

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES' COMMISSION

LYNDA WHEELER,	)	
	)	MEC CASE NO. 7-84
Grievant,	)	
	)	DECISION NO. 8 - A - MEC
v.	)	
	)	
WASHINGTON STATE FERRIES	)	ORDER GRANTING MM&P
	)	MOTION TO INTERVENE
	)	AND MOTION FOR
Respondent.	)	SUMMARY JUDGMENT
	)	
v.	)	
	)	
INTERNATIONAL ORGANIZATION OF	)	
MASTERS, MATES AND PILOTS,	)	
	)	
Intervenor.	)	
	)	

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J.E. Fischnaller, Attorney at Law, appeared on behalf of International Organization of Masters, Mates and Pilots.

Kelby Fletcher, Attorney at Law, appeared on behalf of Grievant Lynda Wheeler.

Kenneth Eikenberry, Attorney General, by Robert B. McIntosh, appeared on behalf of Washington State Ferries.

INTRODUCTION

Lynda Wheeler, an employee of Washington State Ferries (WSF) and a member of the International Organization of Masters, Mates and Pilots (MM&P), filed a grievance with the Marine Employees' Commission (MEC) on August 8, 1984, alleging an incorrect seniority date. MM&P filed an objection with MEC alleging lack of jurisdiction by MEC to arbitrate the Wheeler grievance. On June 18, 1985, MEC entered Decision No. 8-MEC, concluding that MEC had jurisdiction under chapter 47.64 RCW and under the MM&P/WSF bargaining agreement, and ordering that the parties to the Wheeler grievance could proceed.

On June 27, 1985, MM&P filed a Motion to Intervene and a Motion for Summary Judgment. Grievant Wheeler did not respond to MM&P's Motion to Intervene, but on July 29, 1985, filed a Memorandum and

Affidavit in Opposition to the Motion for Summary Judgment. On July 31, 1985, WSF filed a response joining in both MM&P motions.

On September 11, 1985, the Motion to Intervene and the Motion for Summary Judgment were argued before Commissioner Louis O. Stewart. Grievant Wheeler took no position on the motion to intervene. At the hearing, Commissioner Stewart indicated that he would recommend to the other two Commissioners that the MM&P Motion to Intervene be granted as part of MEC's Decision on the Motion for Summary Judgment.

In ruling on the MM&P's Motion for Summary Judgment, the MEC considered the following:

- 1) MM&P Motion for Summary Judgment;
- 2) Affidavit of Captain Dave A. Boyle and Attachments;
- 3) MM&P Brief in Support of Summary Judgment;
- 4) Response of WSF to MM&P's Motion to Intervene and Motion for Summary Judgment;
- 5) Memorandum of Grievant in Opposition to Motion for Summary Judgment by IOMM&P;
- 6) Declaration of Lynda Wheeler in Opposition to Motion for Summary Judgment by IOMM&P;
- 7) 1977-1980 WSF-MMP Collective Bargaining Agreement;
- 9) 1980-1983 WSF-MMP Collective Bargaining Agreement.

Although neither of the other two Commissioners were present for the September 11, 1985 hearing, all three Commissioners have reviewed the hearing transcript, all briefs, affidavits, memoranda, and collective bargaining agreements relating to this case.

The Marine Employees' Commission now establishes the following positions of the parties, findings of facts and conclusions of law, does not attempt to reach a decision on the merits of this case, but does reach decisions on the Motion to Intervene and the Motion for Summary Judgment only.

#### POSITIONS OF THE PARTIES

##### MM&P

As the moving party, MM&P argued that it should be allowed to intervene because it is the exclusive bargaining representative for the MM&P and a change in Grievant Wheeler's seniority date would

affect other members of the MM&P.

MM&P recognized its burden of proof as the party for Summary Judgment. In support of that motion, MM&P submitted an affidavit from Captain Dave Boyle. The 1980 "Masters" seniority roster listed April 10, 1980 as Wheeler's first "Master" seniority date. The 1981, 1982 and 1983 seniority rosters and a 6-15-84 seniority roster also listed the April date as Lynda Wheeler's "Master" seniority date. In his affidavit, Captain Boyle also stated that Rule 20.08 of the current and previous WSF-MM&P agreement "contained an absolute prohibition against the protest of any seniority roster, more than 90 days after its published date." Boyle also stated that the April 10 seniority date was correct and that the date could not now be challenged. Copies of the 1980, 1981, 1982, 1983 and the 6-15-84 seniority lists were attached to Boyle's affidavit.

