

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

DISTRICT NO. 1 - PACIFIC)	MEC CASE NO. 8-86
DISTRICT, NATIONAL MARINE ENGINEERS)	
BENEFICIAL ASSOCIATION, AFL-CIO,)	DECISION NO. 34 - MEC
)	
Union,)	
)	FINDINGS OF FACT,
v.)	CONCLUSIONS OF LAW AND
)	ORDER
WASHINGTON STATE FERRIES,)	
)	
Employer.)	
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Webster, Mrak & Blumberg, Attorney at Law, by James H. Webster, appeared on behalf of the Union.

Kenneth Eikenberry, Attorney General, by Robert M. McIntosh and Tom Wendel, Assistant Attorney General, appeared for the respondent.

BACKGROUND

In September, 1986, Washington State Ferries (WSF) purchased the M/V EXPRESS, an 85-foot, 97-ton catamaran for the purpose of adding faster, more frequent passenger-only service between Seattle and Bremerton, keeping the existing passenger and vehicle schedules intact. Following that acquisition, WSF put the M/V EXPRESS in service for a demonstration project beginning October 15, 1986 and intended to last until June 30, 1987 with the intention that, should the trial demonstration prove successful, WSF would add four more passenger-only vessels during the 1987-89 biennium.

WSF management decided to operate the M/V EXPRESS without any engine room personnel, whereupon two protests were filed with the Marine Employees' Commission (MEC) as follows:

On October 20, 1986 the Inlandboatmen's Union of the Pacific (IBU) on behalf of the non-licensed WSF Engineering Department personnel (wipers and oilers) filed a request that

MEC “act on the final resolution of manning on the M/V Express...,” and on December 17, 1986 filed a formal charge against WSF alleging an Unfair Labor Practice.

On October 21, 1986 the National Marine Engineers Beneficial Association-District 1 (MEBA) on behalf of the licensed engineers on Washington State Ferries filed a Grievance for Arbitration with MEC.

During its regular monthly meeting on October 24, 1986 and on its own motion, MEC voted to consolidate the two foregoing disputes, as permitted by WAC 316-65-510(3).

The first hearing was held on January 7, 1987, at the beginning of which counsel for WSF and IBU announced that tentative agreement had been reached on the IBU complaint, subject to approval of the U.S. Coast Guard. Thereupon IBU withdrew from the hearing. MEC on February 12, 1987 entered Decision No. 25-MEC dismissing the IBU unfair labor practice charge from MEC Case No. 8-86.

Following observation trips on the HIYU between Point Defiance and Tahlequah and on the M/V EXPRESS and the ISSAQUAH between Seattle and Bremerton, additional hearings were held on February 9, February 11, March 16, March 17, and March 18, 1987.

Testimony between and among witnesses as to the need for and utility of a licensed engineer aboard the M/V EXPRESS was sharply conflicting. However, MEC members deemed the witnesses to be credible with differing personal experiences and/or competence.

Media (press and TV) covered all hearings. WSF asked that the press be excluded, citing RCW 47.64.170(3) as an exemption from Chapter 42.30 RCW, the Open Public Meetings Act. However, Chairman Haworth ruled that RCW 47.64.170(3) pertains to negotiating sessions during collective bargaining procedures, and that MEC hearings on grievances are open to the public, including the media, provided that witnesses may not be distracted by TV cameras during their testimony. WSF agreed with that ruling.

The delay of more than one month between the February and March hearings was caused by the scheduling of other grievance hearings and by collective bargaining renewal procedures. MEC

and counsel for MEBA agreed to petition the Attorney General to employ more legal assistance for WSF.

Chairman Haworth chaired the hearings on January 7, February 9 and February 11, 1987. Vice-Chairman Kokjer chaired the hearings on March 16, 17 and 18, 1987. At least one Commissioner was present throughout the hearings. All three Commissioners participated in the observation trips on February 9, 1987.

Having participated in said hearings and observation trips as described hereinabove, and all three Commissioners have read the entire record, MEC now enters the following statement of the issue, positions of the parties and findings of fact.

