

In the Matter of the Arbitration )  
 )  
 between )  
 )  
 WASHINGTON FEDERATION OF )  
 STATE EMPLOYEES )  
 (Union) )  
 )  
 And )  
 )  
 WASHINGTON STATE )  
 DEPARTMENT OF )  
 TRANSPORTATION )  
 (Employer) )

OPINION AND AWARD  
ALLAN MARTIN OVERTIME  
GRIEVANCE  
AAA Case No. 75 390 00155 06  
LYMC

BEFORE: Kathryn T. Whalen, Arbitrator

APPEARANCES:

For the Union:

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HEARING: August 28, 2006

RECORD CLOSED: October 9, 2006

AWARD ISSUED: November 8, 2006

## **I. INTRODUCTION**

This dispute concerns overtime pay under the terms of the parties' 2005-2007 Collective Bargaining Agreement. Washington Federation of State Employees (Union or WFSE) and Allan Martin (Grievant or Martin) filed a grievance challenging the Washington State Department of Transportation's (WSDOT or Employer) allocation of overtime compensation to him during standby status. The Union and Martin alternatively allege that WSDOT violated the Collective Bargaining Agreement (CBA) by failing to pay him the full overtime rate from the time he receives the call to come to work as opposed to overtime once he arrives at the gate of his work site.

As explained below, the Employer objects to the first issue framed by the Union arguing it is beyond the authority of the Arbitrator. WSDOT agrees with the second issue. However, the Employer denies that it has violated the Agreement.

A hearing was held on August 28, 2006 at which both parties were accorded a full opportunity to present evidence and argument in support of their respective positions. The hearing was reported and transcribed by Court Reporter Dixie Cattell of Dixie Cattell & Associates, Olympia, Washington.

The parties agreed that this dispute is properly before the Arbitrator. The parties also agreed that should the Arbitrator sustain the grievance, she may retain jurisdiction of this case for sixty (60) days to resolve issues, if any, regarding the remedy awarded. Transcript (Tr) 3, 4. The parties elected to submit post-hearing

briefs by mail on October 6, 2006. They also submitted electronic copies by email.

The Arbitrator officially closed the record on October 9, 2006.<sup>1</sup>

## **II. STATEMENT OF THE ISSUES**

WFSE proposed the following two issue statements:

Do the state and federal laws supersede the Collective Bargaining Agreement provisions regarding standby pay and mandate that, while engaged to wait for a call to work, the grievant should be paid full overtime pay?

In the alternative, is it a violation of the CBA to deny grievant full overtime pay from the moment he receives a call to duty while on standby status?

Tr 6.

WFSE argues that the first issue is properly before the Arbitrator and that this case should not be limited to the second issue of when standby status ends. In the first issue, Martin alleges federal and state laws trump the contract definition of work versus standby, and mandate that he be paid full overtime pay during the entire time in which he is on standby status.

The Union acknowledges that the CBA specifically provides that the arbitrator shall not have the authority to “rule contrary to, subtract from, or modify” the Agreement. However, the Union argues Article 6.2 of the CBA mandates that an employee’s overtime eligibility be designated “[p]er federal and state law.” According to the Union, this provision incorporates state and federal law with respect to questions of overtime eligibility and the arbitrator is given power to recognize these outside sources in interpreting the Agreement.

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<sup>1</sup>The Arbitrator received the parties email submissions of their respective briefs, but not the copies sent by regular mail. Apparently, this was due to an incomplete mailing address for the Arbitrator. The Arbitrator proposed a date of October 9, 2006 for officially closing the record and the parties had no objection to that date.

WFSE further claims that the issues as framed arose out of the grievance process and that Grievant chose to frame them as contract claims. The Union argues that federal and Supreme Court cases allow employees to choose their forum for overtime claims and had Grievant filed his claim in court he could be forced to exhaust contractual remedies first.

WSDOT agrees the Arbitrator has authority to interpret the CBA, but contends her authority is limited by the CBA and must draw its “essence from the contract.” The Employer opines that alternative remedies exist to pursue alleged violation of state and federal wage laws; for example, an employee can file a complaint with the Department of Labor under state wage laws.

