

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
NATIONAL MARINE ENGINEERS	)	CASE NO. 3534-D-81-28
BENEFICIAL ASSOCIATION	)	
	)	DECISION NO. 1228-MRNE
For a declaratory ruling involving:	)	
	)	
WASHINGTON STATE FERRIES	)	DECLARATORY RULING
(WASHINGTON STATE DEPARTMENT	)	
OF TRANSPORTATION)	)	

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Preston, Thorgrimson, Ellis and Holman, by J. Markham Marshall, Attorney at Law, represented the petitioner.

Ken Eikenberry, Attorney General, by Robert M. McIntosh, Assistant Attorney General, represented the employer.

The National Marine Engineers Beneficial Association (MEBA) has petitioned the Public Employment Relations Commission for a Declaratory Ruling pursuant to RCW 34.04.080 and WAC 391-08-500 through -510. The petitioner seeks approval of a grievance procedure contained in a Memorandum of Understanding entered into by MEBA and Washington State Ferries (Washington State Department of Transportation) on May 19, 1981. The Memorandum of Understanding was attached to a 1980 - 1983 collective bargaining agreement signed by the parties at the same time. The employer has joined with the union in the request that a ruling be made, but differs from the union as to what that ruling should be. The facts relevant to this determination have been stipulated by the parties.

The Memorandum of Understanding sets forth dual procedures for resolving employee grievances. Of concern here is the first procedure, dealing with employee grievances on disciplinary matters. That procedure ultimately calls for final and binding resolution of a dispute by a private arbitrator. The union maintains that the arbitration procedure can and should be recognized by PERC. The employer questions the legality of what effectively would be a subdelegation of PERC's authority.

RCW 41.58.020(4) (pertaining to the general powers and duties of this Commission) declares that: "final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes..." However, Chapter 47.64 RCW (applicable specifically to marine employees, including those represented by the

petitioner), as amended by Section 2, Chapter 343, Laws of 1981 (Senate Bill 3359) directs this Commission to: "adjudicate all complaints, grievances and disputes concerning labor arising out of the operation of the ferry system..." RCW 47.64.040 details the procedures to be followed to bring employee grievances before PERC. It states:

"47.64.040 Adjudication of labor disputes-Hearings-Subpoenas. Any employee or employee's representative, or the department of transportation claiming labor disputes shall in writing notify the commission who shall make careful inquiry into the cause thereof and issue an order in writing advising the employee, or his representative, and the department as to the decision of the commission.

The parties shall be entitled to offer evidence relating to disputes at all hearings conducted by the commission. The orders and awards of the commission shall be final and binding upon any employee or employees or their representatives affected thereby and upon the department.

The commission shall by regulation prescribe its rules of procedures.

The commission shall have the authority to subpoena any employee or employees, or their representatives, and any member or representative of the department, and any witnesses. The commission shall have power to require attendance of witnesses and the production of all pertinent records at any hearings held by the commission. The subpoenas of the commission shall be enforceable by order of any superior court in the state of Washington for the county within which such proceedings may be pending."

RCW 47.64 is unique in that, of the many collective bargaining statutes administered by the Commission, it is the only one to direct the Commission to exclusively arbitrate contract grievances and is the only one which establishes specific grievance procedures available to individual employees.

The Commission has twelve professional employees, including its Executive Director, who provide a variety of dispute resolution services, including representation case and unfair labor practice case adjudication as well as mediation and grievance arbitration. The public sector clientele of the agency is estimated to include more than 100,000 employees in more than 3000 bargaining units. The Commission's case load has increased during each biennium since the agency was created but, due to budgetary constraints, staffing has not always kept pace with case load. Although PERC backlogs and case processing delays have been reduced somewhat recently, case handling is not all on a "current" basis. Consequently, and in keeping with the spirit of RCW 41.58.020(4), and general administrative efficiency, the Commission generally welcomes efforts of parties to resolve their labor disputes among themselves including, as here, through the use of private arbitrators.

Nevertheless, after reviewing the relevant legal precedents, we find that we cannot delegate the authority to make final and binding decisions on grievances involving the discipline of marine employees. RCW 47.64.040 clearly directs the Commission to resolve such disputes. A grievance arbitration procedure is an adjudicatory or quasi-adjudicatory function. It is well settled that the final responsibility for such functions, insofar as they are not ministerial, cannot be wholly delegated. In re Puget Sound Pilots Assn., 63 Wn.2d 142 (1963). Noe v. Edmonds School District, 83 Wn.2d 97 (1973); Foster v. Industrial Insurance Co., 107 Wash. 400 (1912). 2 K.Davis, Administrative Law Treatise, Sec. 9.06 (1958) and Supplement (1976); 3 J.Sutherland, Statutory Construction, Sec. 4.14 (Sands, ed