

STATE OF WASHINGTON
MARINE EMPLOYEES' COMMISSION
Evergreen Plaza Building
P.O. Box 40902
Olympia, Washington 98504-0902
(360) 586-6354
www.marineempcom.org

Friday, July 23, 2010 – 10:00 a.m.
Rainier Conference Room—Washington State Ferries, Seattle

MINUTES

Present: Members and staff - John R. Swanson, Chairman
Patricia A. Warren, Commissioner
Linda Hoverter, Special Assistant
Kathy Marshall, Administrator

Others - Benita Hyder, OPEIU
Karol Kingery, MEBA
Tim Saffle, Masters Mates & Pilots
David Slown,
Jay Ubelhart, IBU
Carrie Wood, Washington State Ferries Labor Relations

Office

The meeting was called to order at 10:02 a.m.

Moved, seconded and carried: to adopt the agenda distributed at the meeting.

Moved, second and carried: to approve the minutes of the June 25, 2010 meeting.

STATUS OF CASES

MEC Case No. 19-06

IBU v. WSF—Unfair labor practice complaint filed 1/27/06 in which IBU charges WSF with interference, domination, discouraging union membership, and refusal to bargain: 1) selective implementation of 01-03 collective bargaining agreement-LWOP; and 2) failure to abide by MEC Case 2-06 settlement. On 9/14/09, Examiner Swanson conducted the hearing (Count 2 of Case 17-08). Transcript was received 10/6/09. Briefs were timely filed—both received

11/13/09. On 12/8/09, MEC entered Decision and Order, Dec. No. 572-MEC. On 1/4/10, WSF filed a Petition for Judicial Review of MEC Decision No. 572. The case was assigned to Judge Paula Casey and a status conference scheduled for 4/9/10. On 2/22/10, WSF filed an Affidavit of Prejudice asking that the case be reassigned. The case has now been assigned to Judge Hicks. **On 7/23/10, AAG Slown reported that Judge Hicks sustained MEC's Order. The Judge was expected to sign a closing order on 7/23. WSF has not made decision on whether to seek appellate review.**

MEC Case No. 10-08

IBU v. WSF—Unfair labor practice complaint filed 12/21/07 in which IBU charges WSF with interference, refusal to bargain. Specifically IBU charges WSF with unilateral implementation of payroll system—pay discrepancies. On 3/27/09, AAG Slown reported the parties are still working with Payroll in Olympia to resolve the issue. On 4/24/09, Dennis Conklin reported there are some discrepancies on payment of sick leave and overtime. Paul Ganalon stated that several people from Payroll in Olympia are working on the issue with the parties. On 5/29/09, Paul Ganalon reported that WSF is still working with Payroll in Olympia to resolve the problems and will give IBU an update. On 6/26/09, Jay Ubelhart, IBU, reported there are still problems to be worked out. On 7/24/09, Jay Ubelhart reported that some new problems developed in July. On 9/25/09, Paul Ganalon reported WSF is still working to resolve some problems. On 10/23/09, Jay Ubelhart reported the parties have not met recently on this issue. IBU will discuss the case and decide what to do to move it along. As of 2/26/10, IBU reported that the parties have not gotten back to this issue yet. **On 4/23/10, Jerry Holder and Dennis Conklin noted that the parties need to meet again to determine if any issues remain unresolved.**

MEC Case No. 16-08

MEBA v. WSF—On 7/24/09, MEC entered Decision and Award, Dec. No. 563-MEC. On 8/12/09, WSF filed a Petition for Reconsideration of Attorney's Fees. MEC received MEBA's Response to the Petition on 8/20/09. **On 9/8/09, MEC entered Order Denying WSF's Petition for Reconsideration of Attorney's Fees, Dec. No. 563-A MEC.** On 10/8/09, WSF filed a petition with Thurston County Superior Court for review of MEC's decision awarding attorney's fees. On 1/8/10, a status conference was held on the petition for review. On 1/22/10, Jeff Duncan reported that members have been paid the retro portion of the award through 8/31/09. The parties continue discussions to resolve how the issue will be handled going forward. MEBA and WSF last met for this purpose on 7/7/10. **WSF filed its opening brief with the court on 7/13/10. Briefs of Respondents MEBA and MEC are due 8/2/10.**

MEC Case No. 17-08

IBU v. WSF—Unfair labor practice complaint filed 4/4/08 in which IBU charges WSF with interference and refusal to bargain. Specifically IBU charges WSF with failure to honor the interim arbitrator's award and MEC settlement regarding retroactive vacation. On 9/14/09, Examiner Swanson conducted the hearing (Count 2 of Case 17-08). Transcript was received 10/6/09. Briefs were timely filed—both received 11/13/09. **On 12/8/09, MEC entered Decision and Order, Dec. No. 572-MEC. On 1/4/10, WSF filed a Petition for Judicial Review of MEC Decision No. 572.** The case was assigned to Judge Paula Casey and a status conference was scheduled for 4/9/10. On 2/22/10, WSF filed an Affidavit of Prejudice with the Court asking that the case be reassigned. The case has now been reassigned to Judge Hicks. **On 7/23/10, AAG Slown reported that Judge Hicks sustained MEC's Order. The**

Judge was expected to sign a closing order on 7/23. WSF has not made decision on whether to seek appellate review.

MEC Case No. 21-08

IBU v. WSF—Unfair labor practice complaint filed 6/20/08 and amended 6/23/08 and again 6/26/08 in which IBU charges WSF with interference and refusal to bargain. Specifically IBU charges WSF with a unilateral change in the working conditions of unlicensed deck department employees (filling open assignments for Summer 2008). The parties reached agreement on issues 1 and 2; IBU provided MEC with a copy on 10/24/08. During MEC settlement on 11/7/08, the parties reached agreement on a third issue. On 1/7/09, WSF filed its Answer to the Amended Complaint. On 1/21/09, the parties gathered for the hearing, but it did not proceed. IBU and WSF spent some time discussing the issue. They agreed to convert the 2/6/09 hearing in Consolidated Cases 19-06 and 17-08 to another settlement conference (without mediator) for Case 21-08. Hearing was continued to 3/3/09, but later cancelled due to IBU Counsel's unavailability. On 9/25/09, IBU requested that a hearing be scheduled on the issue of assignment of AB work. On 12/4/09, Chairman Swanson reminded the parties that their "Dispatch Rules" settlement provides for resolution of related disputes such as this one through private arbitration with Liz Ford. AAG Slown will discuss this with IBU Counsel. On 3/26/10, AAG Slown reported he left this with Rob Lavitt and has heard nothing more. On 4/23/10, AAG Slown reported that counsel agree the expedited dispute process is appropriate for resolving the dispute, but have not scheduled with Arbitrator Liz Ford yet. On 5/21/10, AAG Slown suggested that the complaint could be withdrawn or dismissed since the parties have agreed to take it to Liz Ford for arbitration. (Counsel will discuss.) **On 7/23/10, the parties reported they have not yet found time to schedule an arbitration date with Ms. Ford. IBU is not ready to withdraw Case 21-08 at this time.**

MEC Case No. 15-09

IBU v. WSF—Unfair labor practice complaint filed 5/29/09 in which IBU charges WSF with interference and discouraging union membership. Specifically IBU charges WSF with violation of Dec. 518-A MEC (failure to hire R. Jackson as On-call Traffic Attendant). On 2/16/10, Examiner Warren conducted the hearing. MEC received the transcript on 3/5/10. On 4/6/10, IBU Counsel requested the 4/9 brief filing date be extended one week; WSF did not object. Examiner Warren granted the request. Briefs were timely filed—both received on 4/16/10. **Decision pending.**

MEC Case No. 18-09

IBU v. WSF—Grievance filed 6/15/09 in which IBU alleges WSF filled a temporary vacancy in a year-around position. Commissioner Cox has been assigned as Arbitrator. On 7/30/09, the parties participated in a settlement conference with Chairman Swanson, but were unable to resolve the issue. On 8/31/09, IBU Counsel requested the 9/9 hearing be continued; grievant was not available on that date. WSF Counsel did not object. Arbitrator cancelled the 9/9 hearing date, rescheduling for 1/22/10. Due to an unexpected conflict, the Arbitrator had to cancel the 1/22/10 hearing date. The hearing was rescheduled to 3/8/10. On 2/19/10, IBU requested the 3/8 hearing be continued because the Union's primary witness was not available. WSF did not object. Arbitrator Cox granted the request. On 3/24/10, IBU filed an amendment to Case 18-09, requesting that two additional similar grievances be arbitrated with 18-09, as agreed to by the parties. **Arbitrator Cox conducted the hearing on 7/21/10. Transcript is due 8/13/10 and briefs are to be simultaneously mailed on 9/17/10.**

MEC Case No. 2-10

IBU v. WSF—Unfair labor practice complaint filed 10/2/09 in which IBU charges WSF with domination, discouraging union membership, refusal to bargain. Specifically IBU alleges WSF has implemented a new policy and procedure covering employees' accumulation of compensatory time for holidays and overtime (Rules 10 and 24), without negotiating with the Union. On 1/19/10, the IBU and WSF participated in a settlement conference, but were unable to resolve the issue. MEC found it necessary to cancel the 2/16/10 hearing date for Case 2-10 and use it to reschedule the hearing in Case 15-09. The 2/2/10 Answer filing deadline was also cancelled. On 6/10/10, WSF filed its Answer to the Complaint. Commissioner Cox has been reassigned as Examiner. On 6/17/10, IBU Counsel requested the 6/24/10 hearing be continued. An unavoidable conflict arose for two key witnesses. WSF did not oppose the request. Examiner Cox has cancelled the 6/24/10 hearing date. **The hearing has been continued to 12/6/10.**

MEC Case No. 3-10

IBU v. WSF—~~Unfair labor practice complaint~~ (converted to a grievance) filed 10/6/09 in which IBU charges WSF with discouraging union membership, refusal to bargain. Specifically IBU alleges WSF unilaterally implemented a new payroll overpayment procedure. By phone on 3/2/10, the parties notified the MEC that they had agreed to convert this matter to a grievance. **On 4/21/10, Arbitrator Cox conducted the hearing. MEC received the transcript on 5/4/10. Briefs were timely filed—both IBU's and WSF's were received on 7/9/10. Decision pending.**

MEC Case No. 4-10

MEBA v. WSF—Unfair labor practice complaint filed 10/30/09 in which MEBA charges WSF with interference, discouraging union membership, refusal to bargain. Specifically MEBA alleges WSF made a SCE schedule change while in shipyard. **On 6/24/10, MEC received a withdrawal of this matter from MEBA, along with a signed copy of the parties' settlement agreement. On 6/25/10, MEC entered Order Closing Settled Complaint, Decision No. 583-MEC.**

MEC Case No. 5-10

IBU v. WSF—Unfair labor practice complaint filed 11/5/09 in which IBU charges WSF with interference, discouraging union membership, refusal to bargain. Specifically IBU alleged WSF failed to provide information related to fact-finding meetings. During a 6/28/10 settlement conference with Chairman Swanson, the parties resolved the issue. WSF provided MEC with a copy of the signed settlement agreement which includes IBU's withdrawal of the complaint. **On 7/19/10, MEC entered Order Closing Settled Complaint, Decision No. 584-MEC.**

MEC Case No. 7-10

IBU v. WSF—Unfair labor practice complaint filed 11/5/09 in which IBU charges WSF with interference and refusal to bargain. Specifically IBU alleges that WSF has failed to abide by Rule 3.04/single day vacation hours. On 3/12/10, the parties participated in a settlement conference with Commissioner Cox. They were unable to reach agreement on the issue. Due to a scheduling conflict on 5/4/10, Hearing Examiner Warren cancelled the 6/9/10 hearing and 5/26/10 answer deadline. On 6/16/10, WSF filed its Answer to the Complaint. **The 6/30/10 hearing was cancelled due to AAG Slown being ill. The hearing has been rescheduled for 12/16/10.**