ISSUE

MEBA proposed the issue to read as follows:

What shall the manning scale and working schedule be for the Washington State Ferries M/V EXPRESS?

WSF agreed to that language, with the reservation that the issue arises under the applicable provisions of the collective bargaining agreement and that the wording of the issue not imply at least one engineer, that consideration of manning start at zero.

MEC now enters the following statement of the issues:

What shall the manning scale and working schedule for licensed marine engineers be on the M/V EXPRESS under the WSF/MEBA Agreement, with the understanding that this statement of issue itself does not assume manning by at east one such engineer?

POSITIONS OF THE PARTIES

UNION POSITION. MEBA contends that:

1. Sections IV, IX and XIV of the WSF/MEBA Agreement require that all WSF vessels including the M/V EXPRESS be manned by licensed engineers, at least one of which on each watch shall be at the level of Chief Engineer, that said engineers be scheduled for eight-hour or twelve-hour watches depending on the vessel's schedule, and that all maintenance and repair work done under way and during evening tie-ups is the responsibility of said assigned Chief Engineer.
2. Efficiency and economy of operation require that licensed engineers be assigned to the M/V EXPRESS during operation. Experience during the trial period has shown that an assigned night engineer cannot accomplish all of the maintenance tasks; cost of operation has included "a staggering amount of overtime," service has presently been unnecessarily interrupted by mechanical/operational failures; a night-time engineer cannot communicate with parts vendors and shore contractors during the work day, and, even with assistance of an oiler, cannot keep up with maintenance requirements.
3. The difference in wage rates between a licensed engineer and an oiler should be rejected as a factor in resolving work jurisdictional disputes.
4. Safety considerations require manning the M/V EXPRESS with a licensed marine engineer. For examples:
 - (a) Incorrect operation of the two combination fire and bilge pumps can instantly turn a minor fire into an explosion or conflagration.
 - (b) Operation of the halon fire extinguishing systems in the two engine rooms, including the operation of dampers and fuel oil shutoffs, requires the skills of marine engineers.
 - (c) The vibrations resulting from high speed engines causing continual leakage of fuels, lubricating oil, and hydraulic fluid, combined with high heat levels, require the presence of an engineer to perform maintenance as needed and to assure safety of the vessel.

- (d) When odd events occur, as they do frequently on the M/V EXPRESS (such as when one of the main engines would not idle at the speed for which the governor was set), an engineer aboard would have been able to diagnose and correct the problem, rather than shut the engine down.
- 5. Regardless of minimum manning standards established by the U.S. Coast Guard, WSF has firmly established a practice of assigning one Chief Engineer to each watch on each vessel (one of which is a Staff Chief Engineer), even when not required by USCG. WSF exceeds USCG minimum manning standards on five vessels.
- 6. USCG Regulations do not preempt MEC's jurisdiction to consider manning levels.
- 7. WSF violated the WSF/MEBA Agreement by making the unilateral decision to assign the maintenance of the M/V EXPRESS to an Assistant Engineer on the evening shift at the Eagle Harbor shipyard without prior discussion with the Union in accordance with Section II(c) thereof.
- 8. WSF further violated said WSF/MEBA Agreement by making the unilateral decision to assign the maintenance of the M/V EXPRESS to an Assistant Engineer on the evening shift at the Eagle Harbor shipyard without prior discussion with the Union in accordance with Section II(c) thereof.

EMPLOYER POSITION. WSF contends that:

- 1. WSF did not violate Section IV(b) of the WSF/MEBA Agreement. WSF did notify MEBA that WSF would be acquiring the M/V EXPRESS even before actual acquisition. WSF further asserts that WSF and MEBA had a number of contacts in person and by telephone. WSF argues that Section IV(b) only requires the parties to "meet promptly for the purpose of ...," which was accomplished. WSF argues that no completed agreement is required.
- 2. WSF did not violate Section II(c) of said Agreement, when WSF decided to assign an Assistant Engineer to the M/V EXPRESS, with said Engineer doing maintenance work at Eagle Harbor during the evening shift instead of during actual operation. WSF argues that

the assignment of maintenance work at Eagle Harbor was not a “change of hours, wages or working conditions” under Section II(c), but instead was “creation of a new work assignment on a new vessel” under Section IV(b).

