

STATE OF WASHINGTON

BEFORE THE MARINE EMPLOYEES' COMMISSION

DISTRICT NO. 1, MARINE
ENGINEERS BENEFICIAL
ASSOCIATION,

Grievant/Complainant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC Case No. 1-01 (Familiarization ULP)
MEC Case No. 6-01(Boedecker GRV)
MEC Case No. 9-01 (Jenkins GRV)

DECISION NO. 300 – MEC

ORDER OF DISMISSAL

Davies, Roberts and Reid, attorneys, by *Michael McCarthy*, appearing for and on behalf of District No. 1, Marine Engineers Beneficial Association (MEBA), James Boedecker, Jeff Jenkins, et al.

Christine Gregoire, Attorney General, by *David Slown*, Assistant Attorney General, appearing for and on behalf of Washington State Ferries (WSF).

THESE MATTERS came on regularly before the Marine Employees' Commission as follows:

1. On February 14, 2001, MEBA counsel Michael McCarthy filed an unfair labor practice complaint against WSF. The complaint charged WSF with refusing to bargain collectively with representatives of employees. Specifically, MEBA alleged that WSF unilaterally changed the process for filling assistant engineer temporary vacancies, by claiming that it cannot accept MEBA hiring hall referrals who have not fully complied with WSF's newly-implemented "familiarization" program. MEBA asserted that WSF did not provide notice or opportunity to bargain over its familiarization program.

2. On March 29, 2001, Union Representative Mario Micomonaco filed a request for grievance arbitration on behalf of James Boedecker. In its grievance arbitration request, MEBA alleged that WSF denied James Boedecker employment in an assistant engineer temporary vacancy as a result of the employer's newly implemented "familiarization" program.

3. On April 12, 2001, Union Representative Mario Micomonaco filed a request for grievance arbitration on behalf of Jeff Jenkins. MEBA alleged that WSF refused to assign licensed engineer, Jeff Jenkins, who had been dispatched from the MEBA Hiring Hall, thereby violating the contractual procedures for filling licensed temporary vacancies. Prior to any proceedings being held, MEBA amended this grievance to include twelve additional individuals.

MEBA certified that the grievance procedures in the pertinent MEBA/WSF collective bargaining agreement had been utilized and exhausted in both grievance requests described above. In addition, the union certified that the arbitrator's decision shall not change or amend the terms, conditions or application of said collective bargaining agreement and that the arbitrator's award shall be final and binding.

Upon review of the unfair labor practice charge, docketed as MEC Case No. 1-01, the Commission determined that the facts alleged may constitute an unfair labor practice, if later found to be true and provable. The Boedecker request for grievance arbitration was docketed as MEC Case No. 6-01; the Jenkins, et al grievance was docketed as MEC Case No. 9-01. MEBA requested that the all three disputes be consolidated for settlement and hearing, indicating that the disputes involved the same underlying issue.

Upon review of the facts and principles of law alleged in MEBA's complaint and two grievances, the MEC ordered that Case 1-01, 6-01 and 9-01 be consolidated. Chairman John Nelson was designated to act as Arbitrator/Hearing Examiner. A settlement conference was scheduled for June 13, 2001 and a hearing for September 14, 2001. The June 13 settlement conference was continued to August 7, 2001. On August 7, the parties participated in settlement discussions with Commissioner John Sullivan acting as Mediator, but did not resolve the issue.

The September 14 hearing date was cancelled for the following reasons: 1) WSF counsel requested an extension of respondent's Answer due-date; 2) Arbitrator Beck scheduled September 14 for interest arbitration on the IBU/WSF respirator issue; and 3) MEBA and WSF indicated they were close to reaching agreement in the above matters. The parties indicated they would keep the MEC advised of progress toward settlement.

As of December 7, 2001, a settlement had not been finalized. At that time, the Commission directed MEC staff to reschedule the hearing in Case 1-01 6-01 and 9-01. The hearing was set for March 5, 2002.

On January 17, 2002, MEBA submitted to MEC a copy of the parties signed settlement agreement resolving the “familiarization “ issue, as well as a letter withdrawing Case 1-01, 6-01 and 9-01. The parties’ agreement is appended to and becomes a part of this Order by reference.

ORDER

It is hereby ordered that

1. The unfair labor practice complaint, filed by District No. 1 MEBA against WSF and docketed as MEC Case No. 1-01, be dismissed.
2. The request for grievance arbitration, filed by District No. 1, MEBA on behalf of James Boedecker, and docketed as MEC Case No. 6-01, be dismissed.
3. The request for grievance arbitration, filed by District No. 1 MEBA on behalf of Jeff Jenkins, et al, and docketed as MEC Case No. 9-01, be dismissed.