WSDOT stresses that in this case the parties have agreed in Article 29.3(D) to limit the authority of the Arbitrator. According to the Employer, the contract language is clear that the Arbitrator does not have the authority to rule that a contract provision is contrary to law—that determination is to be made by a different forum. Also, the Employer argues that the Union expressly agreed to the language of Article 7. Under these circumstances it is unusual for the Union to suggest such language is contrary to law. WSDOT disagrees with the Union’s first proposed issue and submits that it is not properly before the Arbitrator.

I have carefully considered the arguments and authorities submitted by the parties regarding this matter. I accept the Union’s second issue as properly before me. However, as explained below, I find the first issue is not properly before me for decision.

My authority in this grievance arbitration is derived from the parties' CBA and both of their submissions to me. As both parties acknowledge, their agreement expressly limits an arbitrator's authority. In particular, Article 29.(3)(D)(1)(a) provides the arbitrator will "have no authority to rule contrary to, add to, subtract from, or modify any of the provisions of this Agreement." Joint Ex. 1, p. 58.

In addition, as the Employer mentions, the parties' agreement refers to other forums (court or board of competent jurisdiction) as appropriate for resolving issues of lawfulness and the validity of "any article, section or portion of the Agreement \* \* \*." See Joint Ex. 1, Article 47 [Savings Clause], p. 101.

The parties have agreed in the CBA to a rate of pay for standby that applies to WSDOT employees. See Article 42.22. WSDOT expressly objects to my consideration of the question of its validity under state and federal law. In addition, the parties have defined a grievance as an allegation of "a violation, misapplication, or misinterpretation of this Agreement \* \* \*." Joint Ex. 1, Article 29.2(A), p. 55. The Union's first issue goes beyond this definition by seeking a determination of whether state and federal law supersede the contract's standby provisions.

I do not find WFSE's reliance on the language of Article 6.2 as persuasive.

That article provides:

Per federal and state law, the Employer will determine whether a position is overtime-eligible or overtime exempt. In addition, the Employer will determine if the overtime-eligible position is a law-enforcement position, with or without an extended work period, or a shift position.

Joint Ex. 1, p. 14.

On its face, this provision addresses the Employer's determination of the overtime eligibility of a *position*; it does not extend to the lawfulness of a negotiated contract article. In light of the other articles discussed above, I am not convinced this provision authorizes me to address the question of the validity of the standby provisions of the Agreement under state and federal law.

Similarly, I am not persuaded by the Union's argument concerning court/agency deference to the arbitration process or the application of the doctrine of exhaustion. Although courts/agencies favor the arbitration process (or require exhaustion) in some circumstances, I am not convinced those principles apply to the Union's proposed first issue. Particularly so given the provisions of the Agreement as cited above and WSDOT's express objection to my consideration of that issue.

For the above reasons, I conclude it is not proper for me to decide the Union's first issue.

The parties agreed that I have the authority to frame the issues based upon their submissions to me. Tr. 8. Accordingly, the Arbitrator frames the issues as follows:

Is it a violation of the Collective Bargaining Agreement to deny Grievant full overtime pay from the moment he receives a call to duty while on standby status?

If so, what is the appropriate remedy?

### III. RELEVANT CONTRACT LANGUAGE

#### ARTICLE 7 OVERTIME

##### 7.1 Definitions

\* \* \*

C. Work

The definition of work, for overtime purposes only, includes:

1. All hours actually spent performing the duties of the assigned job.
2. Travel time required by the Employer during normal work hours from one work site to another or travel time prior to normal work hours to a different work location that is greater than the employee's normal home-to-work travel time.
3. Vacation leave.
4. Sick leave.
5. Compensatory time.
6. Holidays.
7. Any other paid time not listed above.

D. Work does **not** include:

1. Shared leave.
2. Leave without pay.
3. Additional compensation for time worked on a holiday.
4. Time compensated as standby, callback, or any other penalty pay.