3. Neither the issue in this case, nor the WSF/MEBA Agreement, nor WSF’s job descriptions require that every WSF vessel have at least one engineer on duty at all times. WSF cites Section XIV(e) in arguing that “the engineer officer shall be the primary engineer officer responsible under the maintenance director for all routine maintenance operations, repairs ...” and that it is possible for WSF to designate another person, not an “engineer officer,” who would be responsible for the maintenance operation.
4. Absent a requirement in this WSF/MEBA Agreement, MEBA has no right to have any particular classifications or numbers of engineers assigned to the M/V EXPRESS.
5. MEBA cannot raise the issue of upgrading the Eagle Harbor Assistant Engineer position to the level of Staff Chief Engineer in this arbitration proceeding. MEBA’s submission of the grievance did not specifically challenge the classification of the night time engineer. Even if MEBA could raise this issue, that night time position does not meet the duties specified for Staff Chief in WSF Policy Circular ER-1-R1.
6. Determination by the U.S. Coast Guard that the M/V EXPRESS and her sister Nichols-built catamarans can operate without the presence of a licensed engineer precludes MEC from any other determination. WSF cited WSF v. MEBA in a prior case before the Public Employment Relations Commission, wherein PERC “made it clear that it would not alter the Coast Guard’s determination with respect to safety and manning.” WSF argues that, if MEBA wants to alter the USCG determination, MEBA may only appeal to USCG.
7. Even if MEC “could overrule the Coast Guard’s determination of a safe manning level, the evidence...(in this case) would not support such action.” WSF argues that the M/V EXPRESS has redundant systems, e.g., duplicate engines, generators, hydraulic pumps, radars, depth sounders, steering engine pumps, and an emergency power supply for the

steering system. WSF further argues that the M/V EXPRESS has been “extremely reliable.” An engineer aboard could do little to enhance safety. The EXPRESS is lacking n tools, spare parts, and access and work space necessary for any repairs while in operation.

8. The extra cost of an engineer aboard the EXPRESS “might cause WSF to abandon the passenger-only project. ...”
9. The oiler assigned to the EXPRESS accomplishes virtually everything that an engineer could accomplish.
10. The M/V EXPRESS was designed to run without an engineer on board. “It has alarms that do the work normally done by an engineer. ... The Express has no duty station for an engineer. The engine room is too cramped and noisy .. confined, and very warm. ...” The EXPRESS has very few tools or spare parts. It is “configured in such a way that an engineer would have little to observe or control. The engines controlled from the pilot house. ... Unlike all other WSF vessels, an engineer on the Express would have no way of taking over control from the pilot house. ... There are no alarms in the engine rooms. ... (There are) more gauges on the bridge than...in the machine space.”

Having established the positions of the parties, MEC now enters the following findings of fact.

FINDINGS OF FACT

1. The M/V EXPRESS and her Nichols-built sister ships are designed to be and are given “T-Boat” classifications (less than 100 tons) by the U.S. Coast Guard; and, as such, USCG certifies them to be operated with crews consisting of one “Operator” (a USCG classification lower than “Master”) and three deckhands.
2. WSF elected to exceed the foregoing USCG manning requirements by assigning a Master, an Able Seaman (AB) and two Ordinary Seaman (OS) at the start of the trial period. When WSF reached agreement with IBU in January, 1987, to use one of the OS (deckhand) positions to assign an oiler to work both in the engine rooms and on deck, WSF again exceeded the minimum USCG manning requirements.