MEC Case No. 8-10

MM&P v. WSF—Unfair labor practice complaint filed 12/21/09 in which MM&P charges WSF with refusal to bargain. Specifically IBU alleges WSF failed to adhere to the terms of the memorandum of understanding which provided for an agreement to negotiate and arbitrate a replacement for the Dispatch By Seniority program if either party elected to terminate that agreement. On 4/1/10, the parties requested the 4/26 settlement conference be postponed; they are waiting for a related interest arbitration decision to issue. On 5/12/10, the parties participated in a settlement conference with Chairman Swanson; the issue was not resolved. (The arbitration decision has not been issued yet.) On 6/3/10, the parties jointly requested the 6/17 hearing be postponed while the parties await an interest arbitration decision, expected out by 6/18. Hearing Examiner Cox granted the request. The 6/17 hearing was cancelled, as well as the 6/3 answer filing date. The parties received Arbitrator Ford's decision on 6/20/10; a petition for reconsideration has been filed. **On 7/23/10, the parties reported that Arbitrator Ford denied the Petition for Reconsideration and Motion to Stay Implementation of her Award. MM&P and WSF plan to discuss implementation of the interim process contained in the Award.**

MEC Case No. 9-10

IBU v. WSF (Keith Hunt)—Grievance filed 1/27/10 in which IBU alleges WSF failed to pay Keith Hunt travel time and mileage for days worked in Anacortes in the summer of 2009. Commissioner Cox has been assigned as Arbitrator. On 3/12/10, the parties participated in a settlement conference with Commissioner Cox. On 5/21/10, Jay Ubelhart reported that he communicated with the grievant and IBU intends to proceed to hearing. **On 7/12/10, Jerry Holder requested the 7/16/10 hearing be continued, due to a problem with a witness. IBU did not object. Arbitrator Swanson granted the request; the 7/16 hearing was cancelled. The hearing has been rescheduled for 1/6/11.**

MEC Case No. 11-10

Jonathan Pearson v. WSF—Unfair labor practice complaint filed 2/12/10 in which Mr. Pearson charges WSF with interference, domination, discouraging union membership, discrimination, and refusal to bargain related to Mr. Pearson's termination. Initially, the Commission decided to hold this matter in abeyance until Case 12-10 was resolved. However, the parties have agreed to participate in a joint settlement conference for the two cases. **A joint settlement conference is scheduled for Case 12-10 and 11-10 on 9/28/10.**

MEC Case No. 12-10

Jonathan Pearson v. MM&P—Unfair labor practice complaint filed 2/16/10 in which Mr. Pearson charges WSF with restraint, coercion; causing employer discrimination; refusal to bargain/failure to represent (Termination). On 5/12/10, the parties participated in a settlement conference with Chairman Swanson. The matter was not resolved; however Mr. Pearson and MM&P are in the process of exchanging additional information. MEC received MM&P's Answer to the Complaint on 5/20/10. On 5/21/10, MEC received a joint request from MM&P and Mr. Pearson to postpone the 6/1 hearing, consolidate this case with Case 11-10 and schedule another settlement conference. WSF objected to consolidation. Hearing Examiner Warren has cancelled the 6/1/10 hearing. **A joint settlement conference is scheduled for Case 12-10 and 11-10 on 9/28/10.**

MEC Case No. 13-10

OPEIU Local 8 v. WSF—Petition for Clarification of Existing Bargaining Unit, specifically vessel work order manager position. On 4/23/10, AAG Slown noted that because the position in question is now represented by IFPTE Local 17, that union should be included as a necessary party. MEC contacted IFPTE Local 17. Vince Oliveri will represent Local 17 in the MEC proceedings. The 7/28/10 hearing date has been cancelled as Mr. Oliveri is not available. On 5/21/10, AAG Slown reported that he recently learned that some duties now in the Vessel Work Order Manager position were originally from a position represented by WFSE a year or two ago. He suggested that MEC may want to contact that union about inclusion in the case. MEC staff contacted the representative for WFSE. As of 6/2/10, WFSE had not determined whether or not it wanted to be involved. On 6/7/10, OPEIU, IFPTE Local 17 and WSF participated in a settlement conference with Chairman Swanson. Local 17 and OPEIU are still discussing the issue. DOP is to provide them further information. **On 7/23/10, OPEIU requested the 8/16/10 hearing be postponed. Neither WSF nor Local 17 objected. Hearing Officer Cox granted the request. The 8/16/10 hearing has been cancelled. MEC will contact the parties in the near future to reschedule.**

MEC Case No. 14-10

MEBA v. WSF—Unfair labor practice complaint filed 3/17/10 in which MEBA charges WSF with refusal to bargain. Specifically MEBA alleges WSF unilaterally implemented a Key Box System without notice to or bargaining with the Union. MEBA's complaint included notice to the Commission that it intends to file a motion for temporary relief. On 4/12/10, the parties requested that the 4/15/10 settlement conference be cancelled. WSF needs more time to provide information MEBA requested. The parties negotiated the key box issue on 4/23 with another matter. Mediator Swanson cancelled the 4/15/10 settlement conference for Case 14-10. **As of 7/23/10, the parties are continuing discussions on this issue.**

MEC Case 15-10

MEBA v. WSF—Unfair labor practice complaint filed 3/26/10 in which MEBA charges WSF with refusal to bargain. Specifically MEBA alleges WSF has decided that unlicensed engine room personnel—Oilers and Wipers—should not be allowed to have parking spaces at the Bainbridge Island Terminal. The parties participated in a settlement conference with Mediator Cox, but were unable to resolve the issue. They intend to continue discussing. **During MEC's 7/23/10 public meeting, Karol Kingery, MEBA, requested the 9/2 hearing be converted to a settlement conference. AAG Slown did not object. Hearing Examiner Warren granted the request. The 9/2 hearing and 8/19 date for WSF to answer the complaint have been cancelled. A settlement conference is scheduled for 9/2/10.**

MEC Case No. 16-10

IBU v. WSF (Pascual)—Grievance filed 4/19/10 in which IBU alleges WSF restricted Elmer Pascual's bumping/bidding on OS positions, in violation of the contract. On 4/26/10, MEC received a copy of a letter from Jerry Holder to IBU asserting that the request for arbitration is untimely. On 6/15/10, IBU responded to Mr. Holder's letter. **A settlement conference is scheduled for 9/15/10, the hearing for 10/14/10.**

MEC Case No. 17-10

IBU v. WSF (Hannam)—Grievance filed 4/20/10 in which IBU alleges WSF did not pay Hannam overtime for working during her vacation. On 4/26/10, MEC received a copy of a letter from Jerry Holder to IBU asserting that the request for arbitration is untimely. On

6/15/10, IBU responded to Mr. Holder's letter. **A settlement conference is scheduled for 9/15/10, the hearing for 11/2/10.**

MEC Case No. 19-10

Christopher Johnson v. MEBA & WSF—Unfair labor practice complaint filed 5/17/10 in which Mr. Johnson charges breach of duty of fair representation/discipline. Specifically Mr. Johnson alleges MEBA acted with restraint and coercion and WSF interfered. **A settlement conference is scheduled for 9/30/10.**

STATUS OF COLLECTIVE BARGAINING 2011-2013

FASPAA	Negotiations began in May. The parties are scheduled for interest arbitration on 8/11 and 8/12 before Arbitrator Sylvia Skratek.
IBU	Negotiations began in February. IBU declared impasse on 6/9/10. On 6/15/10, Jerry Holder requested a mediator be appointed. MEC contacted the FMCS. The parties met with appointed mediator, Gary Hattal, on 7/7 and 7/9/10. IBU and WSF remain at impasse. On 7/12/10, IBU submitted its list of remaining disputed issues/final proposals to MEC. WSF filed its list/proposals on 7/16/10. On 7/22/10, the Commission issued a Certification of Issues for Interest Arbitration . The parties are in dispute over the impasse items. Interest arbitration is set for 8/2-8/6/10 before Arbitrator Sylvia Skratek.
MEBA	Negotiations began in June. The parties have reached a tentative agreement on a few items; next session is 8/4/10. MEBA counsel advised the MEC that the parties have agreed to exchange final proposals on impasse issues in arbitration on 8/10/10. Interest arbitration is scheduled 8/17-8/20/10 before Arbitrator Elizabeth Ford.
MM&P	Negotiations began in April. As of 7/20/10, the parties are at impasse. Interest arbitration is scheduled for 8/16/10 before Arbitrator Timothy Williams.
Oper. Watch Superv's	Negotiations began in February. Interest arbitration is scheduled for 8/16/10 before Arbitrator Timothy Williams.
Metal Trades	The parties have reached agreement.
OPEIU	Negotiations began in May.
SEIU	Negotiations began in June.

OFM/LRO Negotiator Jerry Holder: IBU, MM&P, Operations Watch Supervisors, Metal Trades
OFM/LRO Negotiator Glenn Frye: FASPAA, MEBA, OPEIU, SEIU

ADMINISTRATIVE REPORT

MEC Case Statistics for FY 10

Linda Hoverter prepared and presented FY 10 case statistics for the Marine Employees' Commission (attached at the end of this document.)

ESSB 6503 – Furlough Bill

On the afternoon of July 7 the MEC office was closed in compliance with ESSB 6503. The next furlough afternoon is August 4, 2010.

Essential Services Information

The Office of Financial Management requested all agencies provide information on essential services, as part of the fundamental re-examination of agency activities as the budget is reworked. Eight questions were asked:

Is this activity an essential service?

Does state government have to perform the activity, or can it be provided by others?

Can the activity be eliminated or delayed in recessionary times?

Does the activity need to be paid for with state general funds, versus a user fee?

Are there federal funds or other funds available to support this activity?

Are there more cost-effective, efficient ways to perform the activity?

Can the activity be the subject of a performance contract?

Can the activity be the subject of a performance incentive?

Responses must be provided by August 2, 2010. Each answer can have no more than 256 **characters** (not words), including punctuation. It is very difficult to emphasize everything necessary in just 256 characters.

Yearly Reviews

During July MEC has completed the annual review of its continuity of operations/pandemic plan as well as the annual risk management update.

Next meeting:

*Friday, August 27, 2010, 10:00 a.m., Rainier Conference Room, 4th Floor,
Washington State Ferries Offices, 2901 3rd Avenue, Seattle*

MEC CASE STATISTICS FOR FY 10

7/1/09 through 6/30/10

Cases pending at end of FY 09..... 20

Number of cases filed with the MEC in FY 10..... 20

TYPE OF CASES FILED	NUMBER FILED	PERCENT OF TOTAL
Unfair Labor Practice	15	75%
Grievance Arbitration	4	20%
Unit Clarification Petition	1	5%

Cases closed by the MEC in FY 10..... 21

TYPE OF CASES CLOSED	NUMBER CLOSED	PERCENT OF TOTAL
Unfair Labor Practice	15	71%
Grievance Arbitration	5	24%
Unit Clarification Petition	1	5%

DISPOSITION OF CLOSED CASES:

Cases where agreement reached in

MEC Commissioner mediation 10

Cases withdrawn after MEC mediation 1

Cases dismissed..... 2

Cases where agreement reached prior to MEC mediation..... 4

Cases decided on the merits (hearing held) 4

PERCENT OF DISPUTES RESOLVED THROUGH MEC

COMMISSIONER MEDIATION: *FY 10 AVERAGE = 52%
(11 of 21 cases)

***MEC's performance goal for FY 10 was 75%.**

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Olympia, Washington 98504-0902
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Friday, September 24, 2010 – 10:00 a.m.
Rainier Conference Room—Washington State Ferries, Seattle

MINUTES

Present: Members and staff -	John R. Swanson, Chairman Patricia A. Warren, Commissioner John M. Cox, Commissioner Linda Hoverter, Special Assistant Kathy Marshall, Administrator
Others	- Jeff Duncan, Marine Engineers Beneficial Association Karol Kingery, Marine Engineers Beneficial Association Leah Maurseth, Washington State Ferries Labor Relations
Office	Jim McCray, Marine Engineers Beneficial Association Valarie Peaphon, Office & Professional Employees International
Union	
Ferries	David Slown, Assistant Attorney General – Washington State Harry Thompson, Puget Sound Metal Trades/IBEW 46 Carrie Wood, Washington State Ferries Labor Relations Office

The meeting was called to order at 10:05 a.m.

Moved, seconded and carried: to adopt the agenda distributed at the meeting.

Moved, second and carried: to approve the minutes of the July 23, 2010 meeting.