\* \* \*

**ARTICLE 42  
COMPENSATION**

\* \* \*

**42.22 Standby**

A. An overtime-eligible employee is in standby status while waiting to be engaged in work by the Employer and both of the following conditions exist:

1. The employee is required to be present at a specified location or is immediately available to be contacted. The location may be the employee's home or other specified location, but not a work site away from home. When the standby location is the employee's home, and the home is on the same state property where the employee works, the home is not considered a work site.

2. The agency requires the employee to be prepared to report immediately for work if the need arises, although the need might not arise.

B. Standby status will not be concurrent with work time.

C. When the nature of the work assignment confines an employee during off-duty hours and that confinement is a normal condition of work in the employee's position, standby compensation is not required merely because the employee is confined.

D. Employees on standby status will be compensated at a rate of seven percent (7%) of their hourly base salary for time spent on standby status.

E. Employees dispatched to emergency fire duty as defined by RCW 38.52.010 are not eligible for standby pay.

\* \* \*

**ARTICLE 29  
GRIEVANCE PROCEDURE**

\* \* \*

**29.3**

\* \* \*

D. Authority of the Arbitrator

1. The arbitrator will:

a. Have no authority to rule contrary to, add to, subtract from, or modify any of the provisions of this Agreement.

b. Be limited in his or her decision to the grievance issue(s) set forth in the original

written grievance unless the parties agree to modify it;

c. Not make any award that provides an employee with compensation greater than would have resulted had there been no violation of this Agreement;

d. Not have the authority to order the Employer to modify his or her staffing levels or to direct staff to work overtime.

\* \* \*

3. The decision of the arbitrator will be final and binding upon the Union, the Employer and the Grievant.

E. Arbitration Costs

1. The expenses and fees of the arbitrator, and the cost (if any) of the hearing room, will be shared by the parties.

Joint Ex. 1.

**IV. STATEMENT OF FACTS**

Grievant is employed by WSDOT as a Maintenance Tech 2 at the Hood Canal Bridge. The Bridge is a floating bridge that connects the waterway between Puget Sound and the Olympic Peninsula. Martin's job involves maintaining the bridge structure and providing services as bridge tender to open and close the bridge. He has worked for WSDOT for 20 ½ years, about 19 of those years at the Bridge.

Bridge Maintenance includes such activities as welding, repairing concrete, greasing mechanisms, changing out gear boxes, working on high voltage electricity as well as house-wiring types of electrical maintenance. See Employer Ex. 15.

The canal is a navigable waterway open for all sorts of vessel traffic, including nuclear submarines that are deployed from the Bangor Submarine Base inside the canal. This waterway is regulated by the Coast Guard. WSDOT has contractually agreed with the Coast Guard to a response time of opening the Bridge within one hour's notice.

Raising and lowering the Bridge involves a variety of tasks. To open the Bridge, Martin must first unlock gates and check a variety of machinery. He also must make sure there is no debris lodged in gears, clean out any debris that is present and ensure that nothing has come apart. Since 9-11, Grievant also must check for bombs and for security breaches.

Martin's normal work schedule is a 4/10 schedule (4 days a week/10 hours a day) from 6:30 a.m. to 5:00 p.m. The Bridge must be maintained and operated 24 hours a day, seven days a week. As a result, Martin and seven other employees (in teams of two) are required to be on standby status in order to open the Bridge or perform other necessary work. This requirement, which is a condition of employment, requires that Martin be on standby status slightly less than two weeks a month.

The standby rotation requires that Martin and the other employees arrive at the Bridge within a half hour of being called. They must be physically fit to work, which means, for example, no alcohol consumption. The half-hour requirement means the employees cannot engage in any recreational activities that would prevent them from meeting the time requirement.

For example, Martin cannot take his son water skiing, or attend his son's Little League baseball game, unless the game is at a location within the half-hour requirement. If Martin does attend such a game, he and his wife must drive separate vehicles. Martin describes that the requirements that go along with standby status are like "tethering a dog on a 10-foot leash" and telling him "he can run anywhere in the yard he wants as long as he doesn't go past the leash." Tr. 19.