MM&P argued that a summary judgment of dismissal should be granted, because Wheeler had not submitted a written protest against her assigned seniority date of April 10, 1980, within 90 days after she knew or should have known that she was not satisfied with that date, in accordance with the MM&P/WSF agreement. MM&P further argued that once Grievant Wheeler waived her contractual right to protest by failure to file such protest against that first seniority list (1980), she could not renew her right following the publishing of subsequent lists. MM&P asserted in oral argument that a 1984 seniority list—issued before the 6-15-84 list—was issued by Captain Plate, an MM&P representative who was not authorized to make changes by the MM&P delegate Committee in accordance with the MM&P/WSF agreement. However, there was nothing in Captain Boyle's affidavit concerning Captain Plate or his authority to amend seniority lists.

In response to Grievant's argument that she was grieving the 1984 change, MM&P argued that Grievant could only be grieving the seniority date established in 1980 because she filed her protest against the 1984 Masters' Seniority Roster on March 30, 1984; the amended list was not issued until two weeks later, April 13, 1984.

In summary, MM&P contends there are no material issues of fact to be resolved because:

- 1) The Grievant's seniority date was first posted in the June 1980 roster;
- 2) She knew of the date and thought it might be incorrect; she even discussed the date with two members of the delegate committee;
- 3) She did not file a grievance within 90 days of the posting of the 1980 roster;

- 4) Rule 20.08 of the contract bars any protest after 90 days unless there is a typographical error;
- 5) There was no written protest until after March 30, 1984;
- 6) Time restrictions for filing grievances are to be strictly construed;
- 7) Since the grievant failed to file within 90 days, MM&P is entitled to judgment of dismissal as a matter of law.

#### WSF

Washington State Ferries joined in both MM&P motions. WSF asserted that Port Captain Mangan's letter to MM&P "suggesting" January 25, 1980, as an appropriate seniority date for Mrs. Wheeler is not disputed, but is not a material fact at issue, and is irrelevant to this proceeding. Under the MM&P/WSF Agreement, MM&P is responsible for preparing the seniority lists; and, if MM&P chose to ignore the WSF information, that is the union's absolute right.

WSF also argued that the issuance of a new seniority roster in 1984 does not a priori create a new right of appeal. Additionally, even if the MM&P representative had had authority to issue it, that roster contained exactly what Grievant wanted, and thus was not appealable by here. The "corrected roster" of 1984, following the withdrawal of Captain Plate's roster, showed Grievant in precisely the same order as the four preceding annual rosters, and Grievant's appeal period on that order had expired in 1980.

#### GRIEVANT

Grievant Wheeler asserted that (1) her union, MM&P, is required by the MM&P Agreement to make up the Master's Seniority Roster from information furnished by WSF; (2) that in January 1980, WSF advised MM&P that the Grievant possessed all route pilotage and that the seniority roster should reflect a January 25, 1980 seniority date; (3) Grievant Wheeler did protest her assigned date of April 10, 1980 shortly after she learned of it following its posting in June 1980, by informing two WSF Masters who were both members of the MM&P Delegate Committee of her dissatisfaction; (4) these two Masters informed her that her date was correct, but that she was not aware of "subtle but significant conflicts between parts of the 1977 and 1980 labor agreements...(until) late winter of 1984"; (5) the 1980 roster was not corrected to show her proper date; (6) each annual publishing of the seniority roster opens a new protest (or "window") period; (7) MM&P did finally assign her correct date in 1984; but (8) shortly thereafter changed it back again to the incorrect date; (9) the change of seniority date conclusively opened a new protest period of 90 days; (10) she promptly filed a written protest against the change of date with the Delegate Committee; (11) the Delegate Committee without according her the opportunity to meet with them found her original April 10, 1980

date to be correct, erroneously; and (12) asked that the Motion for Summary Judgment be denied and that she be provided opportunity to present her case in a hearing on the merits.

Grievant Wheeler argued that a material factual dispute exists as to whether or not MM&P waived its right to assert failure to abide by the contractual time limits when MM&P placed Wheeler in a different seniority date in 1984. She also asserted that there was no evidence in the record indicating Plate's lack of authority to change the roster.

Grievant Wheeler asserted that her grievance is principally based upon the changes in the seniority rosters in 1984 by MM&P, and that MEC can only grant the MM&P motion to dismiss the grievance if MEC concludes that the 1984 changes are without legal and factual significance in Wheeler's grievance.