DATED this 25th day of January 2002.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN NELSON, Chairman

/s/ JOHN SULLIVAN, Commissioner

/s/ JOHN BYRNE, Commissioner

**FAMILIARIZATION SETTLEMENT AGREEMENT
BETWEEN
WASHINGTON STATE FERRY SYSTEM
AND
DISTRICT NO. 1 MARINE ENGINEERS BENEFICIAL ASSOCIATION**

JAN 17 2002

MARINE EMPLOYEES COMMISSION
OLYMPIA, WA

Washington State Ferries ("WSF" or "the Ferries") and District No. 1 Marine Engineers Beneficial Association ("MEBA" or "the Union") hereby agree to settle three (3) Union unfair labor practice complaints against the Ferries (MEC Case Nos. 1-01, 6-01, and 9-01) and a Union grievance filed on behalf of MEBA member Pare Abbott, all of which arise out of issues surrounding "familiarization and dispatches from the MEBA Hiring Hall. This Agreement shall be a pilot project which will expire 180 days after it is executed by both parties, unless it is renewed by the parties. In furtherance of this settlement, the parties agree as follows:

1. Temporary vacancies in the Assistant Engineer classification shall be filled in accordance with Section 2.1 of the Licensed Collective Bargaining Agreement, Rule 21.10 of the Unlicensed Collective Bargaining Agreement, and this Settlement Agreement. To the extent that Section 2.1 and/or Rule 21.10 are inconsistent with this Settlement Agreement, this Settlement Agreement shall govern for the period it remains in effect and during any subsequent renewal period;
2. Engineers dispatched through the MEBA Hiring Hall for temporary Assistant Engineer vacancies must meet the familiarization requirements associated with vacancy set forth in this Settlement Agreement before they are dispatched or placed into the vacancy;
3. To be familiarized and "qualified" within the meaning of Section 2.1 of the Licensed Agreement and Rule 21.10 of the Unlicensed Agreement, an engineer dispatched through the MEBA Hiring Hall for an Assistant Engineer temporary vacancy must

complete a 12-hour Phase I Familiarization Program for the class of vessel to which the engineer seeks a dispatch (unless the Ferries has previously approved that engineer to fill temporary vacancies aboard that class). The Ferries will not pay such an engineer for attending this familiarization program, until he/she has met the requirements of the following paragraph.

4. After an engineer dispatched through the MEBA Hiring Hall has completed seven days of service aboard the class vessel for which he/she has attended the 12-hour Phase I Familiarization Program, the Ferries will pay that engineer an additional 12 hours straight-time pay at the Assistant Engineer rate.
5. The payment system set forth in the previous two paragraphs applies on a class-by-class basis. For example, if an engineer completes the 12-hour Familiarization Programs for both Jumbo Mark II and Issaquah Class vessels, he/she will receive 12 hours additional pay after completing seven days on Jumbo Mark II class vessels, and a second 12 hours additional pay after completing seven days on Issaquah Class vessels.
6. The Ferries will maintain and make available to MEBA engineers a 12-hour Phase I Familiarization Program in compliance with this Agreement. The precise content of this 12-hour Phase I Familiarization Program is subject to management discretion.
7. The Ferries, together with the Union, will seek and advocate approval of the 12-hour Phase I Familiarization Program required by this Settlement Agreement from the United States Coast Guard. If the Coast Guard does not give its approval, this Settlement Agreement is void, and the Ferries and the Union return to status quo ante. Should this occur, MEBA may re-file all unfair labor practice charges and grievances

agreed to be dismissed in this Settlement Agreement and the deemed filing date for these re-filed charges and grievances shall be the original date of filing.

8. All engineers dispatched through the MEBA Hiring Hall for temporary Assistant Engineer vacancies must maintain their facial hair in compliance with the Ferries' respirator protection policy.
9. Engineers dispatched through the MEBA Hiring Hall for temporary Assistant Engineer vacancies must actively work toward completion of Phase II of the Ferries' Familiarization Program, unless assigned other duties by the Chief Engineer.
10. If the Staff Chief Engineer or his/her designee declines to "sign off" on a MEBA engineer who has completed the 12-hour Familiarization Program set forth above, that engineer will be given the opportunity to attend an additional 12-hours of familiarization. If the engineer accepts this opportunity, the Ferries will provide such additional familiarization. Engineers who are "signed off" only after attending this additional 12-hours of familiarization will be provided additional pay in compliance with paragraphs 4 and 5, above, except that they will receive 24-hours additional pay, rather than 12. If the Staff Chief Engineer or his/her designee still declines to "sign off" on a MEBA engineer after the completion of 24-hours of familiarization, this refusal may be grieved under this Settlement Agreement and the applicable Collective Bargaining Agreement.
11. The Ferries will make familiarization opportunities reasonably available to interested MEBA engineers. The Ferries and the Union agree to work together in good faith to construct a procedure and/or a pre-determined schedule of familiarization opportunities in order to provide reasonable access.