Joseph Munzi works for WSDOT as a Transportation Systems Technician at the Hood Canal Bridge. He is responsible for the electrical/electronic work on the Bridge. He also has standby duty. Munzi lives 23.4 miles from the Bridge and he must meet the one-half hour response time requirement. For Munzi, standby status means that he is unable to start projects that he cannot complete within a certain period of time. He has three daughters and cannot go with them when they scuba dive or attend their track, orienteering, or softball activities. Munzi cannot go out to dinner any distance away that conflicts with the response time requirement, for example Port Orchard, Seattle or Tacoma. Munzi described that the restrictions would not be such a burden if they were once or twice a year. However, the standby status at Hood Canal Bridge consists of 14-15 week-long blocks during of the year.

From at least 1984 until July, 2005 WSDOT employees received a minimum of two hours of overtime compensation for being called back to work when on standby status. Employer Ex. 2. WSDOT discontinued this practice upon the effective date of the parties' 2005-2007 Collective Bargaining

Agreement. WSDOT now provides employees at the Hood Canal Bridge with a minimum amount of two hours work for each bridge opening callout. However, employees must actually perform two hours of work. Employer Ex. 3

During negotiations for the current Agreement, the parties negotiated over the subjects of overtime and, in particular, standby. Neither the Union nor the Employer proposed the concept of full overtime wages for employees when they received a call on standby status. Employer Ex. 6-13.

In addition, during negotiations, the Union proposed the continuation of certain WSDOT practices, including but not limited to, certain pay practices. Employer Ex. 14. However, WFSE neither proposed, nor raised the issue, of paying overtime compensation to employees at the Hood Canal Bridge for their travel time from home to the Hood Canal Bridge when called back to work. Employer Ex. 6-14. Similarly, the Employer did not propose any language concerning paid travel time for these employees. Tr. 69.

On about December 19, 2005 WFSE and Martin filed a grievance alleging that he was denied overtime pay in violation of Article 7 and Article 42 of the Collective Bargaining Agreement. Employer Ex. 4. Martin described the nature of his grievance as follows:

My hourly wage while I'm standing by for emergency overtime work is approximately \$1.40 per hour. The DOT thinks it is reasonable to have me drive (sometimes hundreds of miles per week) to and from work prior to my normally scheduled shift and on weekends, using my own vehicle for this \$1.40 per hour wage. I believe this practice is not only unfair, but that it also violates state and federal minimum wage and anti-slavery laws.

I believe that the DOT's human resource department has misinterpreted and or misapplied articles 42.22 and 7.1. of our

working agreement. I feel that I should only be paid hourly standby wages while I'm waiting to be engaged to work. And I should be paid overtime wages for the hours that I'm engaged in the driving activities required for the emergency response by the DOT that fall outside my normal work shift.

Standby employees are on the State payroll 24 hours a day. Therefore they should also be reimbursed for the use of their private vehicles while responding to the DOT's critical and necessary after hours work.

I also contend that all other overtime-eligible employees, not on standby, are reimbursed for travel time and expenses with a penalty or callback pay allowance. That is why their overtime hours start upon their arrival to their duty station.

Employer Ex. 4

WSDOT responded to the above grievance specifically denying Martin's allegations. The Employer maintained that Martin is appropriately paid overtime once he arrives at his duty station at the Hood Canal Bridge consistent with the terms of the parties' Agreement and applicable agency regulations Employer Ex. 5; 16. This dispute is now properly before the Arbitrator for decision.

## V. SUMMARY OF POSITIONS

### A. The Union

The Union argues that pursuant to the plain language of Article 42.22(A) of the CBA, Grievant should be compensated as on-duty from the moment he receives the call to work. The Union opines that this provision clearly states that an "employee is on standby status while **waiting to be engaged to work by the Employer.**" According to the Union, the only possible interpretation of this provision is that once engaged, i.e. when the call is received, the employee's standby status ends. Moreover, argues the Union, the CBA mandates no gray

area in Article 42.22(B) which provides that “standby status will not be concurrent with work time.”

WFSE contends the moment Grievant is required to “spring into action and begin traveling to the bridge,” he no longer is waiting to be engaged to work. If the CBA contained different language in that it defined standby in conjunction with waiting to be engaged in on-site duties, then a different interpretation might be warranted. However, posits the Union, as it stands the Employer must stretch common sense in order to argue that once paged and moving toward the bridge Grievant is still waiting to be engaged to work.

