

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES' COMMISSION

DISTRICT NO. 1, MARINE ENGINEERS'  
BENEFICIAL ASSOCIATION,

Complainant,

v.

WASHINGTON STATE DEPARTMENT  
OF TRANSPORTATION, FERRIES  
DIVISION,

Respondent.

MEC CASE NO. 9-11

DECISION NO. 605 - MEC

ORDER CLOSING  
SETTLED COMPLAINT

Reid, Pedersen, McCarthy and Ballew, by *Michael McCarthy*, Attorney, appearing for District No. 1, Marine Engineers' Beneficial Association.

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

THIS MATTER came before the Marine Employees' Commission (MEC) on January 28, 2011, when the Marine Engineers' Beneficial Association (MEBA) filed an unfair labor practice complaint, MEC Case No. 9-11, against the Washington State Department of Transportation, Ferries Division (WSF).

MEBA's complaint charged WSF with engaging in unfair labor practices within the meaning of RCW 47.64.130(1) by refusing to bargain collectively with representatives of employees. Specifically, MEBA alleged that WSF had violated its duty to bargain by ignoring Arbitrator Cox's order to compensate engine room employees for turnover duties in compliance with the collective bargaining agreement; and by refusing to bargain with MEBA regarding retroactive payments for liabilities already accrued.

Following review of MEBA's complaint, the Commission determined that the facts alleged may constitute an unfair labor practice, if later found to be true and provable. Chairman John Swanson was assigned as Mediator for the settlement conference scheduled on February 17, 2011. Commissioner John Cox was designated to act as Hearing Examiner and a hearing scheduled for May 26, 2011.

Early on February 17, 2011, the parties contacted MEC to request that the settlement conference be cancelled; they had reached a tentative agreement. The parties did, however, request that another settlement conference be scheduled, in the event they were not successful in finalizing their agreement. The MEC continued the settlement conference to May 9, 2011.

By letter dated May 5, 2011, MEBA Counsel Thomas Leahy withdrew the complaint with prejudice and provided the MEC with a copy of the parties' signed settlement agreement. A copy of that agreement is appended to and becomes a part of this Order by reference.

### ORDER

It is hereby ordered that the unfair labor practice complaint, filed by MEBA against WSF and docketed as MEC Case 9-11, is closed in acknowledgement of the parties' settlement agreement.

DATED this 12th day of May 2011.

MARINE EMPLOYEES' COMMISSION

  
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JOHN SWANSON, Chairman

  
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JOHN COX, Commissioner

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MARINE EMPLOYEES' COMMISSION  
OLYMPIA, WA

**SETTLEMENT AGREEMENT**  
**Re: Turnover Award Progress Payment**

The Department of Transportation, Washington State Ferries ("WSF" or "the Employer") and the Marine Engineers' Beneficial Association ("MEBA" or "the Union") hereby enter into this Settlement Agreement.

**RECITALS:** On July 24, 2009, following full hearing and briefing, Arbitrator John Cox issued Decision No. 563, in which he ordered WSF to compensate engine room employees for watch turnover duties. WSF and MEBA executed a Settlement Agreement on or about December 2, 2009 pursuant to which WSF made retroactive payments in excess of \$2 million for turnover duties performed by MEBA members. These payments were sufficient to extinguish liability under Arbitrator Cox's Award through August 31, 2009. On January 28, 2011, MEBA filed an unfair labor practice charge against WSF alleging that WSF had refused to bargain regarding additional payments for watch turnover duties performed after August 31, 2009. The Marine Employees' Commission scheduled a settlement conference on the unfair labor practice charge for February 17, 2011. The parties cancelled this settlement conference on the basis of a tentative oral understanding, which they now wish to put in writing.

**THEREFORE, the parties agree:**

1. In further compliance with Arbitrator Cox's Award, WSF will provide progress payments to compensate engine room employees for watch turnover duties performed from September 1, 2009 through January 31, 2011, inclusive. These progress payments will be calculated and distributed in the same manner and pursuant to the same assumptions set forth in the parties' previous Settlement Agreement executed on

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BASETTLEMENT AGREEMENT (Union version #3, 3-3-11).doc

or about December 2, 2009, including the e-mails incorporated at footnote 1 of that Settlement Agreement.

2. The parties will work together to construct a final list of employee names and check amounts similar to that in Exhibit A to the December 2, 2009 Settlement Agreement.

3. All other provisions of the December 2, 2009 Settlement Agreement are likewise incorporated herein, with appropriate adjustments for dates.

4. The parties hereby confirm that they worked cooperatively to cancel the February 17, 2011 settlement conference. However, the parties also confirm that they have jointly requested that the MEC schedule another settlement conference in order to ensure that the parties finalize all arrangements associated with this Settlement Agreement promptly.

5. MEBA agrees that it will seek no further progress payments for amounts owed pursuant to Arbitrator Cox's arbitration Award through the date Arbitrator Howell Lankford issues his interest arbitration award regarding WSP's proposed revisions to watch turnover practices or the parties arrive at an agreement regarding revisions. Provided, however, that MEBA's agreement not to seek further progress payments on the liability under Arbitrator Cox's Award terminates as of February 1, 2012, regardless of the status of the interest arbitration proceedings and/or the parties' negotiations.

6. WSP acknowledges that MEBA's agreement in the immediately preceding paragraph not to seek further progress payments does not represent a waiver of engine room employees' right to compensation for turnover functions under Arbitrator

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Cox's Award for the period after January 31, 2011. To the contrary, WSP acknowledges continuing liability under that Award for the period after January 31, 2011 until the liability is extinguished via Arbitrator Lankfort's interest arbitration award, ~~contemporaneous payment for watch turnover duties in every pay period in which they are performed, or an agreement of the parties.~~

7. If the parties are unable to agree to a mutually-acceptable aggregate sum of payments and a final, mutually-acceptable list of payments as provided for in paragraph 2, above, before the date of the rescheduled MEC settlement conference provided for in paragraph 4, above, this Settlement Agreement shall terminate and be void as of that date.

8. Upon the issuance of the checks provided for in this Settlement Agreement, the Union will withdraw with prejudice its unfair labor practice charge, MEC Case No. 9-11, and withdraw in writing its re-invocation of Arbitrator Cox's jurisdiction dated January 14, 2011.

9. Disagreements regarding the interpretation or application of this Settlement Agreement shall be resolved pursuant to the grievance and arbitration procedures of the collective bargaining agreement.

MARINE EMPLOYEES' BENEFICIAL ASSOCIATION

WASHINGTON STATE FERRIES

By [Signature]  
 Its Seattle Patrolman  
 Dated March 3, 2011

By [Signature]  
 Its Asst. Sec. Treas. W.S.  
 Dated 4/7/11