

IN THE MATTER OF THE INTEREST)
ARBITRATION BETWEEN)
)
WASHINGTON STATE DEPARTMENT)
OF TRANSPORTATION, FERRIES)
DIVISION)
)
and)
)
INTERNATIONAL ORGANIZATION)
OF MASTERS, MATES & PILOTS,)
LOCAL 6)
_____)

OPINION AND AWARD

**Interest Arbitration: 2009-11
Agreement, Deck Officers**

Date: September 24, 2008

**OPINION AND AWARD
OF THE
INTEREST ARBITRATOR**

Interest Arbitrator

Michael H. Beck

Appearances:

**Washington State Department of Transportation, Ferries Division
David J. Slown**

**International Organization of Masters, Mates & Pilots, Local 6
Rhonda J. Fenrich**

**WASHINGTON STATE DEPARTMENT OF TRANSPORTATION,
FERRIES DIVISION**

and

**INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS,
LOCAL 6**

TABLE OF CONTENTS

OPINION OF THE INTEREST ARBITRATOR 1.

PROCEDURAL MATTERS 1.

THE PROPOSALS OF THE PARTIES 3.

1. Rule 6.01 – Rates of Pay and Rule 12.02 – Table of Vacation Credits 3.

2. Rule 17.04 – License Renewal 8.

3. Rule 22.03 Step 5 – Arbitration 10.

AWARD OF THE INTEREST ARBITRATOR 12.

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OPINION OF THE INTEREST ARBITRATOR

PROCEDURAL MATTERS

The Interest Arbitrator, Michael H. Beck, was selected by the parties to resolve various issues that the parties were unable to resolve through collective bargaining with respect to the 2009-2011 Collective Bargaining Agreement, hereinafter the Agreement. The Employer, Washington State Department of Transportation, Ferries Division (WSF), was represented by David J. Slown, Assistant Attorney General. The Union, International Organization of Masters, Mates & Pilots, Local 6 (MM&P) was represented by Rhonda J. Fenrich, of the law firm of Garrettson, Gallagher, Fenrich & Makler, P.C.

A hearing in this matter was held at Seattle, Washington on August 25 and 26, 2008. At the hearing the testimony of witnesses was taken under oath and the parties

presented substantial documentary evidence. A reporter was present during the proceedings and a transcript was made available to the undersigned Arbitrator for his use in resolving the issues before him.

The parties waived the filing of posthearing briefs and instead presented oral closing argument at the conclusion of the hearing. In this regard, I note changes made to RCW Chapter 47.64 during the 2006 regular session of the legislature. In particular, RCW 47.64.170(c) now requires that the resolution of all collective bargaining agreements between WSF and the unions representing ferry employees, whether resolved by negotiations or arbitration, be concluded by October 1 of each even numbered year. Additionally, your Arbitrator was selected to hear two additional interest arbitrations that under the new law also have to be concluded by October 1.

RCW 47.64.320(3) provides that in making his or her determination the arbitrator shall take into consideration the following factors:

- (a) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;
- (b) The constitutional and statutory authority of the employer;
- (c) Stipulations of the parties;
- (d) The results of the salary survey as required in RCW 47.64.220;
- (e) Comparison of wages, hours, employee benefits, and conditions of employment of the involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and classification involved;
- (f) Changes in any of the foregoing circumstances during the pendency of the proceedings;
- (g) The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature; and

(h) Other factors that are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under this chapter.

RCW 47.64.200 provides that the arbitrator:

. . . is limited to selecting the most reasonable offer, in [his/her] judgment, of the final offers on each impasse item submitted by the parties.

THE PROPOSALS OF THE PARTIES

1. Rule 6.01 – Rates of Pay and Rule 12.02 – Table of Vacation Credits

The Employer's offer with respect to wages is that effective July 1, 2009 each classification represented by the Union will be increased by 1.6% and that effective July 1, 2010 each classification represented by the Union will be increased by 1.7%.

Wolfgang Opitz is the Deputy Director of the Washington State Office of Financial Management (OFM). He testified that the same wage offer was made to "virtually" all bargaining units in state government. (Tr. Vol. I, pg. 69.) Opitz also testified that the Employer's offer was based on economic forecasts made by the Washington Economic and Research Forecast Council (Council). In this regard, the Council forecasted the change in the Implicit Price Deflator would be 1.6% for the year 2010 and 1.7% for the year 2011.