3. Fueling and visual inspection for fuel, oil and hydraulic leaks, and some limited maintenance work on the M/V EXPRESS is done by the oiler. But the vast majority of maintenance and repair work on the M/V EXPRESS is being accomplished by a licensed marine engineer at the Assistant Engineer level with help by an additional oiler at the WSF Eagle Harbor Shipyard during tie-ups at night.
4. WSF posted notice of its intention to assign an Assistant Engineer to the M/V EXPRESS on the evening shift at Eagle Harbor without notifying MEBA. However, after MEBA learned about such an intention, MEBA attempted to invoke the procedures in Sections II(c) and/or IV(b) by presenting WSF with a letter of understanding as an addendum to the Agreement. WSF refused to sign the proposal. Several subsequent conversations were held, in person and by telephone, but WSF continued to refuse to sign said letter of understanding. Nor did WSF make any negotiating counter offers at any time.
5. The sister-ships to the M/V EXPRESS are American-registered and operate in American waters without a USCG-licensed marine engineer aboard. A larger catamaran, VICTORIA CLIPPER, of foreign registry, operates as a ferry between American and Canadian ports, and carries a trained marine engineer.
6. WSF operates vessels with engine power ranging from 860 HP (HIYU) to 11,500 HP (WALLA WALLA). At 3,000 HP the M/V EXPRESS has more power than nine other WSF vessels, all of which are designed to be manned by engineers. WSF mans each of these vessels with Staff Chief Engineers/Chief Engineers.
7. The M/V EXPRESS is a high performance vessel. Its twin engines (one in each hull) generate much higher levels of vibration and heat during operation than is the case in any other WSF vessel. This, in turn, has caused greater-than-typical maintenance and repair requirements.
8. Section XIV sets forth the Engineer Officers' duties, as follows:

SECTION XIV – ENGINEER OFFICERS' DUTIES

- (a) Engineer Officers in charge of a watch shall not be required to perform duties away from the confines of the engine or fire room casings while the vessels are underway.
- (b) Engineer Officers shall not be required to perform duties other than those necessary for the proper operation and maintenance of vessels' auxiliary and main propulsion units.
- (c) All pumps, winches, steering units, piping lines, sanitary and heating systems, refrigeration units and other mechanical or electrical equipment normally falling under the cognizance of the Chief Engineer Officer shall be classed as vessel auxiliaries.
- (d) Except in emergencies, Engineer Officers shall not be required to perform duties normally performed by unlicensed personnel.
- (e) The Engineer Officer shall be the primary Engineer Officer responsible under the Maintenance Director for all routine maintenance, operations, repairs and, when so designated by the employer, for all major repairs such as when in the drydock for major overhaul. As such, the Engineer Officer shall maintain all required historical records, maintenance records and operating records for his assigned vessel.
- (f) Maintenance and repair work of an extended nature on any of the mechanized, semi-mechanized, or retro-fit vessels of the Employer, while the vessels are in lay-up status which falls within the work jurisdiction of the Engineer Officers, shall normally be performed by the regular complement of vessel Engineer Officers, by other WSF employees, or by contracted repair services, carried out under the supervisory jurisdiction of the Licensed Engineer Officers. Manning during extended work periods will be as determined by the Port Engineer or Maintenance Director.
- (g) It is agreed that such supervisory jurisdiction shall include the maintenance and repair of all computer equipment and related servo mechanisms which are concerned with the propulsion and internal machinery and equipment of the ship. Routine preventive maintenance work and minor repair work done underway and during evening tie-ups are the basic responsibility of the assigned complement of Engineer Officers.

9. The M/V EXPRESS was designed to operate with an unmanned engine room:

Gauges, alarm systems and warning indicators are located in the bridge.

The engines and most of the auxiliary equipment are controlled from the bridge and cannot be overridden in the engine room.

Access to the engine rooms and to the engines themselves is difficult.

It is difficult and potentially dangerous to undertake repairs, other than minor adjustments, while underway.

Due to lack of room, there are few tools, spare parts, and very little work space on board.

