

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

DISTRICT NO. 1, MARINE ENGINEERS'
BENEFICIAL ASSOCIATION,

Grievant,

v.

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION, FERRIES
DIVISION,

Respondent.

MEC CASE NO. 16-08

DECISION NO. 563-A-MEC

ORDER DENYING WSF'S
PETITION FOR
RECONSIDERATION
OF ATTORNEY'S FEES

APPEARANCES

Reid, Pederson, McCarthy and Ballew by *Michael McCarthy*, Attorney, appearing for the District No. 1, Marine Engineers' Beneficial Association (MEBA).

Robert McKenna, Attorney General, by *David Slown* and *Kara Larsen*, Assistant Attorneys General, appearing for the Washington State Department of Transportation, Ferries Division (WSF).

This matter came before the Marine Employees' Commission on August 12, 2009, when WSF filed a Petition for Reconsideration of Attorney's Fees awarded in Decision and Award 563-MEC. On August 20, 2009, the MEBA filed a Response to Employer's Petition for Reconsideration of Attorney's Fees.

ANALYSIS

The Arbitrator acted appropriately and within his contractual authority and obligations. The Employer was on notice from the Court of Appeals that payment for watch changeover was a contractual obligation of WSF. The Arbitrator was put on notice by the Court that WSF and

the State were aware that the Courts have spoken twice and the very language of the Court of Appeals' remand was convincing and compelling.

We emphasize that watch changes are a regular, essential and required work activity for which the State must compensate under the CBA and whether watch changes are work or whether watch changes must be compensated is not an issue for future grievance or arbitration.

(Emphasis added.) It is only reasonable to assume that learned and esteemed counsel exhaustively argued and presented the same rationale and advocacy to the Courts that was advanced to the Arbitrator.

Upon receipt of the Court of Appeals' findings, WSF had every opportunity to work with the Union to pursue an appropriate remedy short of requiring the MEBA to present their members' case to an arbitrator and require additional attorney's fees, in spite of the direction of the Courts.

The Arbitrator is aware that although the decision on its merits is final and binding as to the questions of law and fact, the decision and authority are contractual in nature and are limited to the powers conferred in the RCW's and collective bargaining agreement. After careful review of all relevant facts, the Commission is certain the decision in this case is within its legal and contractual authorities. It also should be noted that a great deal of consideration regarding the parties' operating history, their long, professional enlightened relationship and the Union's desire to settle the issue by offering reasoned alternative proposals influenced the Commission's equitable approach in resolution of the controversy.

It can be argued that our decision has limited merit as to whether the Arbitrator should find an implied obligation in the contract or the RCW's regarding attorney's fees. It can also be argued that the obligations of the Employer to the affected employees were not satisfied by the

decision of the Arbitrator and WSF was not held liable for its complete obligations as enunciated by the Courts.

If the Employer feels a more exhaustive judicial review is appropriate, they can exercise their legal authority.

In the present case, the Arbitrator was provided a complete record, the directions of the Courts, a complete representation of all the relevant facts, evidence, testimony and detailed, well-constructed post-hearing briefs. There was no refusal to hear pertinent, material evidence and the decision was reached by careful analysis of the facts and the hearing was, by any standards, a fair hearing.

ORDER

The decision of the Arbitrator and confirmed by the Commission is final and binding. The WSF's Petition for Reconsideration is denied.

DATED this 8th day of September 2009.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN COX, Arbitrator

Approved by:

/s/ JOHN SWANSON, Chairman

/s/ PATRICIA WARREN, Commissioner