Robin Rettew is the Senior Transportation Advisor, Budget Division, OFM. She testified that both the WSF Operating Account and the WSF Capital Construction Account are part of the overall transportation budget of the state. Taken together the testimony of Opitz and Rettew indicated that both the state's Unrestricted General Fund

as well as the WSF Operating Account are forecast to be in deficit during the 2009-11 biennium.

The Union has not sought a wage increase for either year of the biennium. Instead, the Union is seeking an increase in the Table of Vacation Credits which would go into effect as of July 1, 2010.

The Union's proposal would provide the same Table of Vacation Credits from six months to five years as is presently in place. However, the proposed Table of Vacation Credits would provide for additional vacation credits after seven years instead of after 15 years as is presently the case. Presently there are only four increases in vacation credits after the five years increase, namely:

15 years = 21 working days
16 years = 22 working days
20 years = 23 working days
21 years or more = 24 working days.

The Union's proposal provides as follows:

7 years = 21 working days
9 years = 22 working days
11 years = 23 working days
13 years = 24 working days
15 years = 26 working days
16 years = 27 working days
18 years = 28 working days
20 years = 29 working days
22 years = 30 working days
24 years = 31 working days
26 years = 32 working days
28 years = 33 working days
30 years or more = 34 working days

The Union's proposal states that it "reflects the increased vacation awarded in arbitration on the '05-'07 contract that was sold back for a 3% wage increase in 2006."

Interest Arbitrator Michael Cavanaugh on November 7, 2005 awarded the Union an enhanced vacation benefit with respect to 2001-03 collective bargaining agreement. Arbitrator Cavanaugh recognized that it was appropriate to provide MM&P members with a vacation benefit equal to that provided to members of the Inlandboatmen's Union (IBU) whose members were supervised on the vessels by members of the MM&P.

Lee Anderson is a relief mate and Chairman of the WSF/MM&P Delegate Committee. He has participated in the negotiations with respect to the 2009-11 Agreement as well as several prior agreements. Anderson testified that during the 2005-07 negotiations, John Dryer, then the chief negotiator for OFM, offered a buyout of the enhanced vacation benefit awarded by Interest Arbitrator Michael Cavanaugh. According to Anderson, Dryer told the Union representatives that if the Union did not accept the buyout, the Union would lose the enhanced vacation benefit either through legislative action or through future collective bargaining. The parties agreed that the benefit was equal approximately to a 3% wage increase for the bargaining unit employees. The Union determined to accept the buyout, receive the wage increase, and gave up the enhanced vacation benefit.

Jerry Holder replaced John Dryer as the labor negotiator for OFM. He testified that during negotiations for the 2009-11 Agreement, he refused the Union's request for additional vacation benefits because it was the present policy of the state to attempt to bring employee vacations more in line on a state-wide basis. In this regard, he pointed out that there was a great disparity between employees represented by ferry unions and the 75,000 to 80,000 government employees, whose maximum benefit is 176 hours, which comes to 22 eight-hour working days.

Anderson pointed out that most general government workers worked a nine to five, eight-hour day, five days a week, but masters and mates working on the vessels work fluctuating hours, work different runs, and work holidays and weekends. Anderson further testified that these varying work schedules make time off a very important factor at WSF and throughout the marine industry.

The enhanced vacation benefit provided to MM&P members by Arbitrator Cavanaugh was based in significant part on an award of an enhanced vacation benefit to the IBU made by your Arbitrator with respect to the 2001-03 agreement. That Award, dated September 9, 2005, was made just two months before Arbitrator Cavanaugh issued his Award on November 7, 2005.

Holder testified that the state, during the negotiations with the IBU for the 2009-11 Agreement, did not propose any reduction in the vacation benefit for IBU members, despite the fact that IBU members enjoy the most generous vacation benefit provided to any employee at WSF and, therefore, presumably the most generous benefit provided to any state employee. The failure to propose a reduction in IBU vacation benefits seems inconsistent with the state policy, described by Holder, of attempting to provide a more equal vacation benefit among all of the state's employees. No explanation was provided for this apparent inconsistency.

The state provided cost figures showing that the 1.6% and 1.7% salary increases proposed by the Employer would cost \$764,206, while the Union's vacation leave proposal would cost \$457,451. Thus, if the Union's proposal were adopted the state would save \$306,755, which is about a 40% saving.

