

STATE OF WASHINGTON
IN INTEREST ARBITRATION
BEFORE ELIZABETH G. FORD

MARINE ENGINEERS' BENEFICIAL
ASSOCIATION,
DISTRICT 1, PCD,

And

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION, FERRIES
DIVISION.

(2011 – 2013 Collective Bargaining
Agreement Interest Arbitration)

ARBITRATOR'S AWARD

INTRODUCTION

The Marine Engineers' Beneficial Association, District 1, PCD ("MEBA") and the Washington State Department of Transportation, Ferries Division ("WSF" or "State") are parties to two collective bargaining agreements governing the terms and conditions of employment for certain WSF employees. The first agreement sets the terms and conditions of employment for all unlicensed employees assigned to the WSF's "Engine Department and shore side maintenance." Jt. Ex. 1 Unlicensed, Rule 6.01. Employees covered include Oilers and Wipers. The second agreement covers "all Engineer Officers", including Staff Chief Engineers, Chief Engineers, and Assistant Engineers. Jt. Ex. 1, Licensed, Rule 4(a). Both agreements expire on June 30, 2011, and both

agreements were negotiated together in the spring and summer of 2010. In August 2010 the parties reached good faith impasse in those negotiations. Both agreements were submitted to Interest Arbitration together and there is no dispute between the parties that they are appropriately heard at once.

On August 10, 2010, the parties submitted to the Arbitrator and the Marine Employees Commission final positions with respect to the issues that each sought to be decided in arbitration. On August 13, the Marine Employees Commission certified the parties' issue statements as appropriate for interest arbitration.

The interest arbitration hearing was held before the undersigned on August 17 through 19, 2010. The parties provided oral arguments at the close of hearing and submitted additional argumentation and summary to the arbitrator on September 3, 2010.

This is the Arbitrator's Findings of Fact, Decision and Award.

ISSUES

The following issues have been placed before the Arbitrator for decision.

Union:

1.A. The Union seeks the wage award as provided by Interest Arbitrator Vivenzio in his September 25, 2008 decision.

1.B. The Union seeks the vacation award as provided by Interest Arbitrator Vivenzio in his September 25, 2008 decision.

WSF:

1. The State seeks changes to the Visitation rules for union representatives.
2. The State seeks the elimination of travel time pay for vacation relief employees and its substitution with a \$3.78 per hour premium.
3. The State seeks a reduction in the overtime increments from 15 minutes to six minutes.
4. The State seeks the elimination of minimum call.
5. The State seeks the elimination of guaranteed 80 hours of pay for relief employees.
6. The State seeks the elimination of inter-island travel time.
7. The State seeks changes to the crewing requirements aboard all vessels.
8. The State seeks to restrict the use of vacation pay when an employee is called back to work.
9. The State seeks to buy out employees' existing compensatory time balances and to establish compensatory time caps.
10. The State seeks changes to training pay.
11. The State seeks to change the arrangement with respect to the costs of printing the collective bargaining agreement.
12. For Unlicensed employees, the State seeks to eliminate the division of wages where the vessel is not fully staffed.
13. For Unlicensed employees, the State seeks eliminate the availability of Oiler wages for Wipers with physical impairments.

14. For Unlicensed employees, the State seeks wage cuts for employees with oiler endorsements occupying wiper billets.
15. For Unlicensed employees, the State seeks to eliminate minimum pay for early call out on a workday, workday call back, call back on scheduled day off and for on call employees.
16. For Unlicensed employees, the State seeks to change the Holiday compensatory time language.
17. For Unlicensed employees the State seeks to change the rules related to pay for work in a higher classification.

ARBITRATOR'S FINDINGS AND DECISION

As an introduction, the Arbitrator finds that on September 25, 2008, Arbitrator Vivenzio made certain contractual changes to the 2009-2011 collective bargaining agreement. Those changes included wage increases and changes to the rates of vacation accrual for MEBA employees. In 2009, at the Governor's request, the Union agreed to forego the changes ordered in that decision in an effort to address the extreme financial situation faced by the State. The Arbitrator also finds that the State's financial situation continues to be bleak, though the Washington State Economic and Revenue Forecasts suggest some reason for hope in the outlying years.

Union's Issues

Wages

The arbitrator finds that the MEC survey is the appropriate source for wage comparison data and will rely on it with the following caveats. The Arbitrator finds that the inclusion of the “cost of living differential” or “COLD” when comparing Alaska wages to WSF wages is inappropriate, since that is a benefit – appropriately or not – attributable only to location of the work being in Alaska. As to the non-watch pay, the Arbitrator finds that, because that pay intended to account for overtime pay, it is not appropriately included.

