2010 a few minutes prior to a 3:29 p.m. caucus. The proposal was not read to the MM&P. The proposal was not explained to the MM&P.

8. The sections of the agreement affected by the proposal were not identified by WSF to MM&P.

9. No formal bargaining was conducted regarding the language of WSF's proposal (Ex. U-7) at any time during negotiations. The only formal legislative formatted proposal for Rule 8.06 was what was submitted to MEC for certification by the State. Nothing regarding Rule 8.06 was even discussed in any detail with the Union by WSF prior to WSF's July 30, 2010 submission of final disputed issues to MEC for impasse certification.

DISCUSSION

The duty to bargain does not require parties to engage in fruitless give and take marathon discussions at the expense of statements and support of respective positions. But, there has to be good faith discussions and explanations of their proposals even where irreconcilable differences in the parties' positions are apparent.

Both parties had every opportunity during the seven (7) official negotiation sessions to explore and present their respective positions, explain and explore potential compromises to resolve the issues they concluded important.

This is particularly true in the present negotiations between the parties when WSF and the Union were both keenly aware that interest arbitration was a potential probability. This was understood because WSF was not willing to continue the current contract, but wanted major concessions from the Union as a result of the economic conditions currently affecting the State of Washington. The fact that interest arbitration was an accepted probable certainty required the parties to make it clear, specifically, what issues were in dispute. WSF's formal proposal regarding Rule 8 given to the Union on July 1 did not include any change in Rule 8.06 and is the

only formal position discussed to any degree regarding Rule 8 between the parties as testified to by WSF's Chief Negotiator. Tr. 66:21-25, Tr. 68:1-25, Tr. 69:1-19.

WSF's Chief Negotiator is a credible, knowledgeable and extremely capable negotiator and in spite of WSF's desire to move Rule 8.06 to arbitration, did not for whatever reason have any meaningful discussion or explanation regarding Rule 8.06 with the Union during negotiations. It was not until negotiations were concluded, impasse declared and a formal proposal submitted to MEC that the Union became aware of WSF's proposal.

Certain facts are considered when impasse occurs:

- a) fluidity of position
- b) continuous bargaining
- c) rules and statements of the parties concerning impasse
- d) bargaining history
- e) mediator's involvement

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, the contemporaneous understanding of the parties as to the state of negotiations are all relevant factors to be considered in deciding whether an impasse has occurred. In the present case, the MM&P and WSF have always maintained an enlightened relationship. The vessel masters and mates are vested with overall responsibility for safe operation of the vessels and crew while in operation. The purpose of collective bargaining is to promote a dialogue that will create the chance of reaching a satisfactory agreement acceptable for both WSF and MM&P. Such agreement should recognize the importance of their continuing relationship. In the matter of Rule 8.06, the record supports that WSF failed to propose or discuss any changes to Rule 8.06 during the negotiations.

The Commission could cite numerous NLRB and court decisions which would support the obvious conclusion that, in spite of WSF's arguments, Rule 8.06 never was at impasse.

CONCLUSIONS OF LAW

The record is irrefutable regarding Rule 8.06. No impasse could have reasonably occurred as the proposal to modify Rule 8.06 was never received by the Union until after it was received by the MEC to be certified for interest arbitration.

DECISION

Rule 8.06 is not certified as an appropriate issue for interest arbitration. The record shows that no discussion occurred regarding Rule 8.06 and therefore impasse was not reached.

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 31st day of August 2010.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN SWANSON, Chairman

/s/ JOHN COX, Commissioner