IN THE MATTER OF

WASHINGTON STATE FERRY SYSTEM

AND

INLANDBOATMEN'S UNION OF
THE PACIFIC

Grievance: MEC Case No. 1-84
Minimum Manning

OPINION OF THE ARBITRATOR

PROCEDURAL MATTERS

The Arbitrator was selected to hear the instant dispute by the Marine Employee's Commission. The arbitration was conducted pursuant to the applicable Collective Bargaining Agreement between the parties (Joint Exhibit No. 1), hereinafter referred to as the Agreement. A hearing in this matter was held on September 27, 1984, at Seattle, Washington. The Employer, Washington State Ferry System was represented by Robert M. McIntosh, Assistant Attorney General. The Union, Inlandboatmen's Union of the Pacific, was represented by John Burns of the law firm of Hafer, Price, Rinehart & Schwerin.

The Arbitrator tape recorded the proceedings. Pursuant to the agreement of the parties, the Arbitrator provided the tape recording to a court reporter for transcription. The Arbitrator was provided with a verbatim transcript of the proceeding for his use in reaching a determination in this matter.

At the hearing the testimony of witnesses was taken under oath and the parties presented documentary evidence. The parties also agreed upon the submission of simultaneous posthearing briefs. The last such brief was received by the Arbitrator on January 9, 1985.

ISSUE

The parties stipulated to the following statement of the issue to be determined in this case:

> Whether the Washington State Ferries' January 1984 implementation decision Regarding manning of the Evergreen State Class vessels violated the Collective Bargaining Agreement (Joint Exhibit No. 1).

The contract provision directly in question here is Rule 9 entitled, 'Crew Requirements'. That section of the Agreement provides in relevant part as follows:

> **RULE 9 - CREW REQUIREMENTS**
>
> 9.01 The Employer agrees to adopt the following minimum manning schedules as part of this Agreement:
>
> Except in cases of emergency and for movements within the vicinity of Eagle Harbor, each vessel, while in service, shall have a minimum manning as follows:

Steel Electric Class (KLICKITAT, ILLAHEE, NISQUALLY, QUINAULT, and including OLYMPIC, RHODODENDRON, KULSHAN, VASHON)

2 AB's 1 OS 1 Watchman 1 Oiler

Super Class (ELWHA, HYAK, KALEETAN, YAKIMA)

4 AB's 2 OS's 1 Watchman 1 Oiler
1 Wiper 1 Matron*

*No Matron will be employed on the Seattle-Bremerton run graveyard shift. No matron will be employed on the Edmonds-Kingston run graveyard shift.

Super Class (SAN JUAN ISLANDS ONLY) April 15 through October 14 - same as above, October 15 through April 14:

4 AB's 1 OS 1 Watchman 1 Oiler
1 Wiper 1 Matron

Jumbo Class (SPOKANE, WALLA WALLA)

4 AB's 2 OS 1 OS/Watchman

Evergreen State Class (EVERGREEN STATE, KLAHOWYA, TILLIKUM)

2 AB's 1 OS 2 Watch. 1 Oiler
1 Wiper

Issaquah Class
At U.S. Coast Guard Certificate

HIYU

2 AB's

* * *

FACTS

The facts are not in dispute and are briefly summarized below. Prior to January 15, 1984, the Certificate of Inspection issued by the United States Coast Guard with respect to the three Evergreen State Class vessels operated by the Employer required that each such vessel carry two able bodied seamen(AB), one ordinary seaman(OS), one watchman, one oiler, and one wiper. These job classifications are all included in the Collective Bargaining Agreement between the parties. However, the Agreement in its list of job classifications shows two, rather than one, watchman.

