

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

INTERNATIONAL ASSOCIATION OF)	
MACHINISTS AND AEROSPACE)	
WORKERS, LODGE NO. 79,)	MEC CASE NO. 7-89
)	
Grievant,)	DECISION NO. 51-MEC
)	
v.)	
)	
WASHINGTON STATE FERRIES,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Employer.)	AND ORDER
)	

Larry Finneman, Directing Business Representative, appeared for the grievant.

Kenneth O. Eikenberry, Attorney General, by Robert M. McIntosh, Assistant Attorney General, appearing for the employer.

INTRODUCTION AND BACKGROUND

The International Association of Machinists and Aerospace Workers, Lodge No. 79 (Machinists) filed a request for grievance arbitration which contained four grievances dated January 30, 1988, June 27, 1989, June 26, 1989, and October 5, 1989 which had not been resolved under the terms of the WSF/Metal Trades Council Agreement. The Machinists allege that Washington State Ferries (WSF) vessel engineers and oilers, working under the jurisdiction of the Marine Engineers Beneficial Association (MEBA), performed work on ferry vessels which should have been done by the machinists. The IAM&AW Lodge 79 alleges that WSF has violated a "Memorandum of Understanding" to the labor agreement regarding engine room crew overhauling main engines while a vessel was in lay-up status and that the engine overhauls should have been done by machinists. They contend that all of the grievance procedures in the labor agreement have been exhausted and the matter is therefore before the MEC in accordance with the statute and MEC rules.

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The action is alleged to involve 11 machinists and each of the following incidents on the dates noted:

- MS KITSAP - Major engine repairs. Changed out two main Engine power assemblies January 30, 1988.
- MS KITSAP - Overhaul of #1 main engine June 8, 1989 to June 26 and ongoing
- MS KITSAP - Overhaul of #2 main engine June 8, 1989 to June 26 and ongoing
- MS ISSAQUAH - Overhaul of both main engines September and October, 1989.

The MEC assigned Case No. 7-89 to Commissioner Louis O. Stewart on January 18, 1990. Public hearing of the mater was set for March 8, 1990. A postponement of the hearing was requested by the Machinists due to the unavailability of witnesses. Hearing was subsequently set for April 5, 1990 in Seattle. Scheduling conflicts resulted in the MEC substituting Commissioner Donald E. Kokjer as hearing examiner in the case. Briefs were timely filed by both parties.

THE ISSUE

The parties did not stipulated an issue. Was the foregoing work a violation of the WSF/Metal Trades Council agreement as clarified by the Memorandum of Understanding between WSF and IAM No. 79? If so, what is the remedy?

RELEVANT CONTRACT PROVISIONS

The 1987-1989 WSF/Metal Trades Council collective bargaining agreement expired on June 30, 1989. At the time of the filing of

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request for grievance arbitration the parties had not entered into a successor agreement. Pursuant to RCW 47.64.170(7) the terms and conditions of the 1987-89 collective bargaining agreement remain in effect until a successor agreement is concluded. IAM No. 79 is a signatory to the WSF/Metal Trades Council agreement.

Article XXVII of the contract in effect between employer and the union at the time of the incidents involved in the complaint provides:

Subject only to the limitations expressly stated in this Agreement, the Unions recognize that the Employer retains the exclusive right to manage its business, including but not limited to the right to determine the methods and means by which its operations are to be carried on, to direct the work force, and to conduct its operations in a safe and effective manner.

The agreement expressed herein in writing constitutes the complete and entire agreement between the parties and no oral agreement or statement shall add to or supersede any of its provisions.

POSITIONS OF THE PARTIES

IAM&AW

IAM&AW Lodge 79, the grievant, contends that prior to January 11, 1985 numerous grievances had been filed under the provisions of the labor agreement because of the vessel crews doing work that the crafts had normally done. In order to resolve these grievances, the parties agreed to enter into negotiation and develop a Memorandum of Understanding to clarify what work belonged to the craft people. From these negotiations came the January 11, 1985 Memorandum of Understanding. Ex. 4. It is grievant's position that this memorandum reserves work during a vessel's "normal lay-

up status at the Eagle Harbor facility and/or while a vessel is in normal lay-up at any other terminal" for Eagle Harbor craft personnel. Grievant further contends that the memo is clear and that it has always been the practice to assign such work to the crafts.