12. The Union Hiring Hall will make its best efforts to ensure that it dispatches only engineers who have completed the required 12-hour Familiarization Program for the class of vessel upon which the temporary vacancy occurs. To assist the Hall in keeping this commitment, the Ferries will fax to the Union Hiring Hall a copy of each and every Staff Chief (or designee) "sign off" for engineers who have completed the 12-hour Familiarization Program (or 24-hour program, if that becomes necessary in an individual case). The Ferries will also immediately inform the Union Hiring Hall in writing if the Staff Chief or his/her designee has declined to "sign off," despite the completion of the required familiarization program.
13. The Ferries and the Union agree to work together in good faith to devise a reliable procedure for the payments required by paragraph 4, above.
14. If the MEBA Hiring Hall is unable to dispatch an engineer who has met the requirements of this Settlement Agreement, WSF may fill the temporary vacancy in compliance with the applicable sub-sections of Section 2.1 of the Licensed Agreement and Rule 21.10 of the Unlicensed Agreement.
15. The Ferries and MEBA jointly agree to develop an expanded computer based training program through the MEBA School. The purpose of this program is to:
 - a. Increase training opportunities for WSF/MEBA personnel;
 - b. Improve the effectiveness of all training; and
 - c. Provide greater access to WSF temporary assistant engineer vacancies for MEBA engineers referred through the MEBA Hiring Hall.
16. The Ferries agree to compensate engineers who were dispatched for temporary Assistant Engineer vacancies by the MEBA Hiring Hall since January 1, 2001, but

were not placed into the positions by the Ferris under the Ferris familiarization program, as set forth in Attachment A. MEBA will dismiss with prejudice all grievances filed on behalf of these individuals.

17. In return for the payment of 2 days to Pare Abbott, the parties agree to dismiss Abbott's pending grievance regarding temporary vacancies. This settlement of Abbott's grievance is on a non-precedent setting basis. It will not be cited by either party as evidence of past practice.

18. Temporary Assistant Engineers dispatched from the Hall to vessels in Anacortes will receive travel time and mileage daily.

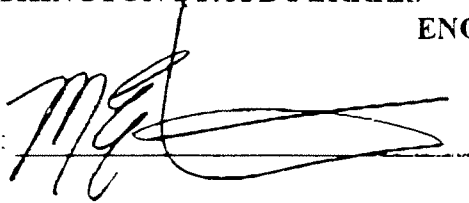
19. This Agreement shall take effect January 7, 2002.

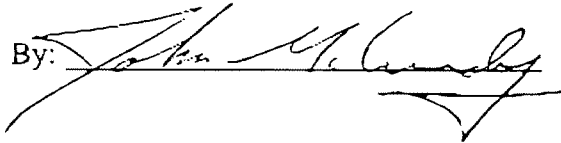
20. The Ferris will begin to identify familiarization opportunities for MEBA engineers within 14 days of the effective date of this Settlement Agreement.

21. Disagreements regarding the interpretation or application of Settlement Agreement shall be resolved pursuant to the grievance procedures of the applicable collective bargaining agreement.

DATED this 7th day of JANUARY, 2002.

WASHINGTON STATE FERRIES DISTRICT NO. 1 MARINE
ENGINEERS BENEFICIAL ASSOCIATION

By: 

By: 

ATTACHMENT "A"

RELIEF FOR WSF

<u>Date Denied</u>	<u>Name</u>
01/05/01	Jeff Jenkins
04/23/01	Joe Shea
04/27/01	Lorraine Acosta
05/08/01	Dennis MacCumber
05/10/01	Justin Raby
05/30/01	Dennis MacCumber
05/31/01	Marvin Wells
06/13/01	Tom Hogan
06/20/01	Greg Kuijper
06/26/01	Tom Hogan



2911 2nd Avenue
Seattle, WA 98121-1012

Washington State
Department of Transportation

Douglas B. MacDonald, Secretary of Transportation

**Washington
State Ferries**

JAN 17 2002

MARINE EMPLOYEES' COMMISSION
OLYMPIA, WA

January 8, 2002

Mr. John McCurdy
M.E.B.A.
732 South Homer Street
Seattle, WA 98108

RE: FAMILIARIZATION SETTLEMENT AGREEMENT

Dear John:

I have signed the attached Familiarization Settlement Agreement. In so doing, I want to again make clear for the record that the references made throughout this Agreement to "12-Hour Familiarization" and "12-Hour Phase I" are in fact references to Part I of the Revised WSF Familiarization Program. The reference should in no way be taken to mean that Part I of the break-in process takes 12 hours to complete.

Part I was designed to meet minimum USCG requirements. We believe that it can be accomplished in 12 hours, but do not warrant this to be the case for every break in opportunity. The length of time required to complete Part I is determined by the progress made by the individual temporary engineer.

I know that we have discussed this on a number of occasions and there is agreement on the subject. I don't wish to alter the Agreement, but since it was your lawyer who drew up the Agreement, I think it is best that we cover this territory one last time.

Your efforts to work out a settlement are greatly appreciated.

Respectfully,

Mark E. Nitchman
Director of Maintenance

MN:bas
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