STATUS OF CASES

MEC Case No. 10-08

IBU v. WSF—Unfair labor practice complaint filed 12/21/07 in which IBU charges WSF with interference, refusal to bargain. Specifically IBU charges WSF with unilateral implementation of payroll system—pay discrepancies. On 8/19/10, IBU withdrew Case 10-08. **On 9/8/10, MEC entered Order Closing Withdrawn Complaint, Dec. No. 587-MEC.**

MEC Case No. 16-08

MEBA v. WSF—On 10/8/09, WSF filed a petition with Thurston County Superior Court for review of MEC's decision awarding attorney's fees. On 1/8/10, a status conference was held on the petition for review. WSF filed its opening brief with the court on 7/13/10. Briefs of Respondents MEBA and MEC were filed on 8/2/10. WSF filed a Reply Brief on 8/12. **At the conclusion of the review hearing on 8/27/10, Judge McPhee affirmed MEC's decision. On 9/22/10, WSF filed a Notice of Appeal to the Court of Appeals, Division II.**

On 1/22/10, Jeff Duncan reported that members have been paid the retro portion of the award through 8/31/09. He reported on 9/24/10 that the parties continue discussions to resolve how the issue will be handled going forward.

MEC Case No. 21-08

IBU v. WSF—Unfair labor practice complaint filed 6/20/08 and amended 6/23/08 and again 6/26/08 in which IBU charges WSF with interference and refusal to bargain. Specifically IBU charges WSF with a unilateral change in the working conditions of unlicensed deck department employees (filling open assignments for Summer 2008). The parties reached agreement on issues 1 and 2; IBU provided MEC with a copy on 10/24/08. During MEC settlement on 11/7/08, the parties reached agreement on a third issue. On 1/7/09, WSF filed its Answer to the Amended Complaint. On 1/21/09, the parties gathered for the hearing, but it did not proceed. IBU and WSF spent some time discussing the issue. They agreed to convert the 2/6/09 hearing in Consolidated Cases 19-06 and 17-08 to another settlement conference (without mediator) for Case 21-08. Hearing was continued to 3/3/09, but later cancelled due to IBU Counsel's unavailability. On 9/25/09, IBU requested that a hearing be scheduled on the issue of assignment of AB work. On 12/4/09, Chairman Swanson reminded the parties that their "Dispatch Rules" settlement provides for resolution of related disputes such as this one through private arbitration with Liz Ford. On 4/23/10, AAG Slown reported that counsel agree the expedited dispute process is appropriate for resolving the dispute, but have not scheduled with Arbitrator Liz Ford yet. On 5/21/10, AAG Slown suggested that the complaint could be withdrawn or dismissed since the parties have agreed to take it to Liz Ford for arbitration. (Counsel will discuss.) **On 7/23/10, the parties reported they have not yet found time to schedule an arbitration date with Ms. Ford. IBU is not ready to withdraw Case 21-08 at this time.**

MEC Case No. 15-09

IBU v. WSF—Unfair labor practice complaint filed 5/29/09 in which IBU charges WSF with interference and discouraging union membership. Specifically IBU charges WSF with violation of Dec. 518-A MEC (failure to hire R. Jackson as On-call Traffic Attendant). On 2/16/10, Examiner Warren conducted the hearing. MEC received the transcript on 3/5/10. On 4/6/10, IBU Counsel requested the 4/9 brief filing date be extended one week; WSF did not

object. Examiner Warren granted the request. Briefs were timely filed—both received on 4/16/10. **On July 23, 2010, MEC served Decision and Order, No. 585-MEC.**

MEC Case No. 18-09

IBU v. WSF—Grievance filed 6/15/09 in which IBU alleges WSF filled a temporary vacancy in a year-around position. Commissioner Cox was assigned as Arbitrator. On 3/24/10, IBU filed an amendment to Case 18-09, requesting that two additional similar grievances be arbitrated with 18-09, as agreed to by the parties. **Arbitrator Cox conducted the hearing on 7/21/10. MEC received the transcript on 8/16/10. On 9/15/10, WSF requested the 9/17 brief filing date be extended to 9/24; IBU did not object. Arbitrator Cox granted the request. Briefs are to be simultaneously mailed on 9/24/10.**

MEC Case No. 2-10

IBU v. WSF—Unfair labor practice complaint filed 10/2/09 in which IBU charges WSF with domination, discouraging union membership, refusal to bargain. Specifically IBU alleges WSF has implemented a new policy and procedure covering employees' accumulation of compensatory time for holidays and overtime (Rules 10 and 24), without negotiating with the Union. On 1/19/10, the IBU and WSF participated in a settlement conference, but were unable to resolve the issue. MEC found it necessary to cancel the 2/16/10 hearing date for Case 2-10 and use it to reschedule the hearing in Case 15-09. The 2/2/10 Answer filing deadline was also cancelled. On 6/10/10, WSF filed its Answer to the Complaint. Commissioner Cox was reassigned as Examiner. On 6/17/10, IBU Counsel requested the 6/24/10 hearing be continued. An unavoidable conflict arose for two key witnesses. WSF did not oppose the request. Examiner Cox cancelled the 6/24/10 hearing date. **The hearing has been continued to 12/6/10.**

MEC Case No. 3-10

IBU v. WSF—~~Unfair labor practice complaint~~ (converted to a grievance) filed 10/6/09 in which IBU charges WSF with discouraging union membership, refusal to bargain. Specifically IBU alleges WSF unilaterally implemented a new payroll overpayment procedure. By phone on 3/2/10, the parties notified the MEC that they had agreed to convert this matter to a grievance. On 4/21/10, Arbitrator Cox conducted the hearing. MEC received the transcript on 5/4/10. Briefs were timely filed—both IBU's and WSF's were received on 7/9/10. **On 9/10/10, MEC entered Decision and Award, Dec. No. 589-MEC.**

MEC Case No. 7-10

IBU v. WSF—Unfair labor practice complaint filed 11/5/09 in which IBU charges WSF with interference and refusal to bargain. Specifically IBU alleges that WSF has failed to abide by Rule 3.04/single day vacation hours. On 3/12/10, the parties participated in a settlement conference with Commissioner Cox. They were unable to reach agreement on the issue. Due to a scheduling conflict on 5/4/10, Hearing Examiner Warren cancelled the 6/9/10 hearing and 5/26/10 answer deadline. On 6/16/10, WSF filed its Answer to the Complaint. The 6/30/10 hearing was cancelled due to AAG Slown's illness. **The hearing has been rescheduled for 12/16/10.**

MEC Case No. 8-10

MM&P v. WSF—Unfair labor practice complaint filed 12/21/09 in which MM&P charges WSF with refusal to bargain. Specifically IBU alleges WSF failed to adhere to the terms of the memorandum of understanding which provided for an agreement to negotiate and arbitrate a

replacement for the Dispatch By Seniority program if either party elected to terminate that agreement. On 5/12/10, the parties participated in a settlement conference with Chairman Swanson; the issue was not resolved. (The arbitration decision has not been issued yet.) On 6/3/10, the parties jointly requested the 6/17 hearing be postponed while the parties await an interest arbitration decision, expected out by 6/18. Hearing Examiner Cox granted the request. The 6/17 hearing was cancelled, as well as the 6/3 answer filing date. The parties received Arbitrator Ford's decision on 6/20/10; a petition for reconsideration has been filed. On 7/23/10, the parties reported that Arbitrator Ford denied the Petition for Reconsideration and Motion to Stay Implementation of her Award. MM&P and WSF plan to discuss implementation of the interim process contained in the Award. **On 9/24/10, AAG Slown reported the interim process goes into effect with the fall schedule. The parties are scheduled to bargain this issue during the week of 9/27.**

MEC Case No. 9-10

IBU v. WSF (Keith Hunt)—Grievance filed 1/27/10 in which IBU alleges WSF failed to pay Keith Hunt travel time and mileage for days worked in Anacortes in the summer of 2009. On 3/12/10, the parties participated in a settlement conference with Commissioner Cox. On 5/21/10, Jay Ubelhart reported that he communicated with the grievant and IBU intends to proceed to hearing. On 7/12/10, Jerry Holder requested the 7/16/10 hearing be continued, due to a problem with a witness. IBU did not object. Arbitrator Swanson granted the request; the 7/16 hearing was cancelled. **The hearing has been rescheduled for 1/6/11.**

MEC Case No. 11-10

Jonathan Pearson v. WSF—Unfair labor practice complaint filed 2/12/10 in which Mr. Pearson charges WSF with interference, domination, discouraging union membership, discrimination, and refusal to bargain related to Mr. Pearson's termination. Initially, the Commission decided to hold this matter in abeyance until Case 12-10 was resolved. However, the parties agreed to participate in a joint settlement conference for the two cases. **A joint settlement conference is scheduled for Case 12-10 and 11-10 on 9/28/10.**

MEC Case No. 12-10

Jonathan Pearson v. MM&P—Unfair labor practice complaint filed 2/16/10 in which Mr. Pearson charges WSF with restraint, coercion; causing employer discrimination; refusal to bargain/failure to represent (Termination). On 5/12/10, the parties participated in a settlement conference with Chairman Swanson. The matter was not resolved; however Mr. Pearson and MM&P are in the process of exchanging additional information. MEC received MM&P's Answer to the Complaint on 5/20/10. On 5/21/10, MEC received a joint request from MM&P and Mr. Pearson to postpone the 6/1 hearing, consolidate this case with Case 11-10 and schedule another settlement conference. WSF objected to consolidation. Hearing Examiner Warren has cancelled the 6/1/10 hearing. **A joint settlement conference is scheduled for Case 12-10 and 11-10 on 9/28/10.**

MEC Case No. 13-10

OPEIU Local 8 v. WSF—Petition for Clarification of Existing Bargaining Unit, specifically vessel work order manager position. On 4/23/10, AAG Slown noted that because the position in question is now represented by IFPTE Local 17, that union should be included as a necessary party. MEC contacted IFPTE Local 17. Vince Oliveri will represent Local 17 in the MEC proceedings. The 7/28/10 hearing date was cancelled as Mr. Oliveri was not available. On 5/21/10, AAG Slown reported that he recently learned that some duties now in the Vessel

Work Order Manager position were originally from a position represented by WFSE a year or two ago. He suggested that MEC may want to contact that union about inclusion in the case. MEC staff contacted the representative for WFSE. As of 6/2/10, WFSE had not determined whether or not it wanted to be involved. On 6/7/10, OPEIU, IFPTE Local 17 and WSF participated in a settlement conference with Chairman Swanson. Local 17 and OPEIU are still discussing the issue. DOP is to provide them further information. On 7/23/10, OPEIU requested the 8/16/10 hearing be postponed. Neither WSF nor Local 17 objected. Hearing Officer Cox granted the request. The 8/16/10 hearing has been cancelled. **The hearing has been rescheduled for 11/16/10.**

MEC Case No. 14-10

MEBA v. WSF—Unfair labor practice complaint filed 3/17/10 in which MEBA charges WSF with refusal to bargain. Specifically MEBA alleges WSF unilaterally implemented a Key Box System without notice to or bargaining with the Union. MEBA's complaint included notice to the Commission that it intends to file a motion for temporary relief. On 4/12/10, the parties requested that the 4/15/10 settlement conference be cancelled. WSF needs more time to provide information MEBA requested. The parties negotiated the key box issue on 4/23 with another matter. Mediator Swanson cancelled the 4/15/10 settlement conference for Case 14-10. **Reports on 7/23/10 and 9/24/10 indicate the parties are continuing discussions on this issue.**

MEC Case 15-10

MEBA v. WSF—Unfair labor practice complaint filed 3/26/10 in which MEBA charges WSF with refusal to bargain. Specifically MEBA alleges WSF has decided that unlicensed engine room personnel—Oilers and Wipers—should not be allowed to have parking spaces at the Bainbridge Island Terminal. On 7/14/10, the parties participated in a settlement conference with Mediator Cox, but were unable to resolve the issue. They intend to continue discussing. During MEC's 7/23/10 public meeting, Karol Kingery, MEBA, requested the 9/2 hearing be converted to a settlement conference. AAG Slown did not object. Hearing Examiner Warren granted the request. The 9/2 hearing and 8/19 date for WSF to answer the complaint have been cancelled. **On 9/2/10, the parties engaged in further settlement discussions with Mediator Cox. The matter is not yet resolved; however MEBA intends to communicate with IBU regarding a possible agreement for use of a parking space. As of 9/24/10, MEBA and IBU are still discussing.**