Finally, Grievant Wheeler asserted that, because she had not been aware of the importance of the changes between the 1977 and the 1980 MM&P/WSF Agreements, the language of both Agreements allowed her 90 days after she was fully aware of the importance of such changes in which to start her protest. Grievant relied heavily upon recent court decisions in tort cases, especially those relating to damages to persons by exposure to asbestos, in arguing the equity of extending the contractual start of a protest period to the time the victim is fully aware of the legal consequences of a tortious act. She has argued that the question of discovery of the consequences of the erroneous date is a factual issue and is not susceptible to summary judgment.

Having reviewed the material filed by the parties and having heard oral argument, the MEC finds that the following Findings of Fact are uncontroverted:

#### FINDINGS

1. Lynda Wheeler is a deck officer employed by WSF.
2. MM&P was and is the exclusive bargaining representative of all WSF deck officers employed.
3. MM&P appeared and argued the question of MEC jurisdiction in this grievance as a de facto intervenor.
4. On June 27, 1985, MM&P filed a Motion to Intervene in the grievance of Lynda Wheeler v. WSF.
5. On January 24, 1980, WSF Fleet Operations Manager, J.W. Mangan, notified MM&P by letter:

This is to advise you that we have reviewed the Master's License as presented by Lynda L. Wheeler and she does possess all route pilotage. ... Please reflect January 25, 1980 as her date on the Master's Seniority Roster. ...

6. MM&P published a SENIORITY LIST OF MASTERS EMPLOYED BY WASHINGTON STATE FERRIES, dated June 2, 1980. This list indicated Grievant Wheeler's seniority date of April 10, 1980. The difference between January 25, 1980 and April 10, 1980, had the effect of placing twelve additional persons ahead of Wheeler on the 1980 Masters' Seniority Roster.
7. In the spring of 1980 Grievant Wheeler complained to two members of the MM&P Seniority Committee (called Delegate Committee after June 30, 1980) about her assigned seniority date. She was told that there was nothing she could do, because otherwise WSF would be inundated with non-system people in the higher ranks. She did not pursue her complaint further at that time.
8. The 1977-1980 WSF/MM&P contract was in effect from July 1, 1977 to June 30, 1980. It provides in part:

20.01. Pilotage Required for Seniority. As of June 6, 1974, any Deck Officer, to establish seniority, shall possess pilotage endorsements for all routes operated by the Washington State Ferries; and, after July 1, 1976, all Deck Officers shall possess a pilotage endorsement on their license for interconnecting routes between Vashon Head and Columbia Beach.

...

20.03 Seniority Rosters. There shall be three (3) separate seniority rosters affecting various classifications of Deck Officers, as follows: A Masters' Seniority Roster, to be used for determining the respective rights of all Masters within the system; a Mates' Seniority Roster, to be used for determining the respective rights of all Mates within the system; and a Deck Officers' Seniority Roster, to be used for determining vacation periods and certain other benefits which affect all Deck Officers uniformly and identically. (Emphasis added.)

...

20.05 Masters' Seniority Roster. The Masters' Seniority Roster shall consist of all Deck Officers who have been promoted to Master. Those Deck Officers so promoted after January 1, 1972 shall have their Masters' seniority date established as of their

first day of employment as a Master. As of July 1, 1976, any Deck Officer who has been employed as a Mate for a period of one (1) year or more, and who receives a Master's license, shall be placed on the Masters' Seniority Roster as of the date he presents his Master's license to the Employer, provided he possesses all route pilotage. Those mates now possessing Master's licenses endorsed with pilotage for all routes operated by the Washington State Ferries, shall be placed on the Masters' Seniority Roster as of July 1, 1976, and in the order of their license dates.

...

20.07 Posting of Seniority Rosters. The Union shall revise the Deck Officers', Masters', and Mates' Seniority Rosters in January of each year, based upon information supplied by the Employer, and the Employer shall then promptly post the three revised seniority rosters in a place easily accessible to the Deck Officers affected thereby.

20.08 Protest of Seniority Rosters. All seniority rosters shall be subject to protest by written notification to the Seniority Committee of the Union, consisting of seven (7) members to be elected by the membership of the Union, and who, in conjunction with the Grievance Committee, shall be responsible for the preliminary adjudication of all seniority disputes, under the provisions of this Agreement relating to disputes (Section XXII); provided, however, that no protest of a seniority roster, except for the correction of a typographical error, shall be commenced more than ninety (90) days after the facts and circumstances giving rise to the protest actually become known or, in the exercise of reasonable care, should have become known, to the Deck Officer affected.