In computing its cost figures for the cost of the vacation benefit proposal, the Employer assumed a replacement at straight-time rate for every vacation day taken by MM&P members pursuant to the newly proposed vacation benefit. However, Lee Anderson pointed out that when a mate is on vacation, that mate is not replaced by a relief mate but rather by a qualified AB who is already earning an AB wage. Thus, according to Anderson, the Employer only has to pay the difference between the AB wage and the wage of the mate the AB is replacing, resulting in additional saving to the Employer. Neither Anderson nor any other witness addressed the cost of replacing the AB who replaces the vacationing mate. In any event, the Union's proposal at the very least will cost WSF \$307,000 less than the state's wage proposal.

Anderson also pointed out that when the AB moves up to replace a mate on vacation, that AB is earning a greater vacation benefit than is being earned by the mate he replaced. In this regard, it is reasonable to argue, as does the Union here, that as a matter of internal equity the deck officers represented by the MM&P, who supervise the deck employees represented by the IBU, should receive at least the same vacation benefit as do the employees they supervise. This argument is recognized by Arbitrator Cavanaugh in granting the enhanced vacation benefit to MM&P members for the 2001-03 agreement.

My review of the IBU vacation benefit and the Union's proposal reveals some slight differences. Namely that after 14 years the IBU members receive one more vacation day than MM&P members, but MM&P members receive one more vacation day after 15 years, 16 years, and 17 years. This difference is very small compared to the present vacation benefit difference, which provides a substantially better vacation benefit to IBU members as compared with MM&P members.

In view of all of the foregoing, I find that the Union’s offer of vacation credits is the most reasonable offer and it shall be awarded.

2. Rule 17.04 – License Renewal

Presently Rule 17.04 provides as follows:

The employer shall pay the cost of all license and document renewal up to one hundred eighty-five dollars (\$185) at five (5) year intervals for license renewals associated with obtaining the Officer’s license and Merchant Mariner Document (MMD) required by any regulatory agencies. (Employer Exhibit No. 3, pg. 29.)

The Union proposes several changes to Rule 17.04:

- A. To insert the word “permit” after the word “license” and add a comma after the work “license.”
- B. To remove the phrase “one hundred eight-five dollars (\$185)” and insert the phrase “two hundred and five dollars (\$205).”

Therefore, 17.04 would read as follows;

The employer shall pay the cost of all license, permit and document renewals up to two hundred and five dollars (\$205) at five (5) year intervals for license renewals associated with obtaining the Officer’s license and Merchant Mariner Document (MMD), as required by regulatory agencies.

Additionally, the Union would add a new subsection, 17.04.01 TWIC Credential Renewal, which would provide as follows:

The employer shall pay the cost of TWIC credential renewal.

The Employer proposes no change with respect to the language of Rule 17.04.

Lee Anderson explained that the addition of the word “permit” did not constitute a substantive change. In this regard, Anderson testified that the license to operate a marine radio is called a marine radio operator permit and therefore this change is merely a language change. No Union witness explained why the Union proposed to raise the Employer contribution to license renewals from \$185 to \$205.

With respect to the Union’s proposal for a new subsection 17.04.01 regarding TWIC credential renewal, I note the following explanation of the TWIC Program provided by the federal Transportation Security Administration:

The Transportation Worker Identification Credential (TWIC™) program is a Transportation Security Administration and U.S. Coast Guard initiative. The TWIC™ program provides a tamper-resistant biometric credential to maritime workers requiring unescorted access to secure areas of port facilities, outer continental shelf facilities, and vessels regulated under the Maritime Transportation Security Act, or MTSA, and all U.S. Coast Guard credentialed merchant mariners. (Union Exhibit No. 111.)

Jerry Holder testified that for employees to have access to specific areas on a WSF vessel as well as in the terminals, employees must have a TWIC credential. The State of Washington determined to pay for the initial TWIC credential for all employees employed by WSF on January 1, 2008 who needed to have this credential to perform their job duties. However, the Employer has not agreed to pay for the TWIC credential renewal. Holder explained that the state agreed to pay for the initial TWIC credential because the Employer understood that the regulation was going to go into effect shortly after it was first issued, and WSF wanted to make sure that all of its employees would be in a position to perform their job duties. However the implementation of the TWIC credential requirement has been delayed until February 2009, according to Anderson.

