

In Re the Arbitration of:

WASHINGTON PUBLIC EMPLOYEES)
ASSOCIATION,)

Petitioner,)

and)

STATE OF WASHINGTON,)
Respondent.)

AAA 75 390 00355 06 LYMC
Grievance – Heikkila, Inman,
Bash, Crigger, Geist-
Work Hours

OPINION AND AWARD

Date of Award: June 13, 2007

Arbitrator
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OPINION OF THE ARBITRATOR

Proceedings

On March 17, 2006, Washington Public Employees Association, UFCW Local 365 (“Union”) filed a grievance on behalf of five bargaining unit members, Kurt Heikkila, Jerry Inman, Greg Bash, Kevin Crigger, and John Geist (“grievants”) against their employer, the State of Washington, Department of Natural Resources (“Employer”) regarding the grievants’ hours of work. Specifically, the Union alleges that due to the conditions under which they work in the interest of their employer, the grievants are unable to take unpaid lunch breaks and, therefore, are working under a straight shift schedule and should be compensated in accordance with Article 6, section 6.6. of the 2005-2007 Collective Bargaining Agreement Between The State of Washington and Washington Public Employees Association (“CBA”). Exhibits (“Exs.”) 1 and 5. The parties were unable to resolve their dispute in the initial steps of the grievance procedure and the grievance was brought to arbitration pursuant to Article 27, Section 27.2 of the CBA. The arbitrator was selected through the American Arbitration Association.

A hearing was held on April 12, 2007, in a conference room at the State Attorney General’s Office, Tumwater, Washington. The Union was represented by Leslie Liddle, Executive Director, Washington Public Employees Association, and the Employer was represented by Kari Hanson, Assistant Attorney General. At the hearing, the parties stipulated that the grievance was arbitrable and there were no timeliness issues. The testimony of witnesses was taken under oath and the parties presented documentary evidence. A formal record was made of the hearing by court reporter, Terri L. Averill of Dixie Cattell & Associates.

The parties filed post-hearing briefs which were received by the arbitrator on May 10, 2007, and the hearing was declared closed on that date.

List of Exhibits¹

- Petitioner Exhibit 1 - Grievance 06-GG-034
 Petitioner Exhibit 2 - Step 1 Response
 Petitioner Exhibit 3 - Step 3 Response
 Petitioner Exhibit 4 - WAC 296-126-092
 Joint Exhibit 5 - 2005-2007 Collective Bargaining Agreement
 Respondent Exhibit 6 - Organizational Chart, Department of Natural Resources,
 Aquatic Resources Division
 Respondent Exhibit 7 - Classification Questionnaire, Program Coordinator,
 Ken Dean
 Respondent Exhibit 8A- Position Description, Land Technician 2-John Geist
 8B- Position Description, Land Manager 1-Greg Bash
 8C- Position Description, Land Manager 1-Jerry Inman
 8D- Classification Questionnaire, Land Technician 2-
 Kurt Heikkila
 8E- Classification Questionnaire, Land Technician I-
 Kevin Crigger
 Respondent Exhibit 9A – DNR Geoduck Compliance Log 8/25/05
 9B – DNR Geoduck Compliance Log 10/21/05
 9C – DNR Geoduck Compliance Log 2/10/06
 9D – DNR Geoduck Compliance Log 5/3/06
 9E – DNR Geoduck Compliance Log 8/14/06
 9F – DNR Geoduek Compliance Log 11/29/06
 Respondent Exhibit 10A-Picture of Vessel “Sentinel”
 10B-Picture of Vessel “Guardian”
 10C-Picture of Vessel “Dawn Breaker”
 10D-Picture of Vessel “Legacy”

List of Witnesses

Kurt Heikkila, Gregory Bash, Jerry Inman, Kevin Crigger, John Geist, Ken Dean,
 Mike Chevalier, Todd Palzer,

Issues

Did the Employer violate Article 6, section 6.6 of the Collective Bargaining Agreement with respect to the work schedules of grievants Heikkila, Inman, Bash, Crigger and Geist? If so, what is the appropriate remedy?