MEC Case No. 16-10

IBU v. WSF (Pascual)—Grievance filed 4/19/10 in which IBU alleges WSF restricted Elmer Pascual's bumping/bidding on OS positions, in violation of the contract. On 4/26/10, MEC received a copy of a letter from Jerry Holder to IBU asserting that the request for arbitration is untimely. On 6/15/10, IBU responded to Mr. Holder's letter. On 9/15/10, the parties participated in a settlement conference with Mediator Cox; they made significant progress. They agreed to use the 10/14 hearing date for a settlement conference in Case 17-10. MEC will reschedule another settlement conference and hearing date for Case 16-10. **The settlement conference has been continued to 10/13/10 and the hearing to 12/13/10.**

MEC Case No. 17-10

IBU v. WSF (Hannam)—Grievance filed 4/20/10 in which IBU alleges WSF did not pay Hannam overtime for working during her vacation. On 4/26/10, MEC received a copy of a

letter from Jerry Holder to IBU asserting that the request for arbitration is untimely. On 6/15/10, IBU responded to Mr. Holder's letter. This matter was scheduled for settlement conference on 9/15/10 along with Case 16-10. Because discussion of 16-10 took most of the day, the parties ran out of time to discuss Case 17-10. IBU and WSF agreed to continue the 17-10 settlement conference to 10/14/10 (formerly hearing date in 16-10). **The settlement conference is continued to 10/14/10; the hearing remains scheduled for 11/2/10.**

MEC Case No. 19-10

Christopher Johnson v. MEBA & WSF—Unfair labor practice complaint filed 5/17/10 in which Mr. Johnson charges breach of duty of fair representation/discipline. Specifically Mr. Johnson alleges MEBA acted with restraint and coercion and WSF interfered. **A settlement conference is scheduled for 9/30/10.**

MEC Case No. 1-11

IBU v. WSF—Unfair labor practice complaint filed 9/13/10 in which IBU charges WSF interference, refusal to bargain. Specifically IBU charges WSF with change in deck department standing orders. Forwarded to Commissioners for review. **On 9/22/10, Dennis Conklin, IBU, notified MEC that the parties have reached an agreement on this matter; IBU withdrew the complaint.**

MEC Case No. 2-11

IBU v. WSF—Grievance filed 9/14/10 in which IBU alleges WSF reduced OS relief positions. **Settlement conference and hearing are to be scheduled.**

MEC Case No. 3-11

IBU v. WSF—Grievance filed 9/14/10 in which IBU alleges WSF violated the 9/09 elimination of touring watches MOU (limitation on flexing shifts). **Settlement conference and hearing are to be scheduled.**

STATUS OF COLLECTIVE BARGAINING 2011-2013

- FASPAA**..... Negotiations began in May. The parties were scheduled for interest arbitration on 8/11 and 8/12 before Arbitrator Sylvia Skratek. On 8/3/10, MEC received the lists of disputed issues/final proposals from the parties. On 8/6, MEC issued a Certification of Issues for Interest Arbitration. Apparently the parties reached agreement and cancelled arbitration.
- IBU**..... Negotiations began in February. IBU declared impasse on 6/9/10. On 6/15/10, Jerry Holder requested a mediator be appointed. MEC contacted the FMCS. The parties met with appointed mediator, Gary Hattal, on 7/7 and 7/9/10. On 7/12/10, IBU submitted its list of remaining disputed issues/final proposals to MEC. WSF filed its list/proposals on 7/16/10. On 7/22/10, the Commission issued a Certification of Issues for Interest Arbitration . The parties were in dispute over the impasse items. Interest arbitration was set for 8/2-8/6/10 before

Arbitrator Sylvia Skratek. On 7/27, the MEC conducted a hearing on disputed final impasse issues for interest arbitration. On 7/29, MEC entered Decision Amending Final Impasse issues for 2011-2013 Interest Arbitration, Decision No. 586-MEC.

Arbitrator Skratek issued her award on 9/22/10.

..... On 8/20/10, WSF filed a Petition for Judicial Review of MEC Decision 586 (MEC IMP 2-10) in Thurston County Superior Court (#10-2-01898-8). Judge Paula Casey is assigned and a status conference is scheduled for 11/19/10. MEC delivered a certified copy of the record to the Court on 9/17/10.

MEBA..... Negotiations began in June. The parties have reached a tentative agree-ment on a few items; next session is 8/4/10. MEBA counsel advised the MEC that the parties have agreed to exchange final proposals on impasse issues in arbitration on 8/10/10. Interest arbitration was scheduled 8/17-8/20/10 before Arbitrator Elizabeth Ford. On 8/13/10, MEC issued a Certification of Issues for Interest Arbitration. Arbitrator's Award is expected 9/27/10.

MM&P..... Negotiations began in April. As of 7/20/10, the parties were at impasse. On 7/30 and 8/2, MEC received the list of remaining disputed issues/final proposals from each of the parties. Interest arbitration was scheduled for 8/16-20/10 before Arbitrator Timothy Williams. On 8/5/10, MM&P objected to WSF's submittal of Rule 8.06 for certification for interest arbitration. On 8/5, WSF filed a response; MM&P replied to WSF's letter on 8/6. On 8/13, the Commission issued a Certification of Issues for Interest Arbitration with a "conditional certification" regarding the section in dispute. On 8/27/10, the Commission conducted a certification hearing. On 8/31/10, MEC entered Decision Denying Certification of Rule 8.06 for 2011-13 Interest Arbitration, Dec. 588-MEC. **Arbitrator Williams issued his Award on 9/23/10 (both deck officers' and watch supervisors' contracts).**

..... On 9/17/10, WSF filed a petition for Judicial Review of MEC Decision No. 588 (MEC IMP 3-11) in Thurston County Superior Court (No. 10-2-02109-1). Judge Paula Casey has been assigned and a status conference scheduled for 1/7/11.

Oper. Watch Superv's..... Negotiations began in February. On 8/2/10, MEC received the list of remaining disputed issues/final proposals from each of the parties. Interest arbitration was scheduled for 8/16-20/10 before Arbitrator Timothy Williams. On 8/11, MEC issued a Certification of Issues for Interest Arbitration.

Metal Trades..... On 8/9/10, MEC received the list of remaining disputed issues/final proposals from each of the parties. Interest

arbitration was scheduled for 8/25-26 before Arbitrator Jane Wilkinson. On 8/18/10, MEC issued a Certification of Issues for Interest Arbitration. **Arbitrator Wilkinson issued her Award on 9/16/10.**

OPEIU..... Negotiations began in May. On 8/23/10, MEC received the parties' outstanding disputed issues/final proposals. Interest arbitration was scheduled for 8/30-31. On 8/25/10, MEC issued a Certification of Issues for Interest Arbitration. **Arbitrator Lumbley issued his Award on 9/23/10.**

SEIU..... Negotiations began in June. The parties have a collective bargaining agreement TA'd. On 8/20/10, MEC received confirmation that the parties have no outstanding issues they are seeking to advance to interest arbitration.

OFM/LRO Negotiator Jerry Holder: IBU, MM&P, Operations Watch Supervisors, Metal Trades

OFM/LRO Negotiator Glenn Frye: FASPAA, MEBA, OPEIU, SEIU

ADMINISTRATIVE REPORT

ESSB 6503 – Furlough Bill

The MEC office was closed from 12noon-5pm on the afternoons of August 4 and September 1 in compliance with the state furlough bill. The next furlough afternoon will be October 6, 2010.

Travel Expense Review

MEC's travel policy requires the Commissioners to review all travel expenses for all employees in the agency every 6 months. All the Commissioners have now reviewed January 1, 2010 to June 30, 2010. Commissioner Warren moved the travel expenses be accepted and Commissioner Cox seconded the motion. The January 1, 2010 through June 30, 2010 travel expenses were approved.

2011-13 Biennial Budget Request

The MEC's 2011-13 biennial budget was submitted to the Office of Financial Management on September 1. The state general fund reductions were 6.3%, but we received word on 9/23/10 that transportation agencies will have to make special budget reductions: the MEC's budget reduction will be 12%, which is \$51,000. Our revised "reduction" budget must be submitted to OFM by October 15, 2010. This brings the MEC back to the '03-'05 budget level.

Cedar River Group Consultants

On August 24 Kathy Scanlan of the Cedar River Group contacted the MEC about a report they are preparing for the Joint Transportation Committee of the Washington State Legislature, the purpose of which is to compare MEC's and PERC's processes. Ms. Scanlan wanted to meet with MEC to discuss the draft. On August 31, she and Blair Scanlan came to Olympia where Linda and Kathy reviewed the report and made a number of suggested changes which were then incorporated into the report.

Budget Challenges

Defense for appeals of MEC decisions by WSF is having a severe impact on MEC's budget. The entire 2-year budgeted amount for attorney general fees has already been exhausted defending these appeals. Because another appeal was filed on Friday, September 17, other portions of MEC's budget will have to be cut to pay the attorney general fees to defend this new appeal.

Comments by Commissioner Warren

I'm going to take the opportunity today to officially announce my resignation as a Marine Employees' Commissioner. I informed the labor folks a couple of months ago that it was my intent to do so. I did not make an official announcement at that time to give them some opportunity to think about it, to think about somebody who can replace me, not that I think I am replaceable. Somebody has to step into these shoes.

I had a couple of reasons for doing so. The first was the increasing amount of snide comments that Gordon Baxter, my better half, was receiving behind the scenes, implying that my participation as an MEC Commissioner, because of my relationship with him, constituted some kind of bias on my part. I take strong exception to those accusations. Gordon is a contract lobbyist, not an employee for any of the labor organizations, and the two of us have never allowed our work over all these years to interfere with what the other one is doing. The second reason was the increasing difficulty with my schedule as a full-time union negotiator to have time to deal with the MEC matters.

I think I have unique experience that I have brought here: not only do I have the NLRB background, but I have active participation on a day-to-day basis in processing grievances and participating in negotiations on behalf of organized labor and that is the insight that I bring to the MEC. And that's my charge, as labor appointee, as an MEC Commissioner, but in addition to my day-to-day responsibilities for the Teamsters, it is my intent to run for delegate to the Teamster Convention which is coming up this next year and that would take me out of the opportunity to be available for MEC matters for 3-4 months.

So the combination of the increasing pressure behind the scenes and my increasing workload, I had to step down from this position and the timing seemed right. I have agreed to stay on until the end of the year in order to complete the matters I had on my plate as well as give labor some time to replace me.

After my decision to step down, I was assigned to hear an issue regarding whether or not something should be submitted to interest arbitration. I led the way on our internal discussions and was scheduled to be the hearing officer on that matter. The state attorney general's office requested I recuse myself because of an appearance of bias due to my relationship with Gordon. Due to the time sensitivity of the issue surrounding negotiations, I agreed to recuse myself, but make no mistake, I did not concede the position of the state as valid. My resignation is unrelated to the unwarranted and unfounded attack on me and in my opinion, that attack was directed at Gordon. I was being used as a proxy and I consider that to be incredibly sexist on the part of the state and I do not believe the same would have happened if the roles were reversed and I were a male Commissioner and Gordon was a female lobbyist. I

had already decided to resign. I choose not to expend the small amount of MEC resources remaining to defend me and my relationship with Gordon.

I do want organized labor to be cautious—this is partially an attack on the very nature of my role on the MEC. I am your representative and it is my job to represent your interests and the very nature of that role was attacked by the state, in my view. I don't intend to go quietly in the night; I am not one to do that. I can guarantee you that if the state thought they were going to extract Gordon out of his role as a lobbyist for the unions by an attack on me, he is not going anywhere. I will make myself available to testify on behalf of organized labor at the upcoming legislative session if there any attacks, trying to eliminate the MEC. I ask the state to do the right thing. It is in your interest to continue the MEC, not just in labor's interest. You have people that are experienced in dealing with these issues with your contracts and you will lose that if it goes to PERC. I would also challenge the state, that if you intend to ask that I recuse myself for future proceedings, do it now, because there are several things on my plate. And if you are going to ask me to recuse myself, let's give the parties the opportunity to find another way of dealing with those matters, rather than wait until the last minute and then send me a letter accusing me of bias.

In closing, I appreciate the opportunity I have been given. I've been honored to represent labor on the MEC. I believe we fulfill an important role and I believe it's cost effective. I will do what I can to seek continued existence of the MEC. Commissioner Callahan, head of PERC, I worked with at the NLRB. The labor community is a small world. I can guarantee you she is no pushover for either side and is doing everything she can to tighten up PERC procedures and make them a little more parallel to the NLRB.