10. The M/V EXPRESS has not been operated by WSF more than 2.3 miles from land; it is under USCG V.T.S. control; the runs have been short. These facts also apply to WSF vessels on the same and all similar runs.
11. The scope of the WSF/MEBA Agreement is stated in Section IV, as follows:

SECTION IV - SCOPE

- a) The terms and provisions of this Agreement shall govern the Employer, the Union and all Engineer Officers in its employ and shall apply to all vessels of the Employer normally employed in the transportation of passengers, automobiles and/or freight on Puget Sound and adjacent inland waters, the Straights of Juan de Fuca, and the San Juan Islands, and the waters of Canada.
 - (b) In the event additional vessels are planned, chartered, or otherwise acquired by the employer, or present vessels are re-engined, the employer and the Union agree to meet promptly for the purpose of arriving at and setting forth a manning scale and working schedule mutually agreeable to the parties for each such vessel.
 - (c) . . .
12. Section IX(b) and (c) of the WSF/MEBA Agreement define working hours of WSF Engineer Officers, as follows:

SECTION IX - HOURS

- (a) . . .
- (b) The Employer agrees that vessels running sixteen (16) or more hours per day will be manned by Engineer Officers working under the following work schedules: ...

(c) Vessels running less than sixteen (16) hours per day will be manned by Engineer Officers working under either the above twelve (12) hour schedule or the eight (8) hour schedule. ...

13. The responsibilities and duties of Staff Chief Engineers are listed and detailed in WSF Policy Circular #ER-1 R1. Said Policy Circular #ER-1 R1 is too voluminous to be included herein, but is part of this Finding of Fact by reference. Of material importance to this issue is the sentence, "Where vessel machinery and engine room employees are concerned, the Staff Chief Engineer is in complete charge."

In actual practice Staff Chief Engineers are in charge of, accomplish, and/or supervise all maintenance work, underway or during tie-up, on all other WSF vessels on all runs. Such maintenance work on watches (shifts) not covered by Staff Chief Engineers is done by or under the supervision of a Chief Engineer.

14. The responsibilities and duties of Assistant Engineers are listed in WSF Policy Circular #ER-4, which is part of this Finding of Fact by reference. Of material importance to this issue is the lead-off sentence, "The Assistant Engineer is responsible to the Chief Engineer for the running, operation and maintenance of the propulsion and electrical systems aboard the vessel."

Manning of WSF vessels by Assistant Engineers is specified in Sub-Section VI (1), WSF/MEBA Agreement, as follows:

- (1) The position of Assistant Engineer Officer shall be part of the manning on the following vessels: HYAK, KALEETAN, YAKIMA, and ELWHA.

...

The new assignment of an Assistant Engineer to do both routine maintenance and repairs during tie-ups at night without supervision by a Staff Chief Engineer at Eagle Harbor is unique in the Washington State Ferry System.

15. The responsibilities and duties of Oilers are listed in WSF Policy Circular #ER-5, which is part of this Finding of Fact by reference. Of material importance to this issue are the following sentences: "The Oiler is responsible to the licensed engineer(s) on watch for

performing inspection, maintenance and repair duties on a routine basis, or as assigned by the engineer in charge. ... The following duties must be performed hourly, or at whatever intervals the Staff Chief Engineer may assign: ...”

The Oilers assigned aboard the M/V EXPRESS during operation report to and work under direction of the Master on watch. Testimony from the Masters ranged from “satisfactory” to “very unsatisfactory” as to this arrangement.

Based on the foregoing findings of fact, the following conclusions of law are hereby entered.

CONCLUSIONS OF LAW

1. The Marine Employees’ Commission (MEC) has jurisdiction over these parties and over this issue. (Section XXIII(c), WSF/MEBA Agreement; Chapter 47.64 RCW)
2. The 1983-85 Agreement between District 1 – National Marine Engineers Beneficial Association (MEBA) and Washington State Ferries (WSF), as extended in accordance with RCW 47.64.170(7), is the governing document in this case.
3. MEC may not change or amend the terms, conditions, or applications of the WSF/MEBA Agreement. (RCW 47.64.150)
4. MEC need not take notice of the prior PERC decision under a different agreement. Nor is MEC required to decide whether or not MEC is pre-empted by the U.S. Coast Guard in determining the minimum manning level of the M/V EXPRESS. Interpretation of the governing WSF/MEBA Agreement is specifically within the authority of MEC, both by stipulation of the parties under Section XXIII of said Agreement (Ex. 1) and by State statute (RCW 47.64.150 and .280 (3)).
5. Section IV(a) sets forth clearly that the terms of the WSF/MEBA Agreement shall apply to all WSF vessels, except as modified by the procedures contained in Section IV(b). Whether or not either party violated said procedures in Section IV(b) (i.e., meeting “promptly for the purpose of arriving at and setting forth a manning scale, and working schedule mutually agreeable to the parties for each such vessel”) became moot when the parties agreed under Section XXIII(c) to refer the dispute to MEC for arbitration.