The Union argues that WSDOT seized the equation from the other end by claiming travel time cannot be considered work time pursuant to the contract definition contained in Article 7.1(C)(2). WFSE acknowledges that this provision does indeed exclude travel time from the definition of work except when it is from one work site to another. However, the Union emphasizes that this definition is not applicable because by its terms it deals with “normal work hours,” and those are not at issue here.

WFSE claims that the Employer has exhibited “tunnel vision” and ignored other contractual definitions of work. The Union cites Article 7.1(C)(1) which provides that work is “[a]ll hours actually spent performing the duties of the assigned job.” One of Grievant’s explicit duties, argues the Union, is that he respond upon command and immediately begin traveling to the bridge when he would not otherwise be doing so. The Union stresses that this is not normal

commute time as evidenced, for example, by the special tools Grievant must carry and the time limit for the drive.

WFSE points out that the Employer concedes that either someone is on standby status or they are working; that if they are working, the term “commuting” is not appropriate. The Union also explains that Grievant does not dispute that during normal commute time he is not eligible to be compensated. Rather, according to the Union, the facts as applied to the relevant contract provisions preclude the application of the term “commuting” to what Martin does when engaged from standby status to report to the bridge.

Finally, the Union notes that the Employer is the party that proposed the language “waiting to be engaged to work” in the parties’ negotiations. There was no dispute as to this language and it remained untouched. WFSE emphasizes that the Director of the State Labor Relations Office, a key party to negotiations, presented no testimony to suggest anything other than its plain meaning was intended by the parties.

As a remedy, the Union requests that the Arbitrator issue a decision mandating future compliance with the parameters of the decision and that the Arbitrator retain jurisdiction for purposes of hearing arguments regarding back pay due as a result of the contractual violation.

**B. The Employer**

WSDOT argues that the CBA does not authorize full overtime pay for commute time when Hood Canal Bridge employees receive a call after hours to return to the bridge. The Employer claims that through the testimony of Steve

McLain, Director of the State Labor Relations Office, it is clear the parties did not negotiate any contract language that would authorize full overtime pay for commute to and from their duty station. Citing the maxim that a party is not permitted to obtain through arbitration that which it failed to gain in negotiations, the Employer asserts the Arbitrator should not grant overtime compensation for commuting when it is clear the contract does not confer this benefit.

WSDOT contends that the Union had every opportunity during negotiations to propose full overtime pay for commuting time when Hood Canal Bridge employees receive a call after hours, but it failed to do so. The Employer emphasizes CBA language that sets forth both Management's and the Union's obligation to propose appropriate topics of bargaining. Article 46.4. McLain, explains the Employer, reviewed all proposals submitted by both parties at the table regarding standby compensation. Exhibit E6-E13. He reported that at no time during negotiations did the either party propose the concept of full overtime wages for employees when they receive a call on standby status. The Employer also stresses that McLain reviewed and testified that there was no reference to standby, Hood Canal Bridge employees, or paid commute time when on standby in Union proposals to address specific items in each State agency.

The Employer further claims that Grievant's commuting/travel circumstances do not meet the CBA's definition of work time for overtime purposes. WSDOT describes that each bargaining unit employee is assigned a permanent duty station in accord with OFM travel regulations. Joint Ex. 1, Article 36.3, p. 75. Grievant's is

Hood Canal Bridge. Exhibit E-15. This is the only duty station assigned to Hood Canal Bridge employees.

WSDOT argues that the definition of work for overtime purposes in Article 7.1(C) of the CBA is:

1. All hours actually spent performing the duties of the assigned job.
2. Travel time required by the Employer during normal work hours from one worksite to another or travel time prior to normal work hours to a different work location that is greater than the employee's home-to-work travel time.

According to the Employer, the Grievant would have to be traveling between two duty stations in order for his travel/commute situation to meet the contractual "work" definition. Since Martin has only one duty station, his travel time or commuting time does not meet the definition of work for overtime purposes.