In the instant case, the grievant had manpower available at Eagle Harbor and could have done the work.

Washington State Ferries

WSF takes the position that the January 11, 1985 Memorandum of Understanding requires vessel engineers to make all work assignments. They contend that the actual assignment of work to engine room crews in these cases is fully supported by the "clear language" of the memo. It is the position of WSF that the crucial phrase "all work related to above" refers to the preceding sentence in the Memorandum of Understanding, not to the preceding paragraph. They further contend that if the parties had meant "the preceding paragraph" they would have said so.

When the MOU was signed on January 11, 1985, the Pipefitters were part of the Metal Trades bargaining unit. Ex. 2, pg. 17. The Pipefitters then split off from the larger Metal Trades bargaining unit and, as a separate unit signed a July 13, 1988 agreement with WSF which specifically states that "all work related to above refers to the preceding sentence, not the preceding paragraph. Ex. 11. This 1988 agreement specifically refers to itself as a "clarification". The "clarification" of the Pipefitters is directly relevant because its signatories were both parties to the original Memorandum of Understanding. Nothing could be more relevant to the disposition of the case than a clarification of the MOU language by the very parties who negotiated it.

WSF considers "normal lay-up" to be the periodic planned (scheduled) lay-up for maintenance work. None of the vessels involved in these grievances was in "normal lay-up" status.

FINDINGS OF FACT

1. The work involved on the occasions under dispute (Exhibit 1, which consists of four signed grievance forms charging violations of the Memorandum of Understanding filed by Eagle Harbor Machinists between 1-03-88 and 10-5-89) was performed on board the vessels tied up at the WSF shipyard located at Eagle Harbor. The Eagle Harbor facility is maintained by WSF for the purpose of doing repair work on WSF vessels which do not require drydocking in a commercial shipyard. The WSF shipyard has six tie-up slips for vessels (Transcript - TR 125), 83 permanent and 26 part-time employees (TR 126) organized into seven crafts, which now bargain as two units, the Metal Trades (which includes the machinists) and the pipefitters. TR 127.

2. The Memorandum of Understanding (Exhibit 4) dated January 11, 1985, delineates responsibilities for mechanical maintenance during "normal operations" and during "normal lay-up status," as follows:

This memo is written to clarify any misunderstanding that may exist between the vessel personnel and Eagle Harbor craft personnel, regarding work performed aboard ships.

The Staff Engineer has the authority to assign to his crew, any job function related to electrical, mechanical, pipe, sheetmetal, etc., he desires when the vessels are in normal operations.

Eagle Harbor craft personnel are only invited aboard vessels to perform work at masters or Staff Chief Engineer's request and are required to report to the Watch Officers prior to

performing any job orders. While vessels are in normal lay-up status at the Eagle Harbor Facility and/or while a vessel is in normal lay-up at any other terminal for purposes other than the vessels' operational tie-up, all work related to above will be performed by craft personnel under the supervision of the Watch Engineer. (Emphasis added.)

3. The definition of "normal lay-up status" does not include "operations tie-up." Ex.4. It is not a "night-time tie-up." TR 29, 30. It is not a tie-up related to an equipment failure or an emergency condition. TR 209. It is not a normal lay-up because a vessel is just tied up at Eagle Harbor. TR 31. This normal lay-up is the "scheduled" annual or bi-annual maintenance lay-up." TR 202, 205 and TR 77.
4. The Memorandum of Understanding dated January 11, 1985 pertains specifically to vessels "in normal lay-up status at the Eagle Harbor facility and/or while a vessel is in normal lay-up at any other terminal," (see Finding of Fact No. 3) and to vessels in "normal operations." (See Finding of Fact No. 2.) The vessels involved herein were in neither status. Therefore the Memorandum of Understanding was ambiguous as applied to these cases.
5. The incident on January 30, 1988 involved "changing out two cylinder head liner assemblies" (TR 208) on the MV KITSAP. 75, 208. The work was done by engineers and oilers on the vessel while the KITSAP was in the Eagle Harbor shipyard "for just the weekend" (TR 75) "parked there in between boat moves." TR 208.
6. Work of the type described in 5 above is normally done by engineers when vessels are not in normal lay-up status at Eagle Harbor. TR 223, 225.