¹ All of the exhibits were admitted into evidence.

Positions of the Parties

The Union maintains that the grievants' duties require them to be on a boat or diving from a boat for eight hours per day during the entire geoduck harvest period. The Union further maintains that grievants do not have sufficient relief from their duties to enjoy an unpaid 30-minute meal period during the harvest day. The Union contends that the CBA provides for assignment of a straight shift for employees, such as the grievants, who are unable to be relieved from duty for an unpaid meal period due to working conditions. The Union believes the Employer has violated the terms of the CBA by not assigning the grievants to a straight shift schedule in accordance with Article 6.6.

The Employer agrees that grievants work on a boat and are unable to leave the boat to take a 30-minute unpaid lunch period on a regular basis. The Employer, however, contends that there is plenty of downtime during the day for each employee to take a full 30-minute lunch break, during which time he is not expected to work and is not actually working. The Employer also contends that the grievants were fully aware that most of their work would be on a boat on the water all day at the time they took their positions. The Employer maintains it did not violate Article 6, section 6.6 or any other provision of the CBA.

Relevant Provisions of Collective Bargaining Agreement

Article 6: Hours of Work

6.1 Definitions

- A. Full-time Employees:
Employees who are scheduled to work forty (40) hours per workweek.

- B. Law Enforcement Employees:
Employees who work in positions that meet the law enforcement criteria of Section 7(k) of the Fair Labor Standards Act (FLSA).

- C. Part-time Employees:
Employees who are scheduled to work less than forty (40) hours per workweek.

- D. Workday:
One of seven (7) consecutive, twenty-four (24) hour periods in a workweek.
- E. Work Schedules:
Workweeks and work shifts of different numbers of hours may be established by the Employer in order to meet business and customer service needs, as long as the work schedules meet federal and state laws.
- F. Work Shift:
The hours an employee is scheduled to work each workday in a workweek.
- G. Workweek:
A regularly re-occurring period of one hundred and sixty-eight (168) hours consisting of seven (7) consecutive twenty-four (24) hour periods. Workweeks will normally begin at 12:00 a.m. on Sunday and end at 12:00 midnight the following Saturday, or as otherwise designated by the appointing authority.

6.2 Determination

The Employer shall determine whether a position is overtime-eligible or overtime-exempt. With regard to law enforcement positions, the Employer shall determine if an overtime-eligible position has an extended work period.

6.3 Overtime-Eligible Employees (Excluding Law Enforcement Employees)

- A. Regular Work Schedules
The regular work schedule for overtime-eligible employees shall not be more than forty (40) hours in a workweek, with starting and ending times as determined by the requirements of the position and the Employer. An employee may request different starting and ending times. The Employer may adjust the regular work schedule with prior notice to the employee as defined in this Article.
- B. Alternate Work Schedules
Workweeks and work shifts of different numbers of hours may be established for overtime eligible employees by the Employer in order to meet business and customer service needs, if the alternate

work schedules meet the requirements of federal and state laws, and do not result in overtime. An employee may request different workweeks and work shifts.

C. Schedule Changes

Employees' workweeks and work schedules may be changed with prior notice from the Employer. Overtime-eligible employees shall receive five (5) calendar days' written notice of a schedule change. The day notification is given is considered the first day of notice. Adjustments in the hours of work of daily work shifts during a workweek do not constitute a schedule change. The Employer may adjust an overtime-eligible employee's daily start and/or end time(s) by two (2) hours.

D. Emergency Schedule Changes

The Employer may adjust an overtime-eligible employees' workweek and work schedule without prior notice in unexpected, serious situations.

E. Employee-Requested Schedule Changes

Overtime-eligible employees' workweeks and work schedules may be changed at the employee's request and with the Employer's approval, provided the Employer's business and customer service needs are Met and no overtime expense is incurred.

