

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of)	
WASHINGTON STATE FERRIES,)	
WASHINGTON STATE DEPARTMENT)	CASE NO. 1586-A-78-143
OF TRANSPORTATION,)	
)	DECISION NO. 479-A, MRNE
Petitioner,)	
)	
vs.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
NATIONAL MARINE ENGINEERS)	AND ORDER
BENEFICIAL ASSOCIATION,)	
)	
Respondent.)	
)	
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APPEARANCES:

SLADE GORTON, Attorney General, by ROBERT M. MC INTOSH,
Assistant Attorney General, for the petitioner.

J. MARKHAM MARSHALL, Attorney-At-Law, for the respondent.

This matter comes before the Public Employment Relations Commission on the basis of a notice of labor dispute filed by the employer on July 19, 1978. An emergency meeting of the Commission was held on July 21, 1978, resulting in an interim order of the Commission. The parties indicated essential compliance with the interim order of the Commission. The matter was heard before the full Commission on August 14 and 15, 1978 at Seattle, Washington. The Commission makes the following:

FINDINGS OF FACT

1. The petitioner is an agency of the State of Washington charged by law with the responsibility for the operation of a system of ferries on and crossing Puget Sound, and is successor to the Washington State Toll Bridge Authority under RCW 47.64.

2. The respondent is the representative of licensed marine engineers employed aboard the ferries operated by the petitioner.

3. The petitioner and the respondent have entered into a collective bargaining agreement for the period from July 1, 1977 through June 30, 1980. Section IV of that collective bargaining agreement provides in sub-section (a) that the agreement applies to all vessels of the employer normally engaged in the transportation of passengers, automobiles and/or freight on Puget Sound and adjacent inland waters, the Straits of Juan de Fuca, and the San Juan Islands, and the waters of Canada. Sub-section (b) of Section IV provides that 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 an immediate conference for the purpose of arriving at and setting forth a minimum wage manning scale, and working schedule agreeable to the parties for each such vessel. In the event the representatives of the parties cannot agree in conference upon a basis for settlement within three days, it is the duty of the parties to refer the controversy or dispute to the Public Employment Relations Commission under RCW 47.64. The orders and awards of the Public Employment Relations Commission are binding upon any employee or employees, or their representatives affected thereby, and upon the Washington State Department of Transportation.

4. The Washington State Department of Transportation has entered into a charter agreement with the Boeing Company which provides for the operation of the Boeing Model 929-100 Jetfoil "Flying Princess II" for Washington State Ferries on a trial basis between various cities on Puget Sound for the period from July 19 to September 9, 1978. The Flying Princess II is operated under a certificate of inspection issued by the United States Coast Guard, under which the required crew consists of two licensed operators and four deckhands. Under the original terms of the charter agreement, Boeing Company was to provide all personnel for maintenance and operation of the chartered vessel.

5. Pursuant to Section IV of their collective bargaining agreement, representatives of the petitioner and the respondent met to determine manning for the demonstration charter of the jetfoil. The respondent initially took the position that there was no need for a licensed marine engineer on board the jetfoil during its operation under the charter agreement referred to in paragraph 4, above. No written agreement was executed by the parties on that subject matter.

6. On or about July 14, 1978, the petitioner entered into a written agreement with the Inlandboatmen's Union of the Pacific providing for the assignment of regular Washington State Ferries unlicensed personnel represented by the Inlandboatmen's Union of the Pacific as two of the four members of the deckhand crew of the Jetfoil Flying Princess II during its charter to Washington State Ferries. Such personnel were to function as working members of the Jetfoil crew, and appropriate modifications were made in contract provisions to accommodate the operation.

7. On or about July 14, 1978, the petitioner entered into a written agreement with the International Organization of Masters, Mates and Pilots, Branch No. 6, providing for the assignment of a deck officer from the seniority roster of Washington State Ferries licensed deck officers represented by the International Organization of Masters, Mates and Pilots as an observer on the bridge of the Jetfoil Flying Princess II during its charter to Washington State Ferries. Such personnel were aboard to provide them with orientation and knowledge of jetfoil operations.

8. No labor dispute has been brought to the attention of the Commission concerning the agreements set forth in paragraphs 6 and 7, above, and the Public Employment Relations Commission has not ruled on the propriety of either such arrangement.

9. There is no evidence of a long-term charter or purchase arrangement under which the petitioner would operate and man Jetfoil Flying Princess II or any similar vessel; and no dispute presently exists concerning the long-term work jurisdiction concerning such vessels which is a justiciable issue before the Commission.

10. The arrangement between the petitioner and the Inlandboatmen's Union of the Pacific set forth in paragraph 6, above, is distinguishable on its face from the arrangement between the petitioner and the Masters, Mates and Pilots which is set forth in paragraph 7, above, and from the present labor dispute, on the basis of the fact that the employees of the petitioner working under paragraph 6, above, are functioning as working members of the Jetfoil crew.

11. The cause of the present labor dispute is the agreement of the petitioner to compensate deck officers for observing

Jetfoil operations where such observers perform no work as a member of the Jetfoil crew, while denying similar treatment to licensed marine engineers.

12. The evidence establishes that the crew provided by the Boeing Company for operator positions on the Jetfoil consist of persons with engineering backgrounds who have been specially trained as jetfoil operators, rather than of deck officers specially trained as jetfoil operators. The respondent has a colorable claim to jurisdiction over jetfoil operator positions.

From the foregoing findings of fact, the Commission makes the following:

CONCLUSIONS OF LAW

1. The determination of minimum manning requirements for the safe operation of the Jetfoil Flying Princess II, its passengers, cargo and crew is a function pre-empted by federal law and delegated by Congress to the United States Coast Guard. The Public Employment Relations Commission is not authorized to review or overrule such determinations of the United States Coast Guard and assumes no responsibility for the minimum safety standards established by the United States Coast Guard. Any appeal from the ruling of the officer in charge of the United States Coast Guard must be taken up through appropriate federal channels.

2. The Public Employment Relations Commission has jurisdiction under RCW 47.64 and under the collective bargaining agreement between the parties to determine a dispute concerning the minimum manning of the Jetfoil Flying Princess II during its charter to Washington State Ferries, and such dispute has been properly presented to the Commission.

3. The petitioner is not legally obligated by statute or by contract to assign a licensed marine engineer to the Jetfoil Flying Princess II during the period of the charter referred to above.

4. Because another labor organization, namely the International Organization of Masters, Mates, and Pilots, has been given an opportunity to observe the operation of the Jetfoil Flying Princess II, the respondent is entitled to one observer aboard said vessel while underway and one observer at dockside during


maintenance to enable it to negotiate intelligently about the manning of the vessel should such a vessel be purchased or chartered in the future for operation by a crew employed by petitioner.

5. Further, such observation by respondent should be without expense to the state but as members of the jetfoil crew manifest, entitled to full access to the vessel without payment of passage or expense for incidental amenities while aboard.

IT IS SO ORDERED.

DONE IN OPEN MEETING at Seattle, Washington this 15th day of August, 1978.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARY ELLEN KRUG, Chairman



MICHAEL H. BECK, Commissioner



PAUL A. ROBERTS, Commissioner