In closing, it has been an honor and a pleasure working with Commissioner Swanson, who is a legend in our community. I have appreciated working alongside Commissioner Sullivan in the time that we had together and I have also enjoyed getting to know and work alongside Commissioner Cox. They are both wonderful men who do a great job for you and I hope that would be recognized in the future. Thank you for my time and getting to know you all and deal with your issues.

Chairman Swanson's Response

Obviously, Commissioner, anyone who knows you, and knows your history, knows that your ethics, your integrity, your honor are unquestionable. I wasn't aware of what you were going to say, but you are, and have been, an extremely valuable asset, and certainly will continue to be until you leave us, and anything you aspire to do in the future I know you will continue to function with the utmost integrity and credibility and intelligence. Certainly for Jack and me it has been a great pleasure and will continue to be a great pleasure not only to work with you, but to know you. I am sorry to see that this thing has developed the way it has, but I can appreciate your busy schedule.

The unions are getting beat up everywhere. The economy has changed the whole dynamic. I have a lot of arbitrations outside the MEC and I see some of the things going on in the workplace and they are scary, both for labor and management. The anger, instability, fear, and apprehension has created a very, very troublesome relationship that I have never seen all my

years of labor relations, and that's a very long time. As a matter of fact, I was looking at an invitation I had and it was for breakfast with Abraham Lincoln!

The meeting was adjourned at 10:35 a.m.

***Next meeting: Friday, October 22, 2010, 10:00 a.m., Rainier Conference Room, 4th
Floor, Washington State Ferries Offices, 2901 3rd Avenue, Seattle***

STATE OF WASHINGTON
MARINE EMPLOYEES' COMMISSION
Evergreen Plaza Building
P.O. Box 40902
Olympia, Washington 98504-0902
(360) 586-6354
www.marineempcom.org

Friday, October 22, 2010 – 10:00 a.m.

Rainier Conference Room—Washington State Ferries, Seattle

MINUTES

Present: Members and staff -	John R. Swanson, Chairman Patricia A. Warren, Commissioner Linda Hoverter, Special Assistant Kathy Marshall, Administrator
Others	- Steve Douglas, KING TV Jeff Duncan, Marine Engineers Beneficial Association Susanna L. Frame, KING TV Leah Maurseth, Washington State Ferries Labor Relations
Office	Valarie Peaphon, Office & Professional Employees International
Union	Robert Scott, Puget Sound Metal Trades/PNWRCofC David Slown, Assistant Attorney General – Washington State
Ferries	Harry Thompson, Puget Sound Metal Trades/IBEW 46 Jay Ubelhart, Inlandboatmen's Union of the Pacific Carrie Wood, Washington State Ferries Labor Relations
Office	

The meeting was called to order at 10:06 a.m.

Moved, seconded and carried: to adopt the agenda distributed at the meeting.

Moved, second and carried: to approve the minutes of the September 24, 2010 meeting.

STATUS OF CASES

MEC Case No. 16-08

MEBA v. WSF—On 10/8/09, WSF filed a petition with Thurston County Superior Court for review of MEC's decision awarding attorney's fees. On 1/8/10, a status conference was held on the petition for review. WSF filed its opening brief with the court on 7/13/10. Briefs of Respondents MEBA and MEC were filed on 8/2/10. WSF filed a Reply Brief on 8/12. **At the conclusion of the review hearing on 8/27/10, Judge McPhee affirmed MEC's decision. On 9/22/10, WSF filed a Notice of Appeal to the Court of Appeals, Division II.**

On 1/22/10, Jeff Duncan reported that members have been paid the retro portion of the award through 8/31/09. He reported on 10/22/10 that the parties continue discussions to resolve how the issue will be handled going forward.

MEC Case No. 21-08

IBU v. WSF—Unfair labor practice complaint filed 6/20/08 and amended 6/23/08 and again 6/26/08 in which IBU charges WSF with interference and refusal to bargain. Specifically IBU charges WSF with a unilateral change in the working conditions of unlicensed deck department employees (filling open assignments for Summer 2008). The parties reached agreement on issues 1 and 2; IBU provided MEC with a copy on 10/24/08. During MEC settlement on 11/7/08, the parties reached agreement on a third issue. On 1/7/09, WSF filed its Answer to the Amended Complaint. On 1/21/09, the parties gathered for the hearing, but it did not proceed. IBU and WSF spent some time discussing the issue. They agreed to convert the 2/6/09 hearing in Consolidated Cases 19-06 and 17-08 to another settlement conference (without mediator) for Case 21-08. Hearing was continued to 3/3/09, but later cancelled due to IBU Counsel's unavailability. On 9/25/09, IBU requested that a hearing be scheduled on the issue of assignment of AB work. On 12/4/09, Chairman Swanson reminded the parties that their "Dispatch Rules" settlement provides for resolution of related disputes such as this one through private arbitration with Liz Ford. On 4/23/10, AAG Slown reported that counsel agree the expedited dispute process is appropriate for resolving the dispute, but have not scheduled with Arbitrator Liz Ford yet. On 5/21/10, AAG Slown suggested that the complaint could be withdrawn or dismissed since the parties have agreed to take it to Liz Ford for arbitration. (Counsel will discuss.) On 7/23/10 the parties reported they have not yet found time to schedule an arbitration date with Ms. Ford. (IBU is not ready to withdraw Case 21-08 at this time.) **During the 10/22 meeting, it was announced the parties are ready to schedule this issue for interest arbitration. Jay Ubelhart will check on Ms. Ford's availability and let WSF know.**

MEC Case No. 18-09

IBU v. WSF—Grievance filed 6/15/09 in which IBU alleges WSF filled a temporary vacancy in a year-around position. Commissioner Cox was assigned as Arbitrator. On 3/24/10, IBU filed an amendment to Case 18-09, requesting that two additional similar grievances be

arbitrated with 18-09, as agreed to by the parties. Arbitrator Cox conducted the hearing on 7/21/10. MEC received the transcript on 8/16/10. On 9/15/10, WSF requested the 9/17 brief filing date be extended to 9/24; IBU did not object. Arbitrator Cox granted the request. **Briefs were timely filed—both received on 9/24/10. Decision pending.**

MEC Case No. 2-10

IBU v. WSF—Unfair labor practice complaint filed 10/2/09 in which IBU charges WSF with domination, discouraging union membership, refusal to bargain. Specifically IBU alleges WSF has implemented a new policy and procedure covering employees' accumulation of compensatory time for holidays and overtime (Rules 10 and 24), without negotiating with the Union. On 1/19/10, the IBU and WSF participated in a settlement conference, but were unable to resolve the issue. MEC found it necessary to cancel the 2/16/10 hearing date for Case 2-10 and use it to reschedule the hearing in Case 15-09. The 2/2/10 Answer filing deadline was also cancelled. On 6/10/10, WSF filed its Answer to the Complaint. Commissioner Cox was reassigned as Examiner. On 6/17/10, IBU Counsel requested the 6/24/10 hearing be continued. An unavoidable conflict arose for two key witnesses. WSF did not oppose the request. Examiner Cox cancelled the 6/24/10 hearing date. **On 10/8/10, IBU Counsel withdrew the complaint; the underlying matter has been resolved by the 2011-2013 interest arbitration award. Examiner Cox has cancelled the 12/6/10 hearing date. Case is to be closed.**

MEC Case No. 7-10

IBU v. WSF—Unfair labor practice complaint filed 11/5/09 in which IBU charges WSF with interference and refusal to bargain. Specifically IBU alleges that WSF has failed to abide by Rule 3.04/single day vacation hours. On 3/12/10, the parties participated in a settlement conference with Commissioner Cox. They were unable to reach agreement on the issue. Due to a scheduling conflict on 5/4/10, Hearing Examiner Warren cancelled the 6/9/10 hearing and 5/26/10 answer deadline. On 6/16/10, WSF filed its Answer to the Complaint. The 6/30/10 hearing was cancelled due to AAG Slown's illness. **The hearing has been rescheduled for 12/16/10.**

MEC Case No. 8-10

MM&P v. WSF—Unfair labor practice complaint filed 12/21/09 in which MM&P charges WSF with refusal to bargain. Specifically IBU alleges WSF failed to adhere to the terms of the memorandum of understanding which provided for an agreement to negotiate and arbitrate a replacement for the Dispatch By Seniority program if either party elected to terminate that agreement. On 5/12/10, the parties participated in a settlement conference with Chairman Swanson; the issue was not resolved. (The arbitration decision has not been issued yet.) On 6/3/10, the parties jointly requested the 6/17 hearing be postponed while the parties await an interest arbitration decision, expected out by 6/18. Hearing Examiner Cox granted the request. The 6/17 hearing was cancelled, as well as the 6/3 answer filing date. The parties received Arbitrator Ford's decision on 6/20/10; a petition for reconsideration has been filed. On 7/23/10, the parties reported that Arbitrator Ford denied the Petition for Reconsideration and Motion to Stay Implementation of her Award. MM&P and WSF plan to discuss implementation of the interim process contained in the Award. On 9/24/10, AAG Slown reported the interim process goes into effect with the fall schedule. **On 10/22/10, AAG Slown reported the parties bargained 10/21 and are close to settling the issue.**

MEC Case No. 9-10

IBU v. WSF (Keith Hunt)—Grievance filed 1/27/10 in which IBU alleges WSF failed to pay Keith Hunt travel time and mileage for days worked in Anacortes in the summer of 2009. On 3/12/10, the parties participated in a settlement conference with Commissioner Cox. On 5/21/10, Jay Ubelhart reported that he communicated with the grievant and IBU intends to proceed to hearing. On 7/12/10, Jerry Holder requested the 7/16/10 hearing be continued, due to a problem with a witness. IBU did not object. Arbitrator Swanson granted the request; the 7/16 hearing was cancelled. **The hearing has been rescheduled for 1/6/11.**

MEC Case No. 11-10

Jonathan Pearson v. WSF—Unfair labor practice complaint filed 2/12/10 in which Mr. Pearson charges WSF with interference, domination, discouraging union membership, discrimination, and refusal to bargain related to Mr. Pearson's termination. Initially, the Commission decided to hold this matter in abeyance until Case 12-10 was resolved. However, the parties agreed to participate in a joint settlement conference for the two cases. **On 9/28/10, the parties participated in a joint settlement conference for Cases 11-10 and 12-10 with Chairman Swanson. Mr. Pearson subsequently agreed to withdraw Case 12-10. MM&P is representing Mr. Pearson in Case 11-10. MEC is waiting for a response from MM&P Counsel regarding further scheduling.**

MEC Case No. 12-10

Jonathan Pearson v. MM&P—Unfair labor practice complaint filed 2/16/10 in which Mr. Pearson charges WSF with restraint, coercion; causing employer discrimination; refusal to bargain/failure to represent (Termination). On 5/12/10, the parties participated in a settlement conference with Chairman Swanson. The matter was not resolved; however Mr. Pearson and MM&P are in the process of exchanging additional information. MEC received MM&P's Answer to the Complaint on 5/20/10. On 5/21/10, MEC received a joint request from MM&P and Mr. Pearson to postpone the 6/1 hearing, consolidate this case with Case 11-10 and schedule another settlement conference. WSF objected to consolidation. Hearing Examiner Warren has cancelled the 6/1/10 hearing. **On 9/28/10, the parties participated in a joint settlement conference for Cases 12-10 and 11-10 with Chairman Swanson. Mr. Pearson subsequently agreed to withdraw Case 12-10. MEC received his formal withdrawal on 10/5/10. Case is to be closed.**

MEC Case No. 13-10

OPEIU Local 8 v. WSF—Petition for Clarification of Existing Bargaining Unit, specifically vessel work order manager position. On 4/23/10, AAG Slown noted that because the position in question is now represented by IFPTE Local 17, that union should be included as a necessary party. MEC contacted IFPTE Local 17. Vince Oliveri will represent Local 17 in the MEC proceedings. The 7/28/10 hearing date was cancelled as Mr. Oliveri was not available. On 5/21/10, AAG Slown reported that he recently learned that some duties now in the Vessel Work Order Manager position were originally from a position represented by WFSE a year or two ago. He suggested that MEC may want to contact that union about inclusion in the case. MEC staff contacted the representative for WFSE. As of 6/2/10, WFSE had not determined whether or not it wanted to be involved. On 6/7/10, OPEIU, IFPTE Local 17 and WSF participated in a settlement conference with Chairman Swanson. Local 17 and OPEIU are still discussing the issue. DOP is to provide them further information. On 7/23/10, OPEIU requested the 8/16/10 hearing be postponed. Neither WSF nor Local 17 objected. Hearing Officer Cox granted the request. The 8/16/10 hearing has been cancelled. **On 9/24/10, Leah**

Maurseth reported that OPEIU intends to proceed to hearing on this issue. The hearing has been rescheduled for 11/16/10.