6. Sub-sections IX(b) and (c) together make it clear that all WSF vessels shall be manned by Engineer Officers.
7. As applied to manning the M/V EXPRESS by Engineer Officers, Section XIV(a), supra, is not clear and unambiguous. Although Section XIV(a) restricts the Engineer Officer to work in the “confines of the engine or fire room casings while the vessels are underway, ...” the gauges, alarm systems and warning indicators necessary for the marine engineer to function are all located in the bridge. To all intents and purposes, it is virtually impossible for the Engineer Officer to take over control of the engines and most auxiliaries from the engine rooms.
8. Part of Section XIV(e), supra, (viz: (e) The Engineer Officer shall be the primary Engineer Officer responsible under the Maintenance Director...) is unclear and ambiguous.
9. When the contract language is not clear and unambiguous, MEC as arbitrator must turn to past practice to determine the intentions of the Agreement. (See How Arbitration Works, Elkouri and Elkouri, 3rd Edition, 405ff (1983).)
10. Past practice in the Washington State Ferry System is clear both in actual manning practices and by WSF Policy Circulars:
 - A. In actual manning, each and every WSF vessel is and has been manned by Staff Chief Engineers/Chief Engineers, even to the extent of exceeding USCG standards on five WSF vessels.
 - B. The following pertinent parts of WSF Policy Circulars are clear and unambiguous:
 - a. #ER-1 R1: “Where vessel machinery and engine room employees are concerned, the Staff Engineer is in complete charge. ...”
 - b. #ER-2: “The Chief Engineer is directly responsible to the Staff Chief Engineer, and must assume whatever responsibilities the Staff Chief Engineer may decide to assign to him. While on watch, the Chief Engineer

is empowered to be in charge and take many of the same duties and responsibilities which are outlined for the Staff Chief Engineer. ...”

- c. #ER-4: “The Assistant Engineer is responsible for the running, operation and maintenance of the propulsion and electrical systems aboard the vessel. As the employee most involved with general maintenance work, the Assistant Engineer’s duties may extend through the entire vessel. The Assistant Engineer performs his duties under the direction of the Chief Engineer or Staff Chief Engineer, depending on watch. ...
- d. #ER-5: The Oiler is responsible to the licensed engineer(s) on watch for performing inspection, maintenance and repair duties on a routine basis, or as assigned by the engineer in charge. ... The following duties must be performed hourly, or at whatever intervals the Staff Chief Engineer may assign: ...

11. The foregoing practices of WSF have been and are of such sufficient generality and duration to imply acceptance of them as an authentic construction of the WSF/MEBA Agreement. (See Sheller Mfg. Corp., 10 LA 617, 620 (1948).)

12. Under the foregoing construction of the WSF/MEBA Agreement, two of the assignments in manning the M/V EXPRESS clearly violate the specified duties and responsibilities of engine room personnel as noted in Conclusion of Law No. 10, supra.

- A. The Oilers working aboard while the M/V EXPRESS is operating are not working under the direction of a Staff Chief Engineer, but are under the direction/”supervision” of a Master who may not be able to leave the bridge in order to direct/supervise and who may or may not be competent in marine engineering by his own admission.
- B. The person actually in charge of maintenance and repair of the engines and auxiliaries on the M/V EXPRESS at Eagle Harbor is not a Staff Chief Engineer, but is an Assistant Engineer. Although WSF Policy Circular #ER-4 requires the Assistant Engineer to perform his duties under the direction of a Chief Engineer or Staff Chief Engineer, depending on watch, this Assistant Engineer does not.

13. Both the competent supervision envisaged by #ER-4 and #ER-5 over the work of the oilers during operation and during the maintenance and repair work done at Eagle Harbor appear to lead to the conclusion that MEC should order the establishment of (a) Staff Chief Engineer position(s).