The Arbitrator finds that the simple average excluding benefits is the best, though most crude, source of comparison. The Arbitrator finds the exclusion of benefits appropriate not as a matter of principle; it would be far better to have an accurate source of benefit comparison. The Arbitrator so finds because of the difficulty of comparing benefits between employers in the United States and Canada. It is simply not an apples-to-apples comparison.

In examining the comparisons with these initial decisions in mind, it is clear that MEBA employees lag the market in every category.

This however, does not end the inquiry. Changes to RCW 47.64.320 direct the Arbitrator to consider “[t]he financial ability of the department to pay for the compensation and fringe benefit provisions of a collective bargaining agreement.” The Arbitrator credits the testimony of Robin Rettew, Senior Transportation Budget Advisor at the State’s Office of Financial Management. Ms. Rettew testified credibly as to the

financial condition of the Transportation Budget in general and the Puget Sound Ferry Operations Account in particular. The situation is one in which the WSF is uncertain of its ability to pay its current obligations. The Arbitrator recognizes Ms. Rettew's concession that the current constrictions could ease as the biennium progresses, but that there are additional costs not yet accounted for in the current spending plan.

For reasons of the WSF's ability to pay, the Arbitrator does not award the Union's proposed wage increases. However, if the WSF provides cost of living wage or other increases for other WSF employees in the second year of the biennium, this agreement will be subject to reopening and interest arbitration on the issue of wages.

Vacation

In September 2008, Arbitrator Vivenzio surveyed the comparables and concluded that a change in the vacation accrual rate for MEBA represented employees was in order. The situation has become more compelling since then. The same change to vacation accrual has been in place for the other major WSF unions since 2008. The employees represented by the International Organization of Masters Mates and Pilots and Inlandboatmen's Union of the Pacific have been working side-by-side with MEBA represented employees but have benefited from a differential vacation accrual.¹ While the change was ordered in 2008, MEBA responded to the financial crisis by agreeing to forego the accrual change.

¹ For those other bargaining units, the vacation accrual changes were either fully implemented or traded for increased wages.

While there are costs associated with the increased accrual of vacation leave, these costs are manageable. Indeed, the WSF has successfully managed those costs for two other bargaining units, comprising a much large group of employees.

For reasons of internal equity as well as the reasons well articulated by Arbitrator Vivenzio, the Arbitrator finds that the portion of Arbitrator Vivenzio's decision related to vacation accrual should be implemented. However, in light of the WSF's financial situation, it will be implemented in the second year of the biennium. Thus, the change will be effective July 1, 2012.

State's Issues

I will begin with these first two issues, out of order, because they represent the State's proposal that I will grant.

Compensatory Time

The Arbitrator finds that the current compensatory accrual by MEBA employees creates an unaccounted for liability that the State legitimately seeks to reduce. Furthermore, compensatory time caps are a legitimate mechanism to keep these liabilities under control. It should be emphasized that this award does not excuse WSF from its obligation to compensate employees appropriately for their time worked. Thus, I will award the State's proposal in both the licensed and unlicensed agreements with the following changes. I credit the testimony of Jeff Duncan that the WSF's initial proposal was a cap of 320 hours; thus I will award a 320-hour cap. Finally, the biennial cash out will be triggered by those hours above 240, rather than 160.

Vacation Pay Restrictions

The State seeks to disallow a seldom-used practice of allowing an employee who agrees to come in on his or her vacation to receive payment for the time worked as well as the vacation pay. The purpose of the proposal is to save money. The savings associated with this proposal seem to be quite modest, about \$47,000 over four years, but the fact that there are costs associated with the practice does suggest that it is something that happens. To address that possible double payment, the Arbitrator will allow this proposal.

Visitation

The Arbitrator finds that the State's proposed changes with respect to Union visitation on the vessels to serve none of the interests set out in the statute. The change is out of step with other similar collective bargaining agreements; it does not save money; and it does not enhance operational efficiency. It is merely a way to limit employees' access to their union representative. The proposal is denied.²

Travel Time for Vacation Relief/Inter-Island Travel Time

The Arbitrator finds that the State did not present evidence of cost savings that would be achieved by this proposal, nor did it present evidence of the reason for the particular premium or the policy interest that would be served. The WSF's Lead Negotiator testified as to no understanding of the reason for the proposed premium; how it was calculated; or why, in other bargaining units, the WSF agreed to much larger premium amounts. There was no evidence of the costs attributable to travel pay in this unit or how those costs would be affected by this premium amount. Indeed, the Lead

² It should be noted that this is precisely the type of provocative proposal that derails otherwise productive labor relations. There is little to be gained here except an argument about the value of representation that employees have already expressed their preference for. This is simply not worth the valuable time of negotiators on both sides of the table.