...

9. Section XXII of the contract governs the procedures for resolving seniority protests:

XXII.  
DISPUTES

22.01 Exclusive Remedy. The parties understand that the Washington Public Employment Relations Commission (PERC) may, if it so decides, intercede in a particular dispute to assume jurisdiction and render an adjudication in the matter, and that either party to a dispute shall have the right to request that PERC assume jurisdiction of a particular dispute. If PERC fails to assert jurisdiction, all disputes or controversies which may arise within the scope of this

Agreement shall be adjudicated in the manner herein provided, and that the procedures herein established shall be exclusive in all disputes with regard to which PERC has not asserted jurisdiction; provided, however, that in the event that a court of competent jurisdiction should subsequently determine that the jurisdiction of PERC is both exclusive and mandatory in cases involving disputes of this nature, then Sections 22.04 and 22.05 shall be renegotiated to comply with any such court decision.

22.02 Conference. In the event of a controversy, dispute or disagreement arising either out of the interpretation of this Agreement, or because the Union or a Deck Officer involved feels aggrieved by treatment of the Employer, the aggrieved party may, in writing, within ninety (90) calendar days after the facts and circumstance actually become known, or, in the exercise of reasonable care should have become known, request a conference to be attended by the aggrieved Deck Officer and by one (1) or more representatives of each party, with full authority to settle the dispute or controversy.

22.03 Union Committees. In the event that such a dispute or controversy is not settled or resolved at such a conference, or within ten (10) days thereafter, the aggrieved party shall, within sixty (60) working days of the date of such conference, request in writing, a hearing before the Grievance and Seniority Committees in the case of a dispute which involves an aspect of seniority, and before the Grievance Committee alone in all other cases; and such a hearing shall be promptly held in accordance with the rules of the Grievance Committee, which shall render its written adjudication subsequent to such hearing. A copy of such adjudication shall be mailed to all parties involved upon rendition.

...

10. The 1977-1980 MM&P/WSF Agreement expired on June 30, 1980, which occurred 28 days after the Masters' Seniority Roster was published. The 1980-1983 renewal Agreement became effective on July 1, 1980.
11. The subsequent Masters' Seniority Rosters (dated January 1, and 19 (s0c), 1981; January 4, 1982; and January 10, 1983) each showed a Masters' Seniority Date of April 10, 1980 for Grievant.
12. On March 30, 1984, after talking with Jim Strickland, a former WSF Master and head of the 1980 MM&P negotiating committee, grievant Wheeler filed a written protest with the MM&P Delegate Committee regarding her position on the Masters' Seniority Roster. She requested a written ruling by the Delegate Committee and a reply by April 10, 1984.



13. On April 13, 1984, Captain Edward Paul Plate, IOMM&P Assistant Branch Agent, wrote a letter to Lynda Wheeler, advising her that the Masters' Seniority Roster had been corrected, "changing your Seniority date from April to January 25, 1980. This list has been sent to Washington State Ferries last week. ... It appears that the April date has been listed for you for several years. ..." The enclosed "corrected list" was dated January 2, 1984, but a notation was added at the end, "REVISED April 9, 1984."
14. No record of any action by the Delegate committee on Wheeler's March 30, 1984 letter was submitted by any party.
15. On May 29, 1984, WSF Port Captain William J. Ray notified Grievant Wheeler that she might "be promoted sometime during the summer schedule. Attached you will find your letter authorizing break in. ... Soon we will have an evaluation program in place, and at which time you will be notified of a schedule that will allow time for evaluation and additional training, if needed. ..." The letter indicates that a copy was sent to MM&P.
16. On June 1, 1984, Captain Dave A. Boyle notified Grievant Wheeler "that there has been a mistake made on behalf of this Organization regarding your amended Seniority Date. After thoroughly reviewing the 1977-1980 Labor Agreement, your Seniority Date as it originally appeared on the Seniority Roster of April 10, 1980, is your appropriate Master's Seniority Date. I refer you to rule 21.01.14 and Rule 20.05 of the 1977-1980 Labor Agreement as well as Rule 2.01.16 and Rule 20.05 of the present labor agreement. The agreement provisions referenced by Captain Boyle in his letter provided (emphasis added):

1977-1980 Agreement

2.01.14 Mate. The term "Mate" includes Chief Mates and Second Mates, and is any Deck Officer, not a Master, who possesses the minimum qualifications required to appear on the Mates Seniority Roster.