MEC could conclude that, since the major maintenance and repair of the engines and auxiliaries of the M/V EXPRESS are done at Eagle Harbor, the WSF/MEBA Agreement as construed hereinabove would be satisfied by ordering WSF to appoint a Staff Chief Engineer to do and supervise such work at Eagle Harbor. Nothing in the Agreement would appear to prevent such an assignment, nor would such an assignment "amend or change" the Agreement.

However, such an arrangement alone would not provide the engineering supervision required on board during operation hours and especially while under way. Very little if any actual repair work can be accomplished on the M/V EXPRESS while under way. But, under #ER-5, the oiler is to accomplish even routine inspection and adjustments under the direction of a Staff Chief Engineer. Therefore, #ER-5 implies some presence of a Staff Chief Engineer.

Supervision at two separate but concurrent locations of work would appear to suggest two supervisors, obviously an unnecessary fiscal burden.

One solution is the appointment of one Staff Chief Engineer, working flexible hours such that he could work directly on and supervise major maintenance and repair at Eagle Harbor and also supervise and direct the oiler's inspection and minor adjustments during operation, and participate in them when necessary. Such an arrangement would also allow the necessary contacts with WSF management and parts vendors during business hours. In addition, such an arrangement would provide for training personnel in both situations.

14. MEC may not consider differential wage rates as a factor in work jurisdictional disputes. Ordering compliance with the WSF/MEBA Agreement by establishment of a Staff Chief Engineer position need not and does not include comparison of wage rates of other personnel.

Based on the foregoing findings of fact and conclusions of law, the Marine Employees' Commission now enters the following.

ORDER

1. The grievance filed by the Marine Engineers Beneficial Association against Washington State Ferries regarding the manning of the M/V EXPRESS is valid under the terms of the WSF/MEBA Agreement and is hereby sustained.
2. WSF shall immediately put all maintenance and repair of the M/V EXPRESS and its auxiliaries, and any engineering personnel assigned thereto, in complete charge of a Staff Chief Engineer in accordance with the WSF/MEBA Agreement as supported and implemented by WSF Policy Circular #ER-1 R1, whether said vessel is in operation or being maintained/repared during tie-up status.
3. Determination of the "working schedule" of the Staff Chief Engineer assigned to the M/V EXPRESS is hereby remanded to WSF and MEBA for the purpose of negotiating a shift (watch) arrangement which will enable said Staff Chief Engineer to exercise hands-on work and supervision of assigned personnel during a portion of the operation hours and a portion of the tie-up period, and to do so on a schedule flexible enough to be most effective in either or both location(s), as well as providing opportunity to contact WSF administration and parts vendors as needed, and at minimal cost of overtime and/or added travel expense between locations.
4. All other M/V EXPRESS engineering personnel shall also be assigned to work and receive direction in accordance with the WSF/MEBA Agreement and the WSF Policy Circulars cited in Conclusion of Law No. 10 hereinabove.

Dated at Olympia, Washington, this 22nd day of July, 1987.

MARINE EMPLOYEES' COMMISSION
/s/ DAVID P. HAWORTH, Chairman
/s/ DONALD E. KOKJER, Commissioner
/s/ LOUIS O. STEWART, Commissioner

STATE OF WASHINGTON
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Webster, Mrak & Blumberg, Attorney at Law, by James H. Webster, appeared on behalf of the Union.

Kenneth Eikenberry, Attorney General, by Robert M. McIntosh and Tom Wendel, Assistant Attorney General, appeared for the respondent.

I. BACKGROUND

On August 25, 1987, the Marine Engineers' Beneficial Association (MEBA) filed a complaint, alleging that the parties have been unsuccessful in implementing Decision No. 34-MEC and that Washington State Ferries (WSF) has unilaterally implemented work schedules and assignments which are not in compliance with Decision No. 34-MEC, and requesting that the Marine Employees' Commission (MEC) hold a hearing on said compliance "... to provide the parties with adequate guidance to enable them to reach agreement on scheduling assignments..."

