

IN THE MATTER OF THE)
INTEREST ARBITRATION)
)
WASHINGTON STATE DEPARTMENT)
OF TRANSPORTATION, FERRIES)
DIVISION)
)
and)
)
INTERNATIONAL ORGANIZATION)
OF MASTERS, MATES & PILOTS,)
LOCAL 6)
_____)

OPINION AND AWARD

**Interest Arbitration: 2009-11
Agreement, Watch Supervisors**

Date: September 26, 2008

**OPINION AND AWARD
OF THE
INTEREST ARBITRATOR**

Interest Arbitrator
Michael H. Beck

Appearances:
Washington State Department of Transportation, Ferries Division
David J. Slown
International Organization of Masters, Mates & Pilots, Local 6
Rhonda J. Fenrich

**WASHINGTON STATE DEPARTMENT OF TRANSPORTATION,
FERRIES DIVISION**

and

**INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS,
LOCAL 6**

TABLE OF CONTENTS

OPINION OF THE INTEREST ARBITRATOR 1.

PROCEDURAL MATTERS 1.

THE PROPOSALS OF THE PARTIES 3.

1. Rule 11 – Classifications and Rates of Pay 3.

2. Rule 17 – Vacations 6.

AWARD OF THE INTEREST ARBITRATOR7.

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OPINION OF THE INTEREST ARBITRATOR

PROCEDURAL MATTERS

This interest arbitration was conducted to resolve two issues that the parties were unable to resolve through collective bargaining with respect the 2009-11 Collective Bargaining Agreement, hereinafter the Agreement. The Employer, Washington State Department of Transportation, Ferries Division (WSF), was represented by David J. Slown, Assistant Attorney General. The Union, International Organization of Masters, Mates & Pilots, Local 6 (MM&P) was represented by Rhonda J. Fenrich, of the law firm of Garrettson, Gallagher, Fenrich & Mackler, P.C.

A hearing on this matter held at Seattle, Washington on August 27, 2008. At the hearing the testimony of witnesses was taken under oath and the parties presented

substantial documentary evidence. A reporter was present during the proceedings and a transcript was made available to the undersigned Arbitrator for his use in resolving the issues before him.

The parties waived the filing of posthearing briefs and instead presented oral closing argument at the conclusion of the hearing. In this regard, I note changes made to RCW Chapter 47.64 during the 2006 regular session of the legislature. In particular, RCW 47.64.170(c) now requires that the resolution of all collective bargaining agreements between WSF and the unions representing ferry employees, whether resolved by negotiations or arbitration, be concluded by October 1 of each even numbered year.

In the fall of 2007 your Arbitrator was selected to hear two interest arbitrations in the event the parties were unable to settle their 2009-11 Collective Bargaining Agreements. These two interest arbitrations were WSF v. Inland Boatmen's Union of the Pacific (IBU), and WSF v. MM&P, Deck Officers. In December of 2007 the WSF/IBU interest arbitration was set for the third week of August 2008 and the WSF/MM&P, Deck Officers interest arbitration was set for the last week of August 2008.

On August 1, 2008 I received a telephone call from Mr. Slown informing me that the WSF/MM&P, Deck Officers arbitration would not take the whole week and inquiring as to whether I would be willing to serve as interest arbitrator with respect to the MM&P, Watch Supervisors. I told Mr. Slown that I would be willing to serve as interest arbitrator for the Watch Supervisors, but that because of my schedule and the October 1, 2008 deadline, I might only have time to issue an award without an opinion. Mr. Slown said that he would inform the parties of my situation. Additionally, I confirmed my telephone conversation in writing to the parties. I have fully considered the record in this case.

However, due to the deadline and my schedule, I am only able to provide an abbreviated opinion.

THE PROPOSALS OF THE PARTIES

1. Rule 11 – Classifications and Rates of Pay

The Union proposes a 10.7% wage increase effective July 1, 2009 and a 10.7% wage increase effective July 1, 2010.

Additionally, the Union proposes, effective July 1, 2009 that the basic shift premium be increased from \$.65 to \$.75 per hour and that effective July 1, 2010 the basic shift premium be increased to \$1.00 per hour.

The Employer proposes a wage increase of 1.6% effective July 1, 2009 and a wage increase of 1.7% effective July 1, 2010.

The Employer proposes no increase in the basic shift premium.

The Watch Supervisor job classification dates back to 1995. At that time the Watch Supervisors were paid pursuant to the general government employee schedule. In 2001 WSF applied to the Personnel Resources Board (Board) for a 10% increase for the Watch Supervisors, which was approved by the Board but not granted by WSF. The evidence indicates that the 10% increase was not implemented by WSF for financial reasons relating to the impact of Initiative 695.

In October, 2004 the MM&P was certified as the Watch Supervisor's bargaining representative. The MM&P negotiated the 2005-07 and 2007-09 collective bargaining agreements on behalf of the Watch Supervisors.

Scott Braymer is a Watch Supervisor and also a Union delegate for the Watch Supervisors. He testified that at the time of the negotiations for the 2005-07 and 2007-09 agreements, there were no comparable positions at any of the ferry systems surveyed by the Marine Employees Commission (MEC) Salary Survey (Salary Survey). Thus, he testified it was very difficult to negotiate a wage rate, since there were no similar positions at comparable employers. In the spring of 2007, a benchmark job description was developed for the Watch Supervisor jointly, by Union and management officials. The Watch Supervisors were placed in the Administration section of the Salary Survey and two comparable positions were agreed upon. One was the Communications Coordinator at King County and the other position, which is not specifically named in the record, was at Sound Transit.