...

6.5 Overtime-Eligible Unpaid Meal Periods

The Employer and the Union agree to unpaid meal periods that vary from and supersede the unpaid meal period requirements of WAC 296-126-092. Unpaid meal periods for employees working more than five (5) consecutive hours, if entitled, will be a minimum of thirty (30) minutes and shall be scheduled as close to the middle of the work shift as possible. When an employee's unpaid meal period is interrupted by work duties, the employee will be allowed to resume his or her unpaid meal period following the interruption to complete the unpaid meal period. In the event an employee is unable to complete the unpaid meal period due to operational necessity the employee shall be entitled to compensation, which will be computed based on the actual number of minutes worked within the unpaid meal period. Meal periods may not be used for late arrival or early departure from work and meal and rest periods shall not be combined.

6.6 Overtime-Eligible Paid Meal Periods for Straight Shift Schedules

The Employer and the Union agree to paid meal periods that vary from and supersede the paid meal period requirements of WAC 296-126 - 092. Employees working straight shifts will not receive a scheduled meal period, but will be permitted to eat intermittently as time allows during their shifts while remaining on duty. Paid meal periods for employees on straight shifts do not require relief from duty.

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Article 27: Grievance Procedure

27.1 Terms and Requirements

The Union and the Employer agree that it is in the best interest of all parties to resolve disputes at the earliest opportunity and at the lowest level. The Union and the Employer encourage problem resolution between employees and management and are committed to assisting in resolution of disputes as soon as possible. In the event a dispute is not resolved in an informal manner, this Article provides a formal process for problem resolution.

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27.2 Filing and Processing

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B. Processing

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Step 4 If the grievance is not resolved at Step 3, the Union may file a demand for arbitration (with a copy of the grievance and all responses attached). It will be filed with the Director of the OFM Labor Relations Office (OFM/LRO) and the agency head/designee within fifteen (15) days of receipt of the Step 3 decision. Within fifteen (15) days of the receipt of the arbitration demand, the OFM/LRO will:

1. Schedule a pre-arbitration review meeting with the OFM/LRO Director or designee, the agency's Human Resource Office representative, and the Union's representative to review and attempt to settle the dispute.
2. If the matter is not resolved in this pre-arbitration review, within 15 days of the meeting, the Union may file a demand to arbitrate the dispute with the American

Arbitration Association (AAA).

C. Selecting an Arbitrator

The parties will select an arbitrator by mutual agreement or by alternately striking name supplied by the AAA, and will follow the Labor Arbitration Rules of the AAA unless they agree otherwise in writing.

D. Authority of the Arbitrator

1. The arbitrator will:

- a. Have no authority 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 decision that would result in the violation of this Agreement;
- d. Not make any award that provides an employee with compensation greater than would have resulted had there been no violation of this Agreement;
- e. Not have the authority to order the Employer to modify his or her staffing levels or direct staff to work overtime.

2. The arbitrator will hear arguments on and decide issues of arbitrability before the first day of arbitration at a time convenient for the parties, immediately prior to hearing the case on its merits, or as part of the entire hearing and decision-making process. If the issue of arbitrability is argued prior to the first day of arbitration, it may be argued in writing or by telephone, at the discretion of the arbitrator. Although the decision may be made orally, it will be put in writing and provided to the parties.

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 equally by the parties.

