

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES' COMMISSION

ED CASPERS,

Grievant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC Case No. 24-02

DECISION NO. 316 - MEC

DECISION DISMISSING  
REQUEST FOR ARBITRATION

**NATURE OF THE PROCEEDING**

Ed Caspers brought this matter before the Marine Employees' Commission by filing a Request for Grievance Arbitration which was received by the Commission on January 14, 2002. The union which represents Mr. Caspers, the Marine Engineers Beneficial Association, originally pursued Mr. Caspers' concerns under the terms of the contract's grievance procedure. That union does not approve of Mr. Caspers' request for arbitration.

The Marine Employees' Commission must now determine whether or not it has the legal authority to conduct an arbitration at the request of an individual member of a bargaining unit where the contract covering that unit contains a full grievance resolution procedure and where the union that negotiated the contract does not approve of the individual's request for arbitration.

**PROCEDURAL BACKGROUND**

Within a relatively short period of time, two individuals filed Requests for Arbitration with the Marine Employees' Commission without the approval of the two separate unions which represent the bargaining units involved in those matters. In turn, the Marine Employees'

Commission gave all the unions which represent ferry workers, the two individuals and the employer the opportunity to present written comments on the issue of whether or not the Commission has the legal authority to proceed to arbitration in these circumstances. (Order to Show Cause; February 19, 2002).

The responses received by the Marine Employees' Commission made it evident that the two cases are sufficiently dissimilar to make it inappropriate to address them both in one ruling. This decision is limited to the facts and circumstances presented by the Request for Arbitration filed by Ed Caspers.

### **RECORD BEFORE THE COMMISSION**

The Findings of Fact and Conclusions of Law are based upon the following record:

1. The Request for Arbitration submitted by Mr. Caspers.
2. The Commission's Order to Show Cause dated February 19, 2002.
3. Brief on Order to Show Cause filed on behalf of Washington State Ferries.
4. Brief Re: MEC Jurisdiction ... filed on behalf of the Marine Engineers Beneficial Association.
5. Declaration of Mario Micomonaco.

On the basis of this record, the Commission hereby makes the following Findings of Fact.

### **FINDINGS OF FACT**

1. Ed Caspers is a Chief Engineer employed by Washington State Ferries.
2. A collective bargaining agreement negotiated by District No. 1, Marine Engineers Beneficial Association and Washington State Ferries sets the terms and conditions of Mr. Caspers' employment.

3. The applicable contract is dated 1999-2001. It remains in effect by operation of law (RCW 47.64.170(7)) until a replacement contract is negotiated.

4. Section 23 of that contract sets out a dispute resolution or grievance procedure which allows either the union or the employer to refer an unresolved matter to arbitration by the Marine Employees' Commission or before an independent third party arbitrator.

5. On December 13, 2001, Mr. Caspers filed a grievance with the MEBA asking the union to secure one hour of overtime pay for him. Mr. Caspers alleged he was entitled to "early call out" pay on account of events that occurred on May 16, 2001.

6. The union and the employer did not resolve the matter to the satisfaction of Mr. Caspers.

7. On January 9, 2002, the union informed Mr. Caspers that it would not pursue the matter any further. The union chose not to request arbitration of the claim.

8. On January 14, 2001, Mr. Caspers filed a Request for Arbitration with the Marine Employees' Commission. That request involves the same claim concerning which the union chose not to file a Request for Arbitration.

9. The Marine Engineers Beneficial Association told the MEC orally on or about January 18 and in writing on or about January 29 that Mr. Caspers' Request for Arbitration was filed without the approval of the union.

10. Washington State Ferries opposes the request filed by Mr. Caspers. It argues that the Marine Employees' Commission has jurisdiction to arbitrate disputes arising under a collective bargaining agreement only where one of the parties to the agreement has filed a Request for Arbitration.

## **CONTROLLING LAW**

The Marine Employees' Commission has the responsibility to "adjust all complaints, grievances, and disputes between labor and management arising out of the operation of the ferry system as provided in RCW 47.64.150 ...." (RCW 47.64.280(2).) The statute to which this grant of authority and responsibility makes reference, RCW 47.64.150, authorizes unions which represent ferry workers to negotiate grievance procedures leading to binding arbitration as part of their contracts with the ferry system. That law goes on to specify that where such procedures are negotiated, "[they] shall provide for the invoking of arbitration only with the approval of the employee organization." The final part of that statute states that individuals may request arbitration by the Marine Employees' Commission only "if no such procedures are provided."

The Marine Employees' Commission's Grievance Arbitration Rules (WAC 316-65) explicitly acknowledge the limitations placed on the availability of arbitration by RCW 47.64.150. (See, by example, WAC 316-65-010).

## **CONCLUSIONS OF LAW**

1. The agreement between the Marine Engineers Beneficial Association and Washington State Ferries includes a grievance or dispute procedure authorized by RCW 47.64.150.
2. That MEBA – Washington State Ferries agreement remains in full force and effect currently, despite its expiration date by operation of law (RCW 46.64.170(7)) which continues contracts in effect until replacement agreements are negotiated.
3. Mr. Caspers claim for overtime pay is a dispute within the scope of that agreement's grievance/dispute procedure.

4. The employee organization (here, the Marine Engineers Beneficial Association) must approve a request for arbitration of such a grievance or dispute in order for the Marine Employees' Commission to have legal authority to hear and arbitrate the matter (RCW 47.64.280; 47.64.150).

5. The Marine Engineers Beneficial Association does not approve the Request for Arbitration filed by Mr. Caspers.

6. As a consequence, the Marine Employees' Commission does not have the legal authority to hear and arbitrate the issue brought before it by Mr. Caspers.

**ORDER OF DISMISSAL**

On the basis of the above Findings of Fact and Conclusions of Law, the Request for Arbitration filed in this matter by Ed Caspers is hereby DISMISSED.

**RIGHT TO REQUEST REVIEW**

This Order dismissing the Request for Arbitration is, in essence, a denial of an adjudicative proceeding or hearing. As a consequence, pursuant to WAC 316-02-620, any party to this proceeding, including Ed Caspers, may request that the Marine Employees' Commission

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review this decision. Any such request for review must be filed with the Marine Employees' Commission within 30 days of the receipt of this Order. If no Request for Review is filed, this Order becomes final and binding in accordance with RCW 47.64.280.

DATED this \_\_\_\_\_ day of May 2002.

MARINE EMPLOYEES' COMMISSION

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JOHN D. NELSON, Chairman

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JOHN P. SULLIVAN, Commissioner

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JOHN BYRNE, Commissioner