The question of payment of the initial TWIC credential for employees hired after January 1, 2008 is not in issue here.

With respect to the renewal, the parties agree that the TWIC credential does not have to be renewed until five years after it is issued. It is not disputed that no employee at WSF will be required to ascertain a TWIC renewal during the term of the 2009-11 Agreement.

Furthermore, the record contains evidence with respect to five other employers regarding the TWIC credential renewal. Four of those five employers do not presently provide for the payment of renewals and as to the fifth, the record is not clear.

Neither party asserts that the three proposed changes to Rule 17.04 should be considered as separate impasse items. Furthermore, it does seem appropriate to consider these three items regarding Rule 17.04 as a single impasse item.

Based on all of the foregoing, I find that the Employer's offer of no language change is the most reasonable offer and it shall be awarded.

3. Rule 22.03 Step 5 – Arbitration

Presently Step 5 – Arbitration provides that the demand to arbitrate a dispute “must be filed with the Federal Mediation and Conciliation Service (FMCS). . . .” The last sentence of Step 5 provides as follows:

However, by mutual agreement the parties may instead refer the dispute to the Marine Employees Commission for final resolution.

The Union proposes to strike the phrase “by mutual agreement the parties” and substitute the phrase “either party” so that the last sentence of Step 5 would read as follows:

However, either party may instead refer the dispute to the Marine Employees Commission for final resolution.

The Employer proposes no change to the language of Step 5.

Bryan Hanley is a Master at WSF. He is currently on the Union’s Delegate Committee and its Grievance Committee. He testified that in his experience, the time it takes to resolve a grievance through the MEC is considerably less than using an FMCS appointed arbitrator. He also testified that the cost of using the MEC is significantly less, since the MEC provides the arbitrator at no cost. Hanley also testified that the Union wants the option, particularly with less complex cases, to use the MEC for arbitration.

The Union points to a provision in the WSF/IBU contract in support of its proposal here.

IBU Regional Director Dennis Conklin testified at the hearing and described the arbitration provision in the current WSF/IBU Agreement. In this regard, that Agreement provides as follows:

If a grievance has been processed through Step 4 of the grievance procedure and the parties have not resolved such grievance the Union may select either the FMCS or the MEC to settle the dispute. This will apply to the first five grievances filed after July 1, 2007. The next five grievances not resolved at Step 4, in which the Union seeks arbitration to settle the dispute, the Employer will select either the FMCS or MEC. This approach will continue with the Union selecting between FMCS or the MEC on the next five consecutive grievances, followed by the Employer selecting on the next five grievances, unresolved at Step 4 and the Union desires to proceed to arbitration. Grievances settled between the parties, prior to an arbitration award, will not count as one of the five selections by either party.

This method described above will continue until July 1, 2008 at which time the alternating process will begin again with the Union selection of the first five grievances followed by the Employer and continue until June 30, 2009. (Pgs. 15-16.)

It is important that the process of resolving grievances through arbitration should be mutually agreed upon so that all parties will respect the process.

The evidence here is that the Union prefers utilizing the services of the MEC, while the Employer prefers utilizing the services of a private arbitrator selected through the FMCS. If I were to grant the Union's proposal, it would allow the Union to select the MEC to handle each grievance.

I do not wish to imply that as an Interest Arbitrator, I would never order a change in the grievance and arbitration procedure. However, based on the record before me, there is insufficient evidence to adopt the Union's proposal which would change significantly the procedure for the mutual resolution of disputes.

Based on all of the foregoing, I find that the Employer's offer of no change to the arbitration procedure is the most reasonable offer and shall be awarded.

AWARD OF THE INTEREST ARBITRATOR

The Award of your Interest Arbitrator with respect to each of the three issues discussed in the attached Opinion is as follows:

1. Rule 6.01 – Rates of Pay and Rule 12.02 – Table of Vacation Credits

I find that the Union’s offer of increased vacation credits is the most reasonable offer and is awarded.

2. Rule 17.04 – License Renewal

I find that the Employer’s offer of no language change is the most reasonable offer and is awarded.

3. Rule 22.03 Step 5 - Arbitration

I find that the Employer’s offer of no change to the arbitration procedure is the most reasonable offer and is awarded.

Dated: September 24, 2008

Seattle, Washington

S/Michael H. Beck
Michael H. Beck, Interest Arbitrator