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Article 33; Management Rights

33.1 The Employer retains all rights of management, which, in addition to all powers, duties and rights established by constitutional provision or statute, shall include but not be limited to, the right to:

- A. Determine the Employer's functions, programs, organizational structure and use of technology;
- B. Determine the Employer's budget and size of the agency's workforce and the financial basis for layoffs;
- C. Direct and supervise employees;
- D. Take all necessary actions to carry out the mission of the state and its agencies during emergencies;
- E. Determine the Employer's mission and strategic plans;
- F. Develop, enforce, modify or terminate any policy, procedure, manual or work method associated with the operations of the Employer;
- G. Determine or consolidate the location of operations, offices, work sites, including permanently or temporarily moving operations in whole or part to other locations;
- H. Establish or modify the workweek, daily work shift, hours of work and days off;
- I. Establish the method and means by which work performance standards are set, and the performance standards themselves, which include, but are not limited to, the priority, quality and quantity of work;
- J. Establish, allocate, reallocate or abolish positions, and determine the skills and abilities necessary to perform the duties of such positions;
- K. Select, hire, assign, reassign, evaluate, retain, promote, demote, transfer, and lay off employees;
- L. Determine, prioritize, modify and assign work to be performed;
- M. Determine the need for and the method of scheduling, assigning, authorizing and approving overtime;
- N. Determine training needs, methods of training, employees to be trained, and training programs to be offered;
- O. Determine the reasons for and methods by which employees will be laid-off; and
- P. Suspend, demote, reduce pay, discharge, and/or take other disciplinary actions.

33.2 The Employer agrees that the exercise of the above rights shall be consistent with the provisions of this Agreement.

Facts

The grievants are employed by the State of Washington, Department of Natural Resources in the Aquatics Resources Division, Shellfish Program, as members of compliance/enforcement crews charged with monitoring and enforcing contracts for the harvest of geoduck clams as well as specialized marine operations. Tr. 47, 85-86, 125,² Exhibit (Ex.) 8. Grievants Heikkila, Inman and Bash hold Natural Resource Specialist 1 positions.³ Tr. 12, 37, 59, Ex. 6. Grievants Crigger and Geist hold Natural Resource Technician 3 positions.⁴ Tr. 69, 77; Ex. 6. Their immediate supervisor is Ken Dean, Natural Resource Specialist 3, and their second level supervisor is Todd Palzer, Shellfish Program Manager. Tr. 99-100, 157-158.

The grievants are overtime-eligible employees with a 40-hour workweek. Their work schedule consists of four ten and one-half hour days which include a 30-minute unpaid lunch period each day. Tr. 31, 63. They are routinely scheduled from 7:00 a.m. to 5:30 p.m., although their starting and ending times may vary. Tr. 32, 161. Most of their time is spent in a boat on a tract in Puget Sound monitoring the harvest of geoduck clams by commercial vessels.⁵ Tr. 12. Depending on which crew they are on, a grievant's workweek may begin on Monday and end on Thursday or begin on Tuesday and end on Friday. Tr. 161. Assuming a Monday-Thursday crew, early Monday morning, the grievants on that crew would typically drive to the location where the boat they would be using is moored. Tr. 13. They would check the boat over, ensure that it has water and oil, disconnect the electrical cables used for heat and things to sustain the boat, and

² "Tr." plus a number means a page of the transcript of the arbitration hearing.

³ The Natural Resource Specialist position was formerly called "Land Manager." Tr. 143; Exs. 8B, 8C, 8D. The grievants holding a Natural Resource Specialist 1 position are all leads on the water. Tr. 105.

⁴ The Natural Resource Technician position was formerly called "Land Technician." Tr. 99; Exs. 8A and 8E.

⁵ A tract is a designated area for geoduck harvesting. Tr. 12.

load all of the equipment needed for the week on to the boat. Tr. 13. The boat would then be fired up, and the crew would head out of the marina and travel to the particular geoduck harvest tract to which they were assigned in time to be on the tract by 8:00 a.m. Tr. 14, 78. Geoduck harvesting normally begins at 8:00 a.m. and ends at 4:00 p.m., or 4:30 p.m. in some cases, and the compliance crew is required to be on tract the entire time the harvesting is going on, except for when they need to take on fuel or drop off health samples. Tr. 13, 20, 82, 130-131, 168.