By letter dated December 14, 1983, the Coast Guard wrote to the Employer in relevant part as follows:

> 1. Effective 15 January 1984, the non-licensed deck department personnel, required on the EVERGREEN STATE Class Vessels (EVERGREEN STATE, KLAHOWYA, TILLIKUM) are changed to the following: (3) Able Bodied Seamen, (1) Ordinary Seaman, and (1) Watchman. This will bring these vessels more in line with other similar U.S. Flag ferry vessels. (Joint Exhibit No. 5)

In response to this letter, the Employer determined to meet the new Coast Guard requirement by promoting the OS to AB on each crew with respect to each of the three vessels, thereby having three AB's on each crew. A watchman was then promoted to OS on each crew, thereby maintaining one OS on

each crew. However, the promoted watchman was not replaced, thereby leaving only one watchman on each crew. This decision was taken without notice to the Union and without providing the Union with an opportunity to bargain about the manner in which the new Coast Guard requirement would be implemented.

DISCUSSION

The union takes the position that the language of Rule 9 clearly and unambiguously requires each vessel in the Evergreen State Class, while in service, to be manned by a minimum of two watchmen. Therefore, the Union contends, that by operating Evergreen State Class vessels with only one watchman, the Employer clearly violated Rule 9. The Employer, on the other hand, contends that Rule 9 requires manning by vessel, and that as long as the Employer has continued to fill the same number of positions as it did prior to its January 1984 implementation decision, there has been no violation of the minimum manning provision. In this regard, the Employer points to the fact that the positions filled after the implementation decision contain higher wage scales. That is, instead of employing two AB's and two watchmen on each crew, the Employer now employs three of the higher rated AB's and only one of the lower rated watchman

per crew, thereby meeting the minimum manning provision.

Rule 9 provides that:

> [E]ach vessel, while in service, shall have a minimum manning as follows:

There follows a list of ferries by class. For each class of ferry there is listed the minimum manning requirement by job classification. Rule 9 does not describe the minimum manning requirement in terms of the total number of positions per crew. Thus, I find myself in agreement with the Union, that the language of Rule 9 is clear and unambiguous in its requirement that the Evergreen State Class ferries be manned by at least two watchmen. As Professor's Elkouri point out in their often cited text How Arbitration Works, BNA, Third Edition, 1973:

> If the language of an agreement is clear and unequivocal, an arbitrator generally will not give it a meaning other than that expressed. [A]n arbitrator cannot ignore clear-cut contractual language and he may not legislate new language since to do so would usurp the role of the labor organization and the employer. Even though the parties to an agreement disagree as to its meaning, an arbitrator who finds the language to be unambiguous will enforce the clear meaning. (Page 303, footnote citing cases omitted.)

Furthermore, I note that other language in Rule 9 talks in terms of job classification rather than total crew size.

Thus, in Rule 9.1, with respect to the Super Class ferries, there is language regarding certain runs on which no matrons will be required.

The Employer contends the result reached by following its interpretation is reasonable while the result reached in following the Union's interpretation is unreasonable. However, an arbitrator's duty in applying contract language is not to weigh the reasonableness of the result of one interpretation over another. As stated by Professors Elkouri in How Arbitration Works, supra, at page 304:

> Arbitrators apply the principle that parties to a contract are charged with full knowledge of its provisions and of the significance of its language. …Thus, the clear meaning of language may be enforced even though the results are harsh or contrary to the original expectations of one of the parties.

Furthermore, RCW 47.64.150, in connection with providing for ferry employee grievance procedures, states:

> An arbitrator's decision on a grievance shall not change or amend the terms, conditions, or applications of the collective bargaining agreement.

Thus, the Arbitrator is required by statute to ensure that his decision does not change or amend the terms of the Agreement. In my view if I were to adopt the Employer's interpretation here, I would be in violation of the

statutory language set forth above.

Finally, I cannot find that the result reached in following the clear language of the Agreement here is unreasonable. Both in the current Agreement and in the prior agreement, the Employer agreed to a minimum manning of two watchmen even though the Coast Guard required only one. No more is required as a result of this decision. Even if one were to accept the Employer's contention, for purposes of argument, that the manning requirement applies only to the total employee complement and not to each individual job classification, the result reached by following the Union's interpretation is consistent with the practice prior to the change in Coast Guard manning requirements. In this regard, I note that my decision will result in the Employer being required to carry eight unlicensed personnel at a time when the Coast Guard requires seven. Prior to January 15, 1984, the Employer carried seven unlicensed personnel at a time when the Coast Guard required six. Thus, even if one thinks in terms of total employee complement rather than on a position by position basis, the interpretation required by the language of the Agreement leaves the Employer in substantially the same position as it was previously, that is, with a requirement to carry one more unlicensed personnel than required by Coast Guard Certificates of Inspection.