20.05 - See Finding 8.

1980-83 Agreement

2.01.16 Mate. The term "Mate" includes Chief Mates and Second Mates, and is any Deck Officer, not a Master, who can establish seniority on the Mate's Seniority Roster. the term "Mate" does not include the Temporary Mate Classification.

20.05 Masters' Seniority Roster. The Masters' Seniority Roster shall consist of all Deck Officers who have been promoted to Master. Those Deck Officers so promoted after January 1, 1972, shall have their Master's seniority date established as of their first day of employment as a Master. As of July 1, 1976, any Deck Officer who has been employed as a Mate with all route pilotage for a period of one (1) year or more, and who receives a Master's License, shall be placed on the Masters' Seniority Roster as of either the date he presents his Master's license to the Employer, or upon completion of the one (1) year period referred to above, whichever is later, and provided he possesses minimum license qualifications.

17. Captain Boyle did not cite §20.08 of the 1977-1980 and 1980-1983 contracts which contained the 90 day limitation on protests.
18. On June 7, 1984, Grievant Wheeler requested a hearing before the Union Delegate Committee regarding the establishment of her Seniority Date on the Seniority List of Masters employed by Washington State Ferries. She asked for a reply by June 13, 1984.
19. The minutes of the July 12, 1984 IOMM&P Delegate Committee meeting provide in part:

LYNDA WHEELER: A thorough discussion followed as to the Master's Seniority Date. The Committee was of the opinion that Mrs. Wheeler's Seniority Date of April 10, 1980 was appropriate but that Lynda Wheeler's letter of June 7, 1984 should be sent to all members of the Delegate Committee, along with a copy of the Minutes to inform her of the Committee's action today, and give her the opportunity to contact each Committee Member individually (if she wishes) to discuss her situation.

A copy of the minutes were sent to Grievant. No notice of the meeting was given to Ms. Wheeler.

20. On August 8, 1984, Grievant Wheeler filed her grievance with MEC.

For purposes of this decision on summary judgment, facts which may be open to dispute have been omitted from these findings.

Based upon the foregoing Findings of Fact, the Marine Employees' Commission adopted certain Conclusions of Law:

## CONCLUSIONS OF LAW

1. The MEC has jurisdiction over the parties and the subject matter.
2. The MMYP was and is responsible for revising the WSF Deck Officers' Seniority Roster (Rule XX, 1977-1980 MM&P Agreement) based on information provided by WSF. It appeared and argued the issue of the MEC's jurisdiction in this matter. MM&P has an interest in the subject matter of the Wheeler grievance. The ability of the MM&P to protect the interest of its members would be impaired or impeded if it was not allowed to intervene. Therefore, MM&P's Motion to Intervene should be granted.
3. In considering WSF/MM&P's Motion for Summary Judgment, the MEC must determine whether a genuine issue of material fact exists. A material fact is one upon which the outcome of the grievance hearing depends. Ashcraft v. Wallingford, 17 Wn. App. 853, 854, 565 P.2d 1224 (1977).
4. Summary Judgment should not be granted to MM&P and WSF unless, considering all the evidence and the reasonable inferences therefrom mostly favorably to Grievant Wheeler, a reasonable person could reach only one conclusion. Turngren v. King Co., 104 Wn.2d 293, \_\_\_ P.2d \_\_\_ (1985).
5. Affidavits submitted in a summary judgment proceeding must be made on personal knowledge, set forth admissible evidentiary facts, and affirmatively show that the affiant is competent to testify as to his statements. PUD of Lewis Co. v. WPPSS, 104 N.2d 353, \_\_\_ P.2d \_\_\_ (1985).
6. The 1977-1980 WSF-MM&P Agreement was in effect at the time of Grievant Wheeler's qualifying for the Masters' Seniority Roster, the time of publishing and posting said Roster, and is the applicable authority under which this grievance and this Motion for Summary Judgment are decided.
7. The 1980 amendments to Rule XX and Rule XXII in the 1977 contract were minor housekeeping amendments. These amendments did not decrease Grievant's right of protest or retroactively confer different procedural rights to process prior seniority protests during the latter period, nor for any grievance arising subsequent to the original grievance.
8. Rule 20.08 of the 1977-1980 WSF/MM&P contract required Lynda Wheeler to file a written protest with the MM&P Seniority Delegate Committee of her posted April 10, 1980 seniority date within 90 days after she actually knew or in the exercise of reasonable care, should have known of the circumstances giving rise to her protest.