At the beginning of a harvest day, the compliance crew typically goes around to each harvest vessel and gets a GPS coordinate and the names of each person on board. Tr. 14, 17, 150-151. They may also check the buoys on the tract to ensure they are in place and to remove any debris. Tr. 14, 151. If there are sufficient people on board,⁶ there may be a dive operation to collect samples of geoducks for health checks and to monitor the harvesting. Tr. 14, 16, 19, 38, 39, 85. There is also a continual monitoring of the harvest vessels and their divers, and any other vessels coming on or near the tract.. Tr. 14, 15. No harvest vessel is allowed to change location without reporting the change to the compliance officers. Tr. 18. The compliance officers perform weigh outs of the geoducks that are harvested, and record the information in a log and on fish tickets. Tr. 16, 20, 21, 87, 88. While one compliance officer is performing a weigh out another may perform a vessel inspection to make sure a harvest vessel is not hiding geoducks anywhere. Tr. 16, 21. All of the compliance activities and any other information pertinent to compliance, the public record, or things that happen on tract are recorded in a daily log. Tr. 33, 35, 36, 54, 61, 72, 78, 79; Ex. 9. At the end of the day, the compliance crew takes the boat back to the marina where it is kept.

The compliance officers do not have a scheduled meal period but typically eat when they are hungry. Tr. 41, 42, 43, 103, 106. The grievants' immediate supervisor, Ken Dean, testified that during the course of the day, there is time for each crew member to take a 30-minute break from their duties to eat a meal, and if

⁶ There needs to be more than two people on the boat to do a dive. Tr. 32, 47-48.

the meal period is interrupted, to resume it later. Tr. 103, 104, 105, 106-108, 117. He further testified that it is up to each individual to take the time for a 30-minute break from their duties. Tr. 107. His testimony in this regard is supported by that of Mike Chevalier (Tr. 146-147) and Todd Palzer. Tr. 162-163, 164. It is also supported by the testimony of grievants showing that there is down time during the work day (Tr. 43, 66, 76), and that crew members will take the time to read a magazine on occasion (Tr. 49-50, 66, 67-68, 71-72, 76, 93, 148). It is further supported by the logs submitted into evidence. Ex. 9.

The logs show that there are times during the day when the boat is moving from one place to another. Ex. 9; Tr. 108-113. It takes only one person to operate the vessel, and the vessel operator can also answer the radio, watch the water and vessel traffic, and monitor the harvest vessels. Tr. 27, 104-105, 116, 137-138. Thus, there is time for a crew member to take a meal break when the vessel is moving around a tract or traveling from one location to another. Tr. 108. It also only takes one person to perform a weigh out. Tr. 28, 137-138. Therefore, once the two vessels are secured, one compliance officer can perform the weigh out and the other compliance officer can take a break from his duties if not doing a vessel inspection.

Burden of Proof

The Union has the burden of proof by a preponderance of the evidence that the Employer violated the CBA by not treating grievants as straight shift employees and paying them in accordance with Article 6, section 6.6.

Discussion

The Union is claiming the Employer violated Article 6, Section 6.6 of the CBA by not establishing straight 10-hour shifts for grievants with paid meal periods. It argues that because of the nature of their jobs, the grievants are never given relief from duty. Thus, they are in effect straight shift employees.

Grievants described how they are always on duty when they are out in the boat, as even when they are not engaged in a compliance activity they are listening

for the radio, watching the water, watching the harvest vessels and divers, and watching for boats transiting the area. Tr. 15, 43, 49, 55-56, 68, 71, 81, 84, 89. They feel that by not having the ability to get away from their work station, from the noise of the boat, the weather conditions, and the radio, that they are not getting an uninterrupted meal period where they can sit down for 30 minutes and just unwind. Tr. 52, 70.