REMEDY

The last two paragraphs of Rule 9.01 provide:

> The Employer and the Union agree that every effort will be made to man the vessels of the Employer, while in service, with the standard complement of crew personnel in accordance with the above minimum manning schedules.
>
> Except in cases of emergency and for movements within the vicinity of Eagle Harbor, when any vessel is not manned in accordance with the minimum manning schedules of unlicensed personnel in the Deck or Engine Department, the wages of the position(s) shall be divided equally among the employees performing the work of the unfilled position(s). If a crew shortage occurs on a holiday, the holiday rate of pay shall apply.

The Union contends that this language requires an award of back pay equal to the wages of one watchman for each shift worked on each Evergreen State Class vessel back to January 15, 1984. The Union further contends that this money should be divided between the OS and the watchman who manned each vessel without a second watchman. However, I must find in Agreement with the Employer that the parties, in agreeing to this language, were looking to remedy temporary violations of the minimum manning schedule set forth in Rule 9.01. Thus, they provided that the wages of the unfilled crew position or positions should be divided equally among the employees performing the work of the

unfilled position or positions. In other words, the parties' language indicates that it was their intent to remedy a crew shortage resulting in the work normally performed by the absent crewman having to be performed by some or all of the remaining crewmen.

Here, the overall standard complement of crew personnel was not reduced, that is, there was no overall crew shortage. The Agreement itself requires no more than a seven man crew and during the period in question here the Evergreen State Class vessels were manned by a seven man crew, even though each job classification was not filled in accordance with the Agreement. In this situation your Arbitrator cannot simply assume that either the watchman or the OS actually had to perform a substantial amount of additional work and the Union did not present any evidence to indicate that such was the case. I recognize that Rule 26.02 provides that Able Bodied Seamen "shall not be required to do work normally assigned to Watchmen. …" However, nothing in any of the contractual language cited to me would have prevented the additional, or third, AB from assisting the OS, thereby freeing the OSU to assist the one watchman with his work.

Finally, it would just be inequitable to provide additional pay to an OS who, in fact, benefited from the viola-

tion by being promoted from watchman to OS.

The Union, in its brief at page 12, recognizes that the Arbitrator might well find the remedy set forth in Rule 9.01 was only intended for violations of limited duration and suggests an alternate remedy. The Union suggests that the Arbitrator award back pay to out of work individuals eligible for the watchman position. Thus, as I understand what the Union is suggesting it is that an award of back pay be made in an attempt to compensate each employee who would have worked if in fact the Employer had manned each vessel from January 15, 1984, with two watchmen instead of one.

In my view such a remedy would be impractical and inequitable. First of all, it would be an extremely difficult task in the circumstances here to attempt to ascertain who, in fact, would have worked as the second watchman on each crew on each Evergreen State Class vessel ever since January 15, 1984. Secondly, and more importantly, such a remedy in the circumstances here would be inequitable. It must be remembered that the January 15, 1984 implementation decision did not result in the layoff of any employee. No employee was demoted or reduced in job classification. Instead the Employer's implementation decision resulted in the promotion of many employees.

Finally, I wish to point out that the instant case is clearly distinguishable from Tacoma Asbestos Co., 76-1 ARB Section 8201 (Beck), cited by the Union. Unlike the instant case that case involved a direct violation of a contractual hiring hall provision.

AWARD OF THE ARBITRATOR

It is the Award of your Arbitrator that

I. The Washington State Ferries' (the Employer) January 1984 implementation decision regarding manning of the Evergreen State Class vessels violated the Collective Bargaining Agreement.

II. Therefore, it is ordered that the Employer:

A. Cease and desist from manning Evergreen State Class vessels with only one watchman.

B. Operate all Evergreen State Class vessels with two watchmen as required by the Collective Bargaining Agreement.

Seattle, Washington

Dated: March 15, 1985

/s/ MICHAEL H. BECK
Arbitrator