Negotiator testified that he had no substantive knowledge of the genesis of this proposal, suggesting that he was told to propose the \$3.78 premium amount without any explanation of how the amount was calculated.

The amount of travel pay in this bargaining unit is entirely within the control of WSF management because employees can be dispatched to any location; there is no requirement that the WSF use seniority in any way in the dispatch. Thus, the WSF is perfectly able to achieve its cost reduction goals within the current language. The proposal is denied.

As to Inter-island Travel Time, there was no evidence presented at hearing as to the cost savings, comparables or policy sought to be served by the elimination of Interisland Travel Time. That proposal is also denied.

Overtime Increments

The Arbitrator finds that this proposal is not supported by evidence of comparables or evidence that it would have a significant effect on the State's costs. The comparable evidence is consistent: all similarly situated employers pay overtime in increments of at least 15 minutes. That, however, does not end the inquiry if the WSF can demonstrate a solid rationale related to its financial ability. However, none was presented here. There is no evidence of the amount of cost attributable to the overtime increments. While there is evidence of overtime costs in general, there is no indication of the amount attributable to the increment. When proposing to make a change of this sort based not on comparables but on the financial necessity, it is crucial to know how much would be saved by the change. The proposal is denied.

Minimum Call and Guarantee Time³

The Arbitrator finds that this set of proposals is not supported by evidence of comparables. Indeed, all of the comparable employers provide minimum call and guarantee time similar to those provided under the current MEBA agreements. Again, though, there may be other considerations.

If the WSF can demonstrate the necessity for and achievement of cost savings, that evidence will support its proposal. Here, the evidence demonstrates that the cost is trending in the right direction with no change to the contract language. According to the State's Exhibit 2-27, there has been a 25% reduction in these guaranteed hours between 2008 and 2009. Moreover, according to that same exhibit, the total amount spent on minimum call was \$23,909 in 2010, not an amount whose reduction is going to make a difference to the State's Transportation budget. The proposal is denied.

Crewing Changes

The WSF seeks to move all crewing requirements aboard all vessels to that required by the Coast Guard's Certificate of Inspection. The testimony at hearing was that the purpose for this change was to provide flexibility in staffing decisions eliminate the necessity of having to bargain with the union regarding the staffing levels for new vessels coming into the fleet. The testimony, however, also revealed no difficulties in negotiating staffing levels and, in particular, as to new vessels the parties had had very little difficulty in negotiating this issue and arriving at reasonable conclusions.⁴ The proposal is denied.

³ This includes the proposals related to the Unlicensed Agreements.

⁴ If the WSF's position was to reduce staffing by 16 immediately, this was an issue that was raised for the first time at hearing.

Training Pay

There was no evidence presented by the WSF of cost savings to be achieved through this proposal, but it appears that, where an employee attends training at the employer's direction, the proposal is that the employee will be paid 8 hours, rather than their scheduled 12-hours of pay. While there is likely some cost savings associated with this, it is likely to be exceedingly modest and there was no evidence presented at hearing as to the projected savings. The proposal is denied.

Contract Publication Expenses

Both parties have a legal and ethical obligation to see that employees have access to their collective bargaining agreement. The employer's duty extends beyond its obligation to see that its managers receive their copy. Thus, the parties' current arrangement of splitting the cost evenly is perfectly fair and appropriate. The proposal is denied.

Unlicensed Proposals (division of wages, wages for Wipers with physical impairments, wages cuts for employees with Oiler endorsements, holiday compensatory time, pay for work in a higher classification).

The WSF presented no evidence as to any of these proposals in the course of the hearing. Specifically, no comparables were presented, no evidence of the policy sought to be advanced, and no evidence of the savings sought to be achieved. In short, these proposals were not mentioned by any witness or attorney. The proposals are denied.

CONCLUSION

The Arbitrator hereby orders the implementation of contractual provisions consistent with the above Findings and Decision.

Dated this 2nd Day of October, 2010.

/S/
Elizabeth Ford
Arbitrator