MEC Case No. 14-10

MEBA v. WSF—Unfair labor practice complaint filed 3/17/10 in which MEBA charges WSF with refusal to bargain. Specifically MEBA alleges WSF unilaterally implemented a Key Box System without notice to or bargaining with the Union. MEBA's complaint included notice to the Commission that it intends to file a motion for temporary relief. On 4/12/10, the parties requested that the 4/15/10 settlement conference be cancelled. WSF needs more time to provide information MEBA requested. The parties negotiated the key box issue on 4/23 with another matter. Mediator Swanson cancelled the 4/15/10 settlement conference for Case 14-10. **On 10/22/10 Jeff Duncan reported MEBA and WSF are still negotiating this issue.**

MEC Case 15-10

MEBA v. WSF—Unfair labor practice complaint filed 3/26/10 in which MEBA charges WSF with refusal to bargain. Specifically MEBA alleges WSF has decided that unlicensed engine room personnel—Oilers and Wipers—should not be allowed to have parking spaces at the Bainbridge Island Terminal. On 7/14/10, the parties participated in a settlement conference with Mediator Cox, but were unable to resolve the issue. They intend to continue discussing. During MEC's 7/23/10 public meeting, Karol Kingery, MEBA, requested the 9/2 hearing be converted to a settlement conference. AAG Slown did not object. Hearing Examiner Warren granted the request. The 9/2 hearing and 8/19 date for WSF to answer the complaint have been cancelled. **On 9/2/10, the parties engaged in further settlement discussions with Mediator Cox. The matter is not yet resolved; however MEBA intends to communicate with IBU regarding a possible agreement for use of a parking space. As of 10/22/10, MEBA and IBU are still discussing.**

MEC Case No. 16-10

IBU v. WSF (Pascual)—Grievance filed 4/19/10 in which IBU alleges WSF restricted Elmer Pascual's bumping/bidding on OS positions, in violation of the contract. On 4/26/10, MEC received a copy of a letter from Jerry Holder to IBU asserting that the request for arbitration is untimely. On 6/15/10, IBU responded to Mr. Holder's letter. On 9/15/10, the parties participated in a settlement conference with Mediator Cox; they made significant progress. They agreed to use the 10/14 hearing date for a settlement conference in Case 17-10. MEC will reschedule another settlement conference and hearing date for Case 16-10. **On 10/13/10, the parties met again with Mediator Cox to continue settlement discussions. They are close to reaching agreement. The hearing remains scheduled for 12/13/10.**

MEC Case No. 17-10

IBU v. WSF (Hannam)—Grievance filed 4/20/10 in which IBU alleges WSF did not pay Hannam overtime for working during her vacation. On 4/26/10, MEC received a copy of a letter from Jerry Holder to IBU asserting that the request for arbitration is untimely. On 6/15/10, IBU responded to Mr. Holder's letter. This matter was scheduled for settlement conference on 9/15/10 along with Case 16-10. Because discussion of 16-10 took most of the day, the parties ran out of time to discuss Case 17-10. IBU and WSF agreed to continue the 17-10 settlement conference to 10/14/10 (formerly hearing date in 16-10). **At the conclusion of the 10/14/10 settlement conference, Commissioner Cox determined that IBU's**

arbitration request was untimely. Case is to be closed. The 11/2 hearing date has been cancelled.

MEC Case No. 19-10

Christopher Johnson v. MEBA & WSF—Unfair labor practice complaint filed 5/17/10 in which Mr. Johnson charges breach of duty of fair representation/discipline. Specifically Mr. Johnson alleges MEBA acted with restraint and coercion and WSF interfered. **Some progress was made during the 9/30/10 settlement conference with Chairman Swanson. The parties are still discussing the matter as of 10/22/10.**

MEC Case No. 1-11

IBU v. WSF—Unfair labor practice complaint filed 9/13/10 in which IBU charges WSF with interference, refusal to bargain. Specifically IBU charges WSF with change in deck department standing orders. Forwarded to Commissioners for review. On 9/22/10, Dennis Conklin, IBU, notified MEC that the parties have reached an agreement on this matter; IBU withdrew the complaint. **On 9/24/10, MEC entered Order Closing Settled Complaint, Dec. No. 590-MEC.**

MEC Case No. 2-11

IBU v. WSF—Grievance filed 9/14/10 in which IBU alleges WSF reduced OS relief positions. **A settlement conference is scheduled for 11/30/10, the hearing for 1/12/11.**

MEC Case No. 3-11

IBU v. WSF—Grievance filed 9/14/10 in which IBU alleges WSF violated the 9/09 elimination of touring watches MOU (limitation on flexing shifts). **A settlement conference is scheduled for 1/18/11, the hearing for 2/2/11.**

MEC Case No. 4-11

IBU v. WSF—Unfair labor practice complaint filed 9/13/10 in which IBU charges WSF with interference, discouraging union membership, refusal to bargain. Specifically IBU charges WSF with violation of the Morvan agreement (voluntary lay-off for 2nd year hires). **Forwarded to Commissioners for review.**

STATUS OF COLLECTIVE BARGAINING 2011-2013

FASPAA..... Negotiations began in May. The parties were scheduled for interest arbitration on 8/11 and 8/12 before Arbitrator Sylvia Skratek. On 8/3/10, MEC received the lists of disputed issues/final proposals from the parties. On 8/6, MEC issued a Certification of Issues for Interest Arbitration. Apparently the parties reached agreement and cancelled arbitration.

IBU..... Negotiations began in February. IBU declared impasse on 6/9/10. On 6/15/10, Jerry Holder requested a mediator be appointed. MEC contacted the FMCS. The parties met with appointed mediator, Gary Hattal, on 7/7 and 7/9/10. On 7/12/10, IBU submitted its list of remaining disputed issues/final proposals to MEC. WSF filed its list/proposals on 7/16/10. On

7/22/10, the Commission issued a Certification of Issues for Interest Arbitration . The parties were in dispute over the impasse items. Interest arbitration was set for 8/2-8/6/10 before Arbitrator Sylvia Skratek. On 7/27, the MEC conducted a hearing on disputed final impasse issues for interest arbitration. On 7/29, MEC entered Decision Amending Final Impasse issues for 2011-2013 Interest Arbitration, Decision No. 586-MEC. **Arbitrator Skratek issued her award on 9/22/10.**

..... *On 8/20/10, WSF filed a Petition for Judicial Review of MEC Decision 586 (MEC IMP 2-10) in Thurston County Superior Court (#10-2-01898-8). Judge Paula Casey is assigned and a status conference is scheduled for 11/19/10. MEC delivered a certified copy of the record to the Court on 9/17/10.*

MEBA..... Negotiations began in June. The parties have reached a tentative agree-ment on a few items; next session is 8/4/10. MEBA counsel advised the MEC that the parties have agreed to exchange final proposals on impasse issues in arbitration on 8/10/10. Interest arbitration was scheduled 8/17-8/20/10 before Arbitrator Elizabeth Ford. On 8/13/10, MEC issued a Certification of Issues for Interest Arbitration. **Arbitrator Ford issued her Award on 10/2/10. MEBA is waiting for the state to notify MEBA of their position because the award was received 1 day late. By law, it is barred from being included in negotiations.**

MM&P..... Negotiations began in April. As of 7/20/10, the parties were at impasse. On 7/30 and 8/2, MEC received the list of remaining disputed issues/final proposals from each of the parties. Interest arbitration was scheduled for 8/16-20/10 before Arbitrator Timothy Williams. On 8/5/10, MM&P objected to WSF's submittal of Rule 8.06 for certification for interest arbitration. On 8/5, WSF filed a response; MM&P replied to WSF's letter on 8/6. On 8/13, the Commission issued a Certification of Issues for Interest Arbitration with a "conditional certification" regarding the section in dispute. On 8/27/10, the Commission conducted a certification hearing. On 8/31/10, MEC entered Decision Denying Certification of Rule 8.06 for 2011-13 Interest Arbitration, Dec. 588-MEC. **Arbitrator Williams issued his Award on 9/23/10 (both deck officers' and watch supervisors' contracts).**

..... *On 9/17/10, WSF filed a petition for Judicial Review of MEC Decision No. 588 (MEC IMP 3-11) in Thurston County Superior Court (No. 10-2-02109-1). Judge Paula Casey has been assigned and a status conference scheduled for 1/7/11.*

Oper. Watch Superv's..... Negotiations began in February. On 8/2/10, MEC received the list of remaining disputed issues/final proposals from each of the parties. Interest arbitration was scheduled for 8/16-20/10 before

Arbitrator Timothy Williams. On 8/11, MEC issued a Certification of Issues for Interest Arbitration. **Arbitrator Williams issued his Award on 9/23/10.**

Metal Trades..... On 8/9/10, MEC received the list of remaining disputed issues/final proposals from each of the parties. Interest arbitration was scheduled for 8/25-26 before Arbitrator Jane Wilkinson. On 8/18/10, MEC issued a Certification of Issues for Interest Arbitration. **Arbitrator Wilkinson issued her Award on 9/16/10.**

OPEIU..... Negotiations began in May. On 8/23/10, MEC received the parties' outstanding disputed issues/final proposals. Interest arbitration was scheduled for 8/30-31. On 8/25/10, MEC issued a Certification of Issues for Interest Arbitration. **Arbitrator Lumbley issued his Award on 9/23/10.**

SEIU..... Negotiations began in June. The parties have a collective bargaining agreement TA'd. On 8/20/10, MEC received confirmation that the parties have no outstanding issues they are seeking to advance to interest arbitration.

OFM/LRO Negotiator Jerry Holder: IBU, MM&P, Operations Watch Supervisors, Metal Trades

OFM/LRO Negotiator Glenn Frye: FASPAA, MEBA, OPEIU, SEIU

Linda Hoverter announced that in an effort to conserve energy and resources, courtesy copies of all notices and orders will now be sent electronically instead of by U.S. mail.

ADMINISTRATIVE REPORT

ESSB 6503 – Furlough Bill

The MEC office was closed from 12noon-5pm on the afternoon of October 6 in compliance with the state furlough bill. The next furlough afternoon will be December 1, 2010.

Proposed 2011 MEC Public Meeting Schedule

Copies of the proposed 2011 MEC public meeting schedule are available today. It is also posted on the agency website. Commissioner Warren moved to approve the proposed schedule and Chairman Swanson seconded the motion. All were in favor. The proposed 2011 meeting schedule was approved.

2011-13 Biennial Budget Reduction

The MEC's 2011-13 budget reductions were submitted to the Office of Financial Management on October 15. MEC's budget reduction is 12% (\$51,000), which is greater than MEC's variable budget, so cuts had to be made in the fixed budget. Linda's time will be cut back to 3 days per week to Wednesday, Thursday, Friday; travel will be reduced; and continuing education eliminated.

Performance Measure Results – 1st Quarter

MEC's first quarter performance measure results have been posted on the agency website. Three of four measures were on target, but one measure which was very low this quarter was resolution of labor issues. MEC's target is to resolve 75% of labor issues each quarter; this quarter's resolution rate was 14%.

Cedar River Group Consultants

On October 13, MEC received the revised draft report from the Cedar River Group with our suggested changes incorporated into the report. No release date for this report was given.

2011 Supplemental Budget Request

As was announced last month, defense for appeals of MEC decisions by WSF is having a severe impact on MEC's budget. The entire 2-year budgeted amount for attorney general fees was already exhausted as of August. A supplemental budget request was submitted to OFM on October 12, 2010 for additional allotment to cover upcoming attorney general fees.

The meeting was adjourned at 10:36 a.m.