For the above reasons, WSDOT argues it is interpreting the CBA correctly in not authorizing overtime pay for commute time when Hood Canal Bridge employees receive a call after hours to return to the bridge. The Employer contends the grievance should be denied.

## **VI. OPINION**

The question presented is whether it is a violation of the CBA for the Employer to deny Grievant full overtime pay from the moment he receives a call to duty while on standby status. I conclude that it is not a contract violation. The following is my reasoning.

The facts in this case are not in dispute. The parties' disagreement concerns the interpretation of the language of the CBA. The basic goal of contract interpretation is to decide and give effect to the intent of the parties as

expressed by the written contract. In issues of contract interpretation, arbitrators are controlled in the first instance by the contract language. Bargaining history, past practice, and other extrinsic evidence may be important in ascertaining the meaning of the contract where the language is ambiguous or unclear. In this case, there is ambiguity in relevant contract language as well as more than one relevant provision; therefore it is appropriate to consider not only express contract language but also bargaining history and other evidence that sheds light on the parties' meaning.

The Union's claim that Grievant should be paid overtime from the moment he receives a call to duty while on standby status centers on the language of Article 42.22(A). That provision provides in part:

*An overtime-eligible employee is in standby status while waiting to be engaged in work by the Employer \* \* \*. (Emphasis added.)*  
Joint Ex. 1, p. 94.

According to the Union, the only plausible interpretation of this language is that once Grievant receives a call to duty he is "engaged." Therefore, he no longer is "waiting to be engaged" and on standby status. At that point, Martin is working and entitled to full overtime.

This Union's argument is straightforward and has common sense appeal. However, Article 42.22(A) contains no express definition or clarification as to its meaning and it is not the only contract language that must be considered in this case.

Article 7.1 also is referenced in the Union's grievance. It is relied upon by the Employer for its position. The subject of Article 7 is overtime and it includes within its provisions the definition of work. Article 7.1(C) provides, in part:

The definition of work, for overtime purposes only, includes:

1. All hours actually spent performing the duties of the assigned job.
2. Travel time required by the Employer during normal work hours from one work site to another or travel time prior to normal work hours to a different work location that is greater than the employee's normal home-to-work travel time.

Joint Ex. 1, p. 20.

According to WSDOT, pursuant to the above definition Grievant would have to be traveling between two duty stations in order to receive full overtime and he is not doing so when called to duty from standby. It is undisputed that Grievant's only designated duty station is the Bridge. Employer Ex. 15.

In order to ascertain the meaning of a disputed provision of a labor agreement it is well established that the Agreement must be construed as a whole. One arbitrator aptly described this interpretation principle:

The primary rule in construing a written instrument is to determine, not alone from a single word or phrase, but from the instrument as a whole, the true intent of the parties, and to interpret the meaning of a questioned word, or part, with regard to the connection it is used, the subject matter and its relation to all other parts or provisions. *Riley Stoker Corp.*, 7 LA 754, 767 (Platt, 1947.)

Also see: Elkouri & Elkouri, *How Arbitration Works*, 462 (6<sup>th</sup> Ed. 2003.)

In this case, therefore, the relevant provisions of Article 42.22 and Article 7.1 must be construed together. Considered as a whole, these provisions do not support the Union's claimed meaning of the CBA.

The parties negotiated and agreed to language with respect to overtime compensation and standby status. These subjects were directly addressed in the parties' negotiations. More specifically, the parties agreed to a definition of work *for overtime purposes only* that includes within its definition the subject of travel time. Article 7.1(C)(2) identifies specific circumstances when travel time will be included as work thereby entitling employees to overtime pay. Those situations are travel time during normal work hours from one work site to another or travel time prior to normal work hours to a different work location that is greater than the employee's normal home-to-work travel time.

In interpreting contract language, arbitrators often use the maxim the mention of one thing is the exclusion of another; or, to express specific guarantees in an agreement is thought to exclude others. Elkouri & Elkouri at 467-468. Here, the parties have expressly identified for overtime purposes when travel time will be considered time worked. This definition does not include the situation at issue, i.e. when Grievant receives a call to duty while on standby and then must travel to his designated work site at the Hood Canal Bridge.