9. Grievant Wheeler knew in the spring of 1980 that she had been assigned the April 10, 1980 date instead of January 25, but she did not file a timely written protest in accordance with Rule 20.08. On the contrary, Grievant Wheeler's nearest attempt to demonstrating timely protest was showing that she discussed her dissatisfaction with two WSF Masters who were members of the Delegate Committee. Written protest was required by Rule 20.08 and, in its most favorable light, Grievant's discussion could only be considered in an oral protest.
10. Although the Grievant did not indicate in her affidavit the exact date that she became aware that the 1980 roster contained the April date, she did indicate that it was in the spring. Even affording her the most favorable inference that spring ended June 1980, her written protest in 1984 comes many months too late.
11. In reaching a decision in this grievance proceeding, MEC may not change or amend the terms, conditions or applications of the MM&P/WSF Agreement (RCW 47.64.150). (Also see Acme Building Supply Company v. International Woodworkers of America, Local 5-315, 66-1) (ARB Para. 8361 at 4236).
12. Publishing and republishing new Masters' Seniority Rosters in 1981, 1982 and 1983 did not have the effect of opening new protest periods for Grievant Wheeler. If the MEC accepted Grievant's contention that each posting opens a new window period, the 90-day limitation to protest seniority dates would have no meaning. The more sensible interpretation is that a protest can be filed 90 days after the seniority date is first published, or where the Grievant's status has changed within the prior year, or the seniority date has been changed from the prior roster through the procedures provided by the Agreement. (See Pickett Cotton Mill, Inc. v. Textile Workers Union of America, 17 S.A. 405, 406, (1951).
13. Even if Grievant's Master's Seniority Date of April 10 is in error, if no protest was filed in accordance with Rule 20.08, that published date must be considered correct. (See Republic Steel Corp., 24 L.A. 286 (1955).
14. The Grievant's contention that her right to protest was revived by the amendment to the roster in April 1984, is rejected. No evidence was presented, nor was there even an assertion that the change of her date resulted from information supplied by WSF (Rule 20.07), or that it resulted from an adjudication by the Delegate Committee (Rules 20.08 and 22.03, 1980-1983 Agreement). The June 15, 1984 Masters' Seniority Roster contained the same seniority date as the 1980, 1981, 1982 and 1983 rosters; therefore, Conclusion No. 11, supra, also applies to the June 15, 1984 Roster.

15. MEC must reject Grievant's argument that, in light of recent court decisions, the 90-day protest period is triggered only when the aggrieved became fully aware of the consequences of "subtle changes" between the 1977-1980 and the 1980-1983 Agreements and/or is fully aware of the consequences of her erroneous date or of her failure to protest timely. The Grievant's own affidavit demonstrates that she knew that the date assigned to her on the roster was not the January date. The language of the 1980-1983 Agreement did not apply in any way to the June 2, 1980 Masters' Seniority Roster. Nor did any change in the 1980-1983 Agreement, subtle or otherwise, confer any retroactivity to the 1980 roster nor open a new protest period for Grievant following subsequent rosters. Second, in the instance of assigning a seniority date, failure by an aggrieved employee to file a protest has immediate, even if long-lasting, results. The contractual rules are readily available and the consequences are widely known. In many tort cases, such as the asbestos cases as cited by Grievant, the consequences are not known by the victim for many years and it would be senseless for workers to file suit following each use of asbestos when damage to victims cannot be anything but speculative for fifteen to forty years following the event.
16. The motion for Summary Judgment should be granted and the Wheeler Grievance should be dismissed.

Based on the foregoing Findings of Fact and Conclusions of Law, the Marine Employees' Commission adopts the following Order:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that: The Motion to Intervene and Motion for Summary Judgment is granted, and Ms. Wheeler's grievance is dismissed.

DATED at Olympia, Washington, this 3<sup>rd</sup> day of December, 1985.

MARINE EMPLOYEES' COMMISSION

/s/ DAVID P. HAWORTH, Chairman

/s/ LOUIS O. STEWART, Commissioner

/s/ DONALD KOKJER, Commissioner