The Salary Survey, which was effective September 2007, shows that the Watch Supervisors at WSF were behind the weighted monthly base pay of the two comparable employers by 21.4%. The weighted monthly base pay was \$5,758 per month while the Watch Supervisors at WSF received only \$4,743 per month. The salary range minimum was \$5,015 while the salary range maximum was \$5,863. The total number of employees working at both comparable employers was 27. From the foregoing, it is clear, as Mr. Slown recognized in oral argument, that a large majority of the 27 employees worked at the Employer whose wage rate was the salary range maximum, which based on the wage figures has to be King County.

The 2007-09 Watch Supervisor's Agreement lists the wages on a per hour, not a per month, basis. As of July 1, 2008 the Watch Supervisors made an hourly wage of

\$27.81. If the Watch Supervisors are granted a 10.7% wage increase as of July 1, 2009 their wage rate would be \$30.79.

The record contains a listing of the wages for the Communications Coordinator at King County, which is the position comparable to the Watch Supervisor. The record does not contain hourly wage rates for the Salary Survey position at Sound Transit. As of May 1, 2009, two months prior to July 1, 2009, the Communications Coordinator wage was \$35.90, meaning that the Watch Supervisor, with the 10.7% raise to \$30.79 effective July 1, 2009 would still be almost 17% behind the Communications Coordinator.

If another 10.7% wage increase was provided to the Watch Supervisor effective July 1, 2010, the Watch Supervisor's hourly wage rate would be \$34.08. The last wage rate in the record regarding the Communications Coordinator is as of November 1, 2009, is \$36.98. Thus as of July 2, 2010 the Watch Supervisor would still be about 8.5% behind the Communications Coordinator, assuming the Communications Coordinator does not receive a wage increase in May of 2010, as had been the case of May of 2009.

The Employer argues that the financial condition of the State of Washington is such that it cannot afford the increases proposed by the Union. In this regard, the Employer relies on the testimony of Wolfgang Opitz, Deputy Director of the Washington Office of Financial Management (OFM) and Robin Rettew, Senior Transportation Advisor, Budget Division, OFM. These two witnesses testified before me in the Deck Officers arbitration and the parties in this arbitration agreed that their testimony would become part of the record here.

The Employer placed in evidence a document setting forth the costs of the Employer wage increase proposal and the cost of the Union wage increase proposal.

(Employer Exhibit No. 20.) The difference came to \$133,108. However, these cost figures were based on seven employees being in the bargaining unit and, in fact, there are only six employees in the bargaining unit. At seven employees, the difference in cost per employee would be \$19,015. If one subtracts \$19,015 from \$133,108 the true difference in cost between the Employer and Union proposals is \$114,093. This is an extremely small amount of money when compared to the \$428.7 million Ferry Operating Budget for 2007-09 biennium. For a full discussion of my view regarding the State's inability to pay contention, please see my Interest Arbitration Opinion and Award dated September 20, 2008 in the WSF/IBU interest arbitration.

With respect to the shift differential, Braymer testified that the Department of Personnel in April of 2008 recommended that shift differentials be raised to \$1.00 effective July 1, 2009 and \$1.50 effective July 1, 2010. Here, the Union's proposed amounts are below that recommendation.

In view of all of the foregoing, I find that the Union's offer regarding the wage increase and shift differential is the most reasonable offer and shall be awarded.

2. Rule 17 - Vacations

The Union proposes an enhanced vacation accrual benefit which would provide Watch Supervisors a vacation accrual benefit equal to that enjoyed by Terminal Agents represented by FASPAA and slightly behind the vacation accrual benefit received by employees represented by the OPEIU. (See Union Exhibit No. 2 and Employer Exhibit No. 9.)

The Employer proposes no increase in vacation accrual.

In support of its position, the Union contends that it should have a vacation benefit that is comparable to the benefit received by employees represented by FASPAA and OPEIU. In this regard, the Union contends that the work Watch Supervisors perform is similar to work performed by administrative employees represented by the OPEIU and that the work Watch Supervisors perform is of equal complexity to that performed by Terminal Agents represented by FASPAA.

It is a generally recognized principle of interest arbitration that the job of the interest arbitrator, with respect to collective bargaining, is to resolve disputes in a manner that comes as close as possible to how those disputes would have been resolved had the parties been able to successfully bargain a complete collective bargaining agreement. In my view, it is unlikely that the Union would have been able to achieve in collective bargaining its wage increase proposal without conceding on one or more other economic matters also in dispute between the parties.

Based on all of the foregoing, I find that the Employer's offer of no change to vacation accrual is the most reasonable offer and shall be awarded.

AWARD OF THE INTEREST ARBITRATOR

The Award of your Interest Arbitrator with respect to the two issues discussed in the attached Opinion is as follows:

1. Rule 11 – Classifications and Rates of Pay

The Union's offer of a 10.7% wage increase and a shift premium of \$.75 per hour effective July 1, 2009, and a wage increase of 10.7% and a shift premium of \$1.00 per hour effective July 1, 2010 is the most reasonable offer and is awarded.

2. Rule 17 – Vacations

The Employer's offer of no change to vacation accrual is the most reasonable offer and is awarded.

Dated: September 26, 2008

Seattle, Washington

S/Michael H. Beck
Michael H. Beck, Interest Arbitrator