MEC discussed said MEBA complaint during its regular meeting on August 28, 1987, and raised a question as to MEC jurisdiction in a case which it had already decided. (See RCW 47.64.280: "...The orders and awards of the commission are final and binding upon any ferry employee or employees or their representative affected thereby and upon the department. ...") (See also Part II, paragraph 5(f), "Code of Ethics and Professional Standards for Labor Management Arbitration,": as cited in Elkouri and Elkouri, How Arbitration Works, 3rd Ed., 239: After the award has been

rendered, the arbitrator should not issue any clarification or interpretation thereof, or comments thereon, except at the request of both parties, unless the agreement provides therefor.)

The MEBA-WSF Agreement is silent regarding clarification or interpretation of arbitration awards. However, Elton Eilert, representing WSF, stated that WSF had no objection to MEC clarification of the order. Thereupon, MEC agreed to set a hearing on this matter.

At that hearing, on November 9, 1987, the parties discussed their attempts to negotiate in compliance with the Commission's Order Nos. 2 and 3 in Decision No. 34-MEC. Copies of an August 6, 1987, letter from WSF to the MEBA were provided, which documented the WSF's proposal to:

- 1) "Compensate Greg Herz at the Staff Chief Engineer wage rate for work related to the M.V. Express, beginning July 22, 1987 and continuing until he may be reassigned or until a different wage rate may be applicable; provided that this change in Mr. Herz's wage rate shall not be deemed to waive WSF's claim that the Staff Chief Engineer rate for work associated with the M.V. Express should be reduced, and such claim is hereby expressly reserved."
- 2) Continue with an eight hour work day for the engineer officer which would be rescheduled to overlap the vessel's operating crew work shift by thirty minutes, and
- 3) Allow the engineer officer, on a flexible basis, to ride the vessel at least one trip each week.

This proposal has not been accepted by the Marine Engineers Beneficial Association.

At the November 9 hearing, it was agreed that the critical issues involved in implementing the Commission's Decision No. 34-MEC are:

- . The adequacy of engineering resources available for the M/V Express operation and maintenance.

- . The adequacy of engineering supervision provided the M/V Express operation and maintenance.

Both parties requested that the MEC clarify in writing the intent of Decision No. 34-MEC, so that the parties may determine how to proceed to implement it. The following written clarification is therefore provided.

II. CLARIFICATION

It is the intent of Decision No. 34-MEC that:

- 1) The Staff Chief Engineer's role be that of supervisor of "... all maintenance and repair of the M/V Express...and any engineering personnel assigned thereto ...” (Order No. 2)
- 2) That the Staff Chief Engineer should be able to “work directly on and supervise both maintenance and repair at Eagle Harbor and inspection and minor adjustments during operation . . . ” (Conclusion of Law No. 13)

The Order is purposely silent regarding MEC's opinion as to:

- . The appropriate specific scheduling of each shift and
- . The extent and type of engineering support resources required.

These issues are left to be negotiated by the parties in accordance with Order No. 3. MEC believes that the parties can lend expertise which should result in more effective implementation following good faith negotiations.

In carrying out the provisions of Order No. 3 of our Decision, the shift (watch) arrangement to be negotiated pursuant to that order must incorporate:

- . A supervisory as well as hands-on role for the Staff Chief Engineer for a portion of both operating and maintenance shifts, and therefore
- . Availability of engineering support resources to the Staff Chief on both of these shifts as well as

. Sufficient overlap of the Staff Chief's shift to allow for supervision by the Staff Chief on both shifts.

It is clear that the proposal advanced by WSF in its August 6, 1987 letter fails to comply with this intent.

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If further negotiation between the parties fails to achieve the Order's intent within a reasonable period of time the Commission stands ready to entertain the filing of a new action by either party.

Dated at Olympia, Washington, this 30th day of November, 1987.

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MARINE EMPLOYEES' COMMISSION
/s/ DAVID P. HAWORTH, Chairman
/s/ DONALD E. KOKJER, Commissioner
/s/ LOUIS O. STEWART, Commissioner