What the grievants are describing are the normal conditions of being on a boat on the water, which are weather, engine noise, radio noise, boat motion, and vessel traffic. Yet, at the time they took their jobs with the state, the grievants were made aware of the working conditions, which included spending most of their work days on a boat in Puget Sound. They were also aware that their work day would consist of ten and one-half hours with a 30-minute meal break. Tr. 53, 68, 75-76, 164-165. Thus, at the time they accepted their positions, grievants knew or should have known that they would likely have to eat their lunch on the boat much of the time.

Although they may have to spend much of their time on a boat, the evidence does not show that the grievants are required to remain on duty the entire time they are on the boat. Their work schedule provides for a 30-minute unpaid meal break from their duties each day, and their first and second level supervisors indicated that they are expected to take such a break. There are always two or more people on a compliance boat and many of the duty activities can be done by one person. Tr. 169, 175. For example, it only takes one person to operate any of the boats used by the geoduck compliance crew, and the vessel operator can also listen for and answer the radio, monitor the harvesters, and watch for other vessel traffic. Tr. 164, 169. It also only takes one person to perform a weigh out of the geoduck harvest after the compliance boat and the harvester boat are rafted together. Tr. 137-138. Furthermore, only one person at a time can enter data into the computer and talk on the radio or telephone. The evidence clearly shows that there are times when one person can take a break from duty for up to 30 minutes

after informing the other crew member(s) so they can take over. *See* log, Ex. 9; Dean testimony Tr. 108-113. Furthermore, each grievant is not on the water every day. There are days when a grievant may be scheduled for the office, the dive locker, or the marine station. Tr. 113-114.

Mr. Heikkila testified that whoever is at the helm can answer the radio and the telephone if one of the crew was completely off duty for a period. Tr. 27. He also testified that once their boat is secured alongside a harvester, it only takes one person to do a weigh out, although another crew member may perform a vessel inspection. Tr. 27, 28. Yet, the logs show that vessel inspections are not performed every day or on every harvest vessel. Ex. 9; Tr. 58. Thus, Mr. Heikkila's testimony and the logs show that a crew member can take a 30-minute break from his duties during the day if he so desires.

Mr. Bash described how it is easy to relax, read a book or take a nap during a meal period when the water is flat calm, but there are days when the water is so rough that a computer cannot be kept on the table, and there is everything in between. Tr. 45. He also testified that one has to be more vigilant as to where the boats and divers are in rough water, and one is constantly shifting one's body weight to counter the movement of the boat. Tr. 50. Yet, Mr. Bash also admitted that not everyone on the boat is looking around all the time. Tr. 49. Thus, it appears that even in rough water one person could be off duty while the other crew member or members remain extra vigilant.

Mr. Geist testified that during weigh outs someone has to monitor the radio and telephone, and to be attentive to the boat and surroundings. Tr. 82. He also testified that there are times when one boat is monitoring two different tracts and must transit from tract to tract. Tr. 86, 96. He additionally testified that he is always alert and listening to the radio and that sort of thing. Tr. 97. According to Mr. Geist, there is no down time during the day. Tr. 93. Yet, he admitted that only one person can answer the radio at any given time, and that it was not always his responsibility to answer the radio. Tr. 97. He also indicated that his

conclusion there is no down time during the day is largely based on the fact that when he is out on the water, he cannot escape the engine and radio noise, the boat motion, and the sights and sounds of his surroundings. Thus, his testimony did not establish that he could not take 30 minutes away from his compliance duties each day if he so desired. It only showed that he could not take a 30-minute break from the boat every work day.

Article 6, section 6.6 pertains to employees working straight shifts who are required to eat their meals while remaining on duty. It is undisputed, however, that grievants are not working straight shifts with paid meal periods. Tr. 51. They have an unpaid 30-minute meal period which they may take at any time during their 10½ hour shift when they feel hungry and there is no activity requiring their attention. There is no set meal period and members of the compliance crew are expected make their own time as to when they need to eat. Tr. 106. Mr. Dean, testified that he could set a schedule for meal times but he did not think the men would want that, and he tries to be as accommodating as possible. Tr. 106. The grievants are not required to remain on duty during their meal period as evidenced by the testimony of their supervisors. They can take a 30-minute break from duty each day, and it is up to them to take the time. Tr. 107-108, 147, 162-164. Thus, I find the grievants are covered by Article 6, section 6.5, not Article 6, section 6.6.