The Union argues that the Article 7.1(C) definition is not applicable because by its express terms it deals with "normal work hours," and those are not in question. As explained above, however, Article 7.1 specifically deals with the subject of overtime compensation and what constitutes work for purposes of that compensation. The parties have identified specific travel situations that are included and by doing so, have indicated that others are excluded.

Bargaining history supports the conclusion that the parties did not intend to extend full overtime to the circumstances at issue.

From at least 1984 until July, 2005 WSDOT employees received a minimum of two hours of overtime compensation for being called back to work when on standby status. Employer Ex. 2. During negotiations, the Union proposed the continuation of certain WSDOT practices, including but not limited to, certain pay practices. Employer Ex. 14. However, neither WFSE nor WSDOT proposed the continuation of the two-hour minimum call-back nor did they address or propose paying overtime compensation to employees at the Hood Canal Bridge for their travel time from home to the Bridge when called back to work. Employer Ex.6-14. WSDOT discontinued the minimum call-back practice upon the effective date of the parties' CBA. At that time, WSDOT began providing employees at the Hood Canal Bridge with a minimum amount of two hours work for each bridge opening callout. However, employees must actually perform two hours of work. Employer Ex. 3.

These facts do not suggest that the parties intended full overtime pay to be paid for Grievant's travel when called to duty from standby. To the contrary, the evidence indicates that it is more probable than not that the opposite was intended.

As mentioned previously, WFSE's claim with respect to Article 42.22(A) has common sense appeal in terms of when an employee becomes "engaged" to work. However, the parties have provided no definition or clarification of the terms "waiting to be engaged" and "engaged" in Article 42.22(A). They have,

however, defined work for overtime purposes and identified when travel time is considered work for overtime compensation purposes. The Union's interpretation is not the more plausible when Article 7.1 and the parties' bargaining history are taken into account and construed together with Article 42.22.

The Union argues, the CBA mandates—and the Employer concedes—there is no gray area between standby and work time. Article 42.22(B). According to WFSE, when Martin is called to duty from standby he is not “commuting” but, rather engaged in duties of his assigned job as described by Article 7.1(C)(1).

While true there is no gray area between work for overtime purposes and standby under the terms of the CBA—it is either one or the other—*where* the parties intended to draw the line between the two is not free from ambiguity or readily apparent from only one contract provision. Rather, as described above, a combination of relevant contract articles must be construed together along with bargaining history. As a whole, the record does not favor the Union's interpretation.

Whether characterized as “commuting,” “moving,” or “driving”, the basic activity for which Martin seeks full overtime compensation is his travel time after being called to duty. As explained before, the relevant contract language, together with bargaining history, do not more plausibly support WFSE's proposed interpretation.

The Union argues that the Employer is the party that proposed the language “waiting to be engaged to work” in the parties' negotiations and there is

not evidence to suggest anything other than its plain meaning was intended by the parties.

Considering Article 42.22(A) in isolation, the Union's argument about the meaning of "waiting to be engaged to work" carries some force. However, for the reasons explained above, this argument fails to hold its own when the other contract language contained in Article 7.1 is considered together with Article 42.22.

For the above reasons, the Arbitrator concludes that the evidence fails to establish that it is a violation of the CBA to deny grievant full overtime pay from the moment he receives a call to duty while on standby status. In arriving at this decision, I have considered all the evidence, arguments and authorities submitted by the parties, even if not specifically discussed in my decision.

Based upon the foregoing findings and conclusions, I will deny and dismiss the Union's grievance. As required by Article 29(E)(3) of the Agreement, I will order the parties to share the fees and expenses of the Arbitrator.

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Having carefully considered all evidence and argument submitted by the parties,  
the arbitrator concludes that:

1. It is not a violation of the Collective Bargaining Agreement to deny Grievant full overtime pay from the moment he receives a call to duty while on standby status.
2. The grievance is denied and dismissed.
3. Pursuant Article 29(D)(3) of the Agreement, the Union and the Employer shall share equally the fees and expenses of the Arbitrator.

Respectfully submitted,



Kathryn T. Whalen  
Arbitrator

Date: November 8, 2006