7. The incidents on June 26, 1989 (Ex. 1) involved the overhaul of the number 1 and number 2 main engines on the MV KITSAP. Ex. 1, pgs. 2, 3. This work was done by the vessel engine room crew, while the Eagle Harbor personnel replaced the vessel's propulsion control system. TR 136. The MV KITSAP was at the Eagle Harbor Shipyard "in response to a failure, emergency condition." TR 209. The U.S. Coast Guard citation requiring the propulsion control system repair forbade the carriage of passengers pending a resolution to the control problem. TR 209. Complete engine overhauls have been done by both vessel engine crews and by Eagle Harbor Shipyard personnel. TR 214-215, 117, 118, 217, 219.
8. The incident on October 5, 1989, involved the overhaul of both main engines on the MV ISSAQUAH between September and October of 1989. Ex. 1 The work done on the ISSAQUAH was "pretty much identical" to that done on the KITSAP in Finding of Fact #7. TR 213. The ISSAQUAH was not in normal lay-up status but went to Eagle Harbor for propulsion control system work originally scheduled for a commercial shipyard. TR 213-14.
9. None of the vessels involved in the grievance now before this Commission was in "normal lay-up status" at the time the work involved in the grievances was accomplished by the vessel engineering crew. Nor were they in "normal operation."
10. The decision to assign work to the engine crew or to Eagle Harbor personnel has always rested with the Staff or Chief Engineer. This practice has been constant and consistent and "has never changed." TR 215.
11. Vessel engineers are legally responsible for the safety and maintenance of the vessel. TR 174. Failure to fulfill these responsibilities places an engineer's license at risk. TR 120, 132.

12. Work at issue performed by vessel engineering crews in the grievance did not displace any of the permanent craft employees at the Eagle Harbor facility.
13. Yard work requisitions are initiated by the Chief or Staff Engineer, approved by the Port Engineer, and designated for one of the crafts at Eagle Harbor. The requisition form assigns a time frame for completion and priority status of the work all determined by the originating vessel engineer. EX. 17.

CONCLUSIONS OF LAW

1. This matter is properly before the Marine Employees' Commission pursuant to RCW 47.64.280 (2).
2. The Memorandum of Understanding dated January 11, 1985 clearly refers to vessels in "normal lay-up status," and in "normal operations," but does not refer to vessels in "emergency lay-up." Finding No. 3
3. Vessel engineers are responsible, by Federal Regulation, for the mechanical condition and the safety of the vessel to which they are assigned. See 46 USC at 229; 46 CFR at 5.61 (b).
5. Because the Memorandum of Understanding is silent about emergency lay-up status, the Commission must examine past practice. Past practice clearly indicates that the Staff Chief Engineer assigns whatever work is to be done by his own crew or shipyard personnel through the "requisition" process.
6. Underlying these grievances are the conflicting interests of two different groups of employees represented by different unions. In the instant case only one of the employee groups

has filed. If the decision protects the conflicting interest of the group not a party to the action, then a final resolution to the dispute has been accomplished. Carey v. Westinghouse Elec. Corp, 84 S.Ct. 401, 55 LLRM 2042 (1964), cited in Elkouri and Elkouri, How Arbitration Works, 4th Ed. (1985), P. 250, 251.

The Marine Employees' Commission having read the entire record including the complaint, the proceedings, the issue and exhibits, the positions of the parties, the findings of fact and conclusions of law, now hereby enters the following decision and order:

DECISION AND ORDER

1. The work at issue in the grievance was properly assigned and performed.
2. The grievance is hereby dismissed.

Dated this 13th day of June, 1990.

MARINE EMPLOYEES' COMMISSION

/s/ DAN E. BOYD, Chairman

/s/ DONALD E. KOKJER, Commissioner

/s/ LOUIS O. STEWART, Commissioner