The evidence shows that although they are entitled to a 30-minute break from duty around the middle of their shift, the grievants' meal break may be interrupted with a necessary compliance activity. Tr. 104, 117, 147. Under these circumstances, the compliance officer whose meal break was interrupted may resume and finish his break once the compliance activity is completed. Tr. 105, 147. The CBA provides that:

...When an employee's unpaid meal period is interrupted by work duties, the employee will be allowed to resume his or her unpaid meal period following the interruption to complete the unpaid meal period. In the event an employee is unable to complete the unpaid meal period due to operational necessity, the employee shall be

entitled to compensation, which will be computed based on the actual number of minutes worked within the unpaid meal period. Meal periods may not be used for late arrival or early departure from work and meal and rest periods shall not be combined.

Ex. 5, Article 6, section 6.5. If an employee is unable to take or complete a 30-minute meal break from duty due to operational necessity, his recourse is to request compensation. None of the grievants, or any other compliance crew member, has ever requested compensation for being unable to complete an unpaid meal period. Tr. 113, 128, 167, 171-172. Thus, I find that the grievants are each able to take a 30-minute meal break from duty each work day, either continuous or interrupted. If they choose to eat their meal while continuing to perform some of their compliance duties, that is their choice; it is not required.

The argument being made is not that the grievants are straight shift employees within the meaning of Article 6, section 6.6., but that they should be straight shift employees. The grievants believe that a straight shift with a paid meal period would be beneficial to operational needs and the crew's ability to appropriately and efficiently perform their duties and serve the geoduck purchasing community. Tr. 30, 47, 65, 75, 89. By their testimony, the grievants certainly have shown that they are earnest, hardworking employees who take their jobs seriously. Yet, there is evidence showing that it would not be beneficial to operational needs to make the compliance crews straight shift employees.

The Shellfish Program Manager, Todd Palzer, indicated that shortening the grievants' work day by 30 minutes would necessitate shortening the length of the harvest opportunity on the tract which would not benefit either the program or the industry. Tr. 167-168. In addition to the 8-hour harvest period when the compliance boat and crew is required to be on tract, there are travel logistics involved with getting to and from the tracts to the marina where the boat is moored, and at the beginning and end of each workweek getting to and from the Olympia area to the marina where the boat is moored. There is considerable juggling of work schedules to ensure that all of this occurs within a 40-hour work

week to avoid overtime or compensatory time. Tr. 126-127, 128, 171. According to Mr. Palzer, shortening each of the grievant's work day by 30 minutes would require an increase in the staffing level and consequently an increase in cost. Tr. 171-172.

It is a management function to determine the location of operations and work sites, and to establish or modify the daily work shift and hours of work of employees. The CBA provides that:

33.1 The Employer retains all rights of management, which, in addition to all powers, duties and rights established by constitutional provision or statute, shall include but not be limited to, the right to:

...

G. Determine or consolidate the location of operations, offices, work sites, including permanently or temporarily moving operations in whole or part to other locations;

H. Establish or modify the workweek, daily work shift, hours of work and days off;

...

33.2 The Employer agrees that the exercise of the above rights shall be consistent with the provisions of this Agreement.

Article 33, section 311G and H; Ex. 5. An employee can request a change in his daily work shift and hours of work but the ultimate decision lies with the Employer. *See* Article 6, section 6.3, Ex. 5. In this case, the Employer has determined that a ten and one-half hour work day with a ten hour work shift and a 30-minute unpaid meal period meets the needs of the Employer's business and customer service. I find no violation of the CBA.

AWARD

The grievance is **DENIED**.

Dated: June 13, 2007



Carol J. Teather
Arbitrator