***Next meeting: Friday, December 10, 2010, 10:00 a.m., Rainier Conference Room,
4th Floor, Washington State Ferries Offices, 2901 3rd Avenue, Seattle***

STATE OF WASHINGTON
MARINE EMPLOYEES' COMMISSION
Evergreen Plaza Building
P.O. Box 40902
Olympia, Washington 98504-0902
(360) 586-6354
www.marineempcom.org

Friday, December 10, 2010 – 10:00 a.m.
Rainier Conference Room—Washington State Ferries, Seattle

MINUTES

- Present: Members and staff - John R. Swanson, Chairman
John M. Cox, Commissioner
Patricia A. Warren, Commissioner
Linda Hoverter, Special Assistant
Kathy Marshall, Administrator
- Others - Valarie Peaphon, Office & Professional Employees International
Union
- John L. Ross, Inlandboatmen's Union of the Pacific
Tim Saffle, Masters Mates & Pilates
Robert Scott, Puget Sound Metal Trades
Jay Ubelhart, Inlandboatmen's Union of the Pacific
Steve Walker, Marine Engineers Beneficial Association

The meeting was called to order at 10:05 a.m.

Moved, seconded and carried: to adopt the agenda distributed at the meeting.

Moved, second and carried: to approve the minutes of the October 22, 2010 meeting.

STATUS OF CASES

MEC Case No. 16-08

MEBA v. WSF—At conclusion of the review hearing on 8/27/10, Judge McPhee affirmed MEC's decision. On 9/22/10, WSF filed a Notice of Appeal to the Court of Appeals, Division II.

On 1/22/10, Jeff Duncan reported that members have been paid the retro portion of the award through 8/31/09. As of 9/24/10, the parties continue discussions to resolve how the issue will be handled going forward. They met again the end of October. On 11/1/10, Glenn Frye notified MEC that the parties are at impasse regarding Watch Turnover and requested a mediator be appointed. Mediator Rick Oglesby was assigned. **On 11/15/10, MEBA Counsel notified MEC that there are at least 2 issues to be bargained—WSF’s proposed changes to watch turnover procedures and MEBA’s request for progress payments. That information has been provided to the Mediator.**

MEC Case No. 21-08

IBU v. WSF—Unfair labor practice complaint filed 6/20/08 and amended 6/23/08 and again 6/26/08 in which IBU charges WSF with interference and refusal to bargain. Specifically IBU charges WSF with a unilateral change in the working conditions of unlicensed deck department employees (filling open assignments for Summer 2008). The parties reached agreement on issues 1, 2 and 3. On 1/7/09, WSF filed its Answer to the Amended Complaint. On 9/25/09, IBU requested that a hearing be scheduled on the issue of assignment of AB work. Chairman Swanson reminded the parties that their “Dispatch Rules” settlement provides for resolution of related disputes such as this one through private arbitration with Liz Ford. On 4/23/10, AAG Slown reported that counsel agree the expedited dispute process is appropriate for resolving the dispute, but have not scheduled with Arbitrator Liz Ford yet. On 7/23/10 the parties reported they have not yet found time to schedule an arbitration date with Ms. Ford. (IBU is not ready to withdraw Case 21-08 at this time.) **On 12/10/10, Jay Ubelhart reported the parties are ready to schedule this issue for interest arbitration. He will check on Ms. Ford’s availability.**

MEC Case No. 18-09

IBU v. WSF—Grievance filed 6/15/09 in which IBU alleges WSF filled a temporary vacancy in a year-around position. Commissioner Cox was assigned as Arbitrator. On 3/24/10, IBU filed an amendment to Case 18-09, requesting that two additional similar grievances be arbitrated with 18-09, as agreed to by the parties. Arbitrator Cox conducted the hearing on 7/21/10. MEC received the transcript on 8/16/10. On 9/15/10, WSF requested the 9/17 brief filing date be extended to 9/24; IBU did not object. Arbitrator Cox granted the request. Briefs were timely filed—both received on 9/24/10. **On 12/7/10, MEC entered Decision and Award, No. 594-MEC.**

MEC Case No. 2-10

IBU v. WSF—Unfair labor practice complaint filed 10/2/09 in which IBU charges WSF with domination, discouraging union membership, refusal to bargain. Specifically IBU alleges WSF has implemented a new policy and procedure covering employees’ accumulation of compensatory time for holidays and overtime (Rules 10 and 24), without negotiating with the Union. On 1/19/10, the IBU and WSF participated in a settlement conference, but were unable to resolve the issue. MEC found it necessary to cancel the 2/16/10 hearing date for Case 2-10 and use it to reschedule the hearing in Case 15-09. The 2/2/10 Answer filing deadline was also cancelled. On 6/10/10, WSF filed its Answer to the Complaint. Commissioner Cox was reassigned as Examiner. On 6/17/10, IBU Counsel requested the 6/24/10 hearing be continued. An unavoidable conflict arose for two key witnesses. WSF did not oppose the request. Examiner Cox cancelled the 6/24/10 hearing date. On 10/8/10, IBU Counsel withdrew the complaint; the underlying matter has been resolved by the 2011-2013 interest arbitration

award. Examiner Cox has cancelled the 12/6/10 hearing date. **On 10/22/10, MEC entered Order Closing Withdrawn Complaint, Dec. No. 592-MEC.**

MEC Case No. 7-10

IBU v. WSF—Unfair labor practice complaint filed 11/5/09 in which IBU charges WSF with interference and refusal to bargain. Specifically IBU alleges that WSF has failed to abide by Rule 3.04/single day vacation hours. On 3/12/10, the parties participated in a settlement conference with Commissioner Cox. They were unable to reach agreement on the issue. Due to a scheduling conflict on 5/4/10, Hearing Examiner Warren cancelled the 6/9/10 hearing and 5/26/10 answer deadline. On 6/16/10, WSF filed its Answer to the Complaint. The 6/30/10 hearing was cancelled due to AAG Slown's illness. The hearing is rescheduled for 12/16/10. **On 12/10/10, IBU requested the 12/16 hearing be continued due to the unavailability of witnesses. WSF did not object to the request. Commissioner Warren cancelled the 12/16/10 hearing date. MEC will reschedule.**

MEC Case No. 8-10

MM&P v. WSF—Unfair labor practice complaint filed 12/21/09 in which MM&P charges WSF with refusal to bargain. Specifically IBU alleges WSF failed to adhere to the terms of the memorandum of understanding which provided for an agreement to negotiate and arbitrate a replacement for the Dispatch By Seniority program if either party elected to terminate that agreement. On 5/12/10, the parties participated in a settlement conference with Chairman Swanson; the issue was not resolved. (The arbitration decision has not been issued yet.) On 6/3/10, the parties jointly requested the 6/17 hearing be postponed while the parties await an interest arbitration decision, expected out by 6/18. Hearing Examiner Cox granted the request. The 6/17 hearing was cancelled, as well as the 6/3 answer filing date. The parties received Arbitrator Ford's decision on 6/20/10; a petition for reconsideration has been filed. On 7/23/10, the parties reported that Arbitrator Ford denied the Petition for Reconsideration and Motion to Stay Implementation of her Award. MM&P and WSF plan to discuss implementation of the interim process contained in the Award. On 9/24/10, AAG Slown reported the interim process goes into effect with the fall schedule. The parties last met on 10/21 to bargain this issue and AAG Slown reported they are close to settling. **On 12/10/10, Tim Saffle reported that MM&P is awaiting a response to its last proposal.**

MEC Case No. 9-10

IBU v. WSF (Keith Hunt)—Grievance filed 1/27/10 in which IBU alleges WSF failed to pay Keith Hunt travel time and mileage for days worked in Anacortes in the summer of 2009. On 3/12/10, the parties participated in a settlement conference with Commissioner Cox. On 5/21/10, Jay Ubelhart reported that he communicated with the grievant and IBU intends to proceed to hearing. On 7/12/10, Jerry Holder requested the 7/16/10 hearing be continued, due to a problem with a witness. IBU did not object. Arbitrator Swanson granted the request; the 7/16 hearing was cancelled. **The hearing has been rescheduled for 1/6/11.**

MEC Case No. 11-10

Jonathan Pearson v. WSF—Unfair labor practice complaint filed 2/12/10 in which Mr. Pearson charges WSF with interference, domination, discouraging union membership, discrimination, and refusal to bargain related to Mr. Pearson's termination. Initially, the Commission decided to hold this matter in abeyance until Case 12-10 was resolved. However, the parties agreed to participate in a joint settlement conference for the two cases. On 9/28/10, the parties participated in a joint settlement conference for Cases 11-10 and 12-10 with

Chairman Swanson. Mr. Pearson subsequently agreed to withdraw Case 12-10. MM&P is representing Mr. Pearson in Case 11-10. MEC is waiting for a response from MM&P Counsel regarding further scheduling. **On 12/10/10, Tim Saffle reported that Mr. Pearson is considering a settlement proposal.**

MEC Case No. 12-10

Jonathan Pearson v. MM&P—Unfair labor practice complaint filed 2/16/10 in which Mr. Pearson charges WSF with restraint, coercion; causing employer discrimination; refusal to bargain/failure to represent (Termination). **On 9/28/10, the parties participated in a joint settlement conference for Cases 12-10 and 11-10 with Chairman Swanson. Mr. Pearson subsequently agreed to withdraw Case 12-10. MEC received his formal withdrawal on 10/5/10. On 10/22/10, MEC entered Order Closing Withdrawn Complaint, Dec. No. 591-MEC.**

MEC Case No. 13-10

OPEIU Local 8 v. WSF—Petition for Clarification of Existing Bargaining Unit, specifically vessel work order manager position. On 4/23/10, AAG Slown noted that because the position in question is now represented by IFPTE Local 17, that union should be included as a necessary party. MEC contacted IFPTE Local 17. Vince Oliveri will represent Local 17 in the MEC proceedings. The 7/28/10 hearing date was cancelled as Mr. Oliveri was not available. On 5/21/10, AAG Slown reported that he recently learned that some duties now in the Vessel Work Order Manager position were originally from a position represented by WFSE a year or two ago. He suggested that MEC may want to contact that union about inclusion in the case. MEC staff contacted the representative for WFSE. As of 6/2/10, WFSE had not determined whether or not it wanted to be involved. On 6/7/10, OPEIU, IFPTE Local 17 and WSF participated in a settlement conference with Chairman Swanson. Local 17 and OPEIU are still discussing the issue. DOP is to provide them further information. On 7/23/10, OPEIU requested the 8/16/10 hearing be postponed. Neither WSF nor Local 17 objected. Hearing Officer Cox granted the request. The 8/16/10 hearing has been cancelled. On 11/16/10, the parties gathered for a hearing, but chose to take time to discuss resolution further. The hearing was not convened. If resolved within the next 30 days, OPEIU will withdraw its petition. If not resolved within that time, MEC will reschedule the hearing. **On 12/10/10, OPEIU Representative Valerie Peaphon indicated the parties may have reached an agreement on this issue.**

MEC Case No. 14-10

MEBA v. WSF—Unfair labor practice complaint filed 3/17/10 in which MEBA charges WSF with refusal to bargain. Specifically MEBA alleges WSF unilaterally implemented a Key Box System without notice to or bargaining with the Union. MEBA's complaint included notice to the Commission that it intends to file a motion for temporary relief. On 4/12/10, the parties requested that the 4/15/10 settlement conference be cancelled. WSF needs more time to provide information MEBA requested. The parties negotiated the key box issue on 4/23 with another matter. Mediator Swanson cancelled the 4/15/10 settlement conference for Case 14-10. On 10/22/10 Jeff Duncan reported MEBA and WSF are still negotiating this issue. **On 11/10/10, MEBA Counsel notified MEC that negotiations have broken down and requested MEC schedule a hearing. The hearing is scheduled for 1/26/11. WSF's Answer to the Complaint is to be filed on or before 1/12/11.**

MEC Case 15-10

MEBA v. WSF—Unfair labor practice complaint filed 3/26/10 in which MEBA charges WSF with refusal to bargain. Specifically MEBA alleges WSF has decided that unlicensed engine room personnel—Oilers and Wipers—should not be allowed to have parking spaces at the Bainbridge Island Terminal. On 7/14/10, the parties participated in a settlement conference with Mediator Cox, but were unable to resolve the issue. They intend to continue discussing. During MEC's 7/23/10 public meeting, Karol Kingery, MEBA, requested the 9/2 hearing be converted to a settlement conference. AAG Slown did not object. Hearing Examiner Warren granted the request. The 9/2 hearing and 8/19 date for WSF to answer the complaint have been cancelled. On 9/2/10, the parties engaged in further settlement discussions with Mediator Cox. The matter is not yet resolved; however MEBA intends to communicate with IBU regarding a possible agreement for use of a parking space. **As of 12/10/10, MEBA and IBU are still discussing.**

MEC Case No. 16-10

IBU v. WSF (Pascual)—Grievance filed 4/19/10 in which IBU alleges WSF restricted Elmer Pascual's bumping/bidding on OS positions, in violation of the contract. On 4/26/10, MEC received a copy of a letter from Jerry Holder to IBU asserting that the request for arbitration is untimely. On 6/15/10, IBU responded to Mr. Holder's letter. On 9/15/10, the parties participated in a settlement conference with Mediator Cox; they made significant progress. They agreed to use the 10/14 hearing date for a settlement conference in Case 17-10. MEC will reschedule another settlement conference and hearing date for Case 16-10. On 10/13/10, the parties met again with Mediator Cox to continue settlement discussions. They are close to reaching agreement. The hearing remains scheduled for 12/13/10. During the 10/22 MEC meeting, Jay Ubelhart, IBU, noted the parties have exchanged some information and hope to get the issue resolved. On 10/22/10, MEC received a letter from AAG Anderson requesting MEC dismiss this grievance as untimely. IBU Counsel responded on 10/29; WSF replied to IBU's response on 11/2. On 11/2, MEC issued Order Denying WSF's Motion to Dismiss. **On 12/9/10, the parties requested the 12/13 hearing be continued while they exchanged proposals that may settle the matter. Arbitrator Swanson granted the request. The 12/13/10 hearing has been cancelled. MEC will reschedule the hearing to take place in December, in the event the case is not settled.**

MEC Case No. 17-10

IBU v. WSF (Hannam)—Grievance filed 4/20/10 in which IBU alleges WSF did not pay Hannam overtime for working during her vacation. On 4/26/10, MEC received a copy of a letter from Jerry Holder to IBU asserting that the request for arbitration is untimely. On 6/15/10, IBU responded to Mr. Holder's letter. At the conclusion of the 10/14/10 settlement conference, Commissioner Cox determined that IBU's arbitration request was untimely. The 11/2 hearing date was cancelled. **On 10/22/10, MEC entered Order of Dismissal, Dec. No. 593-MEC.**

MEC Case No. 19-10

Christopher Johnson v. MEBA & WSF—Unfair labor practice complaint filed 5/17/10 in which Mr. Johnson charges breach of duty of fair representation/discipline. Specifically Mr. Johnson alleges MEBA acted with restraint and coercion and WSF interfered. Some progress was made during the 9/30/10 settlement conference with Chairman Swanson. The parties intended to continue discussions thereafter. When contacted by MEC on 11/5/10, Counsel Rhodes indicated the parties were unable to resolve the matter. On 12/3/10, MEBA requested

the 2/23/11 hearing be continued; Mr. Leahy has a schedule conflict. Opposing counsel did not object. Examiner Cox granted the request. **The 2/23/11 hearing and 2/9/11 deadline for respondents to answer the complaint have been cancelled. MEC will coordinate with the parties to reschedule.**

MEC Case No. 2-11

IBU v. WSF—Grievance filed 9/14/10 in which IBU alleges WSF reduced OS relief positions. **The parties participated in a settlement conference on 11/30/10 with Commissioner Warren. They were unable to resolve the issue. The hearing remains scheduled for 1/12/11.**

MEC Case No. 3-11

IBU v. WSF—Grievance filed 9/14/10 in which IBU alleges WSF violated the 9/09 elimination of touring watches MOU (limitation on flexing shifts). **A settlement conference is scheduled for 1/18/11, the hearing for 2/2/11.**

MEC Case No. 4-11

IBU v. WSF—Unfair labor practice complaint filed 9/13/10 in which IBU charges WSF with interference, discouraging union membership, refusal to bargain. Specifically IBU charges WSF with violation of the Morvan agreement (voluntary lay-off for 2nd year hires). Following review, the Commission determined that the facts alleged may constitute an unfair labor practice, if later found to be true and provable. **A settlement conference is scheduled for 1/27/11, the hearing for 2/17/11. WSF's Answer to the Complaint is to be filed on or before 3/3/11.**

MEC Case No. 5-11

IBU v. WSF—Grievance filed 11/5/10 in which IBU alleges WSF altered Terri Maulin's shift on 7/5/10. On 11/10/10 IBU notified MEC that the parties have settled this dispute. On 12/6/10, IBU provided MEC with a signed copy of the parties' settlement agreement, which includes IBU's withdrawal of the case. **Case is to be closed.**

STATUS OF COLLECTIVE BARGAINING 2011-2013

FASPAA..... Negotiations began in May. The parties were scheduled for interest arbitration on 8/11 and 8/12 before Arbitrator Sylvia Skratek. On 8/3/10, MEC received the lists of disputed issues/final proposals from the parties. On 8/6, MEC issued a Certification of Issues for Interest Arbitration. Apparently the parties reached agreement and cancelled arbitration.

IBU..... Negotiations began in February. IBU declared impasse on 6/9/10. On 6/15/10, Jerry Holder requested a mediator be appointed. MEC contacted the FMCS. The parties met with appointed mediator, Gary Hattal, on 7/7 and 7/9/10. On 7/12/10, IBU submitted its list of remaining disputed issues/final proposals to MEC. WSF filed its list/proposals on 7/16/10. On

7/22/10, the Commission issued a Certification of Issues for Interest Arbitration . The parties were in dispute over the impasse items. Interest arbitration was set for 8/2-8/6/10 before Arbitrator Sylvia Skratek. On 7/27, the MEC conducted a hearing on disputed final impasse issues for interest arbitration. On 7/29, MEC entered Decision Amending Final Impasse issues for 2011-2013 Interest Arbitration, Decision No. 586-MEC. **Arbitrator Skratek issued her award on 9/22/10.**

..... *On 8/20/10, WSF filed a Petition for Judicial Review of MEC Decision 586 (MEC IMP 2-10) in Thurston County Superior Court (#10-2-01898-8). Judge Paula Casey is assigned and a status conference is scheduled for 11/19/10. MEC delivered a certified copy of the record to the Court on 9/17/10. The status conference was cancelled; no hearing date set yet.*

MEBA..... Negotiations began in June. The parties have reached a tentative agree-ment on a few items. Arbitration was scheduled 8/17-8/20/10 before Arbitrator Elizabeth Ford. On 8/13/10, MEC issued a Certification of Issues for Interest Arbitration. **Arbitrator Ford issued her Award on 10/2/10.**

RCW 47.64.170 requires the contracts and awards to be submitted to the Office of Financial Management by 10/1/10. MEBA is waiting for formal notification of the State's position on this situation.

MM&P..... Negotiations began in April. As of 7/20/10, the parties were at impasse. On 7/30 and 8/2, MEC received the list of remaining disputed issues/final proposals from each of the parties. Interest arbitration was scheduled for 8/16-20/10 before Arbitrator Timothy Williams. On 8/5/10, MM&P objected to WSF's submittal of Rule 8.06 for certification for interest arbitration. On 8/5, WSF filed a response; MM&P replied to WSF's letter on 8/6. On 8/13, the Commission issued a Certification of Issues for Interest Arbitration with a "conditional certification" regarding the section in dispute. On 8/27/10, the Commission conducted a certification hearing. On 8/31/10, MEC entered Decision Denying Certification of Rule 8.06 for 2011-13 Interest Arbitration, Dec. 588-MEC. **Arbitrator Williams issued his Award on 9/23/10 (both deck officers' and watch supervisors' contracts).**

On 9/17/10, WSF filed a petition for Judicial Review of MEC Decision No. 588 (MEC IMP 3-11) in Thurston County Superior Court (No. 10-2-02109-1). Judge Paula Casey has been assigned and a status conference scheduled for 1/7/11. MEC delivered the certified copy of the record to the Court on 10/14/10.

The State filed an affidavit of prejudice against Judge Casey. The matter has been reassigned to Judge Christine Pomeroy; status conference is scheduled for 1/7/11.

Oper. Watch Superv's..... Negotiations began in February. On 8/2/10, MEC received the list of remaining disputed issues/final proposals from each of the parties. Interest arbitration was scheduled for 8/16-20/10 before Arbitrator Timothy Williams. On 8/11, MEC issued a Certification of Issues for Interest Arbitration. **Arbitrator Williams issued his Award on 9/23/10.**

Metal Trades..... On 8/9/10, MEC received the list of remaining disputed issues/final proposals from each of the parties. Interest arbitration was scheduled for 8/25-26 before Arbitrator Jane Wilkinson. On 8/18/10, MEC issued a Certification of Issues for Interest Arbitration. **Arbitrator Wilkinson issued her Award on 9/16/10.**

OPEIU..... Negotiations began in May. On 8/23/10, MEC received the parties' outstanding disputed issues/final proposals. Interest arbitration was scheduled for 8/30-31. On 8/25/10, MEC issued a Certification of Issues for Interest Arbitration. **Arbitrator Lumbley issued his Award on 9/23/10.**

SEIU..... Negotiations began in June. The parties have a collective bargaining agreement TA'd. On 8/20/10, MEC received confirmation that the parties have no outstanding issues they are seeking to advance to interest arbitration.

OFM/LRO Negotiator Jerry Holder: IBU, MM&P, Operations Watch Supervisors, Metal Trades
OFM/LRO Negotiator Glenn Frye: FASPAA, MEBA, OPEIU, SEIU

ADMINISTRATIVE REPORT

ESSB 6503 – Furlough Bill

The MEC office was closed from 12noon-5pm on the afternoon of December 1, 2010 in compliance with the state furlough bill. The next furlough afternoon will be January 5, 2011.

Agency Self Assessment

State agencies are required by RCW 43.17.390 to submit a self-assessment report to the Governor's Accountability and Performance Office by December 30 each year. MEC prepared and submitted its self-assessment December 1.

Commissioner Vacancy

Commissioner Warren's resignation is effective December 31, 2010, so a new Commissioner needs to be appointed. The position is open and the Governor's Office is accepting applications. One application has been received, but the Governor's Office

requires three applications for each position. Those present were encouraged to look for strong candidates to submit applications.

Farewell Comments from Commissioner Warren

Commissioner Warren expressed her disappointment in the lack of participation in today's meeting by Washington State Ferries' (WSF) representatives and counsel, particularly since today's public meeting was held in their facility. She also expressed disappointment in diminishing courtesy on the part of WSF in their participation and attitude. She offered use of the Teamster Hall if needed for meetings and coffee would be provided at no cost.

She commended the one candidate who has applied for the vacant commission position and encouraged those present to nominate two more candidates so the Governor's Office can make a swift decision.

She then recommended the MEC go paperless as much as possible in the materials copied to the Commissioners for information purposes. Transcripts would still need to be hard copy, but nearly all other materials could be sent electronically.

She announced that her husband, Gordon Baxter, was present in the room. She stated that the Governor's letter in response to her resignation looked like it had been turned over to the AG's office for a response. The letter said they had analyzed the issue and said Gordon had no interest in the issue so it was acceptable for her to hold a hearing. She was very disappointed – she didn't believe the Governor actually took it seriously and didn't really review the issues – it was just sent on through government channels for someone in the AG's office to write the letter for her to sign. She then stated she was going to write one last letter and try to get the message through to the Governor that this action just reinforced the appearance of favoritism. If the AG's office wants to play that card, anyone in the commissioner labor role could be found to have an appearance of bias on behalf of labor. She feels it's a serious issue. Knowledge of her lengthy relationship with Gordon was widespread before she was appointed as MEC Commissioner and to use that relationship as an excuse after the years she has been in this position was actually because she was not wanted on that case due to her knowledge of impasse issues and bargaining from her time on the NLRB. Patty affirmed to those present that her decisions were based on contract language, law, prior decisions, and standards of arbitral review found in Elkouri and Elkouri's book, *How Arbitration Works*, and not based on her relationship with Gordon Baxter.

Recognition of Commissioner Patricia A. Warren

Chairman Swanson presented a plaque to Commissioner Patricia Warren in appreciation of her three years of service to the Marine Employees' Commission, 2008-10. He told those present she has been a great asset to the Commission and will be greatly missed.

Commissioner Cox thanked her for her guidance and help during the past two years, helping him learn how to write strong decisions.

The meeting was adjourned at 10:35 a.m.

***Next meeting: Friday, January 28, 2011, 10:00 a.m., 2nd Floor Conference Room,
Evergreen Plaza Building, 711 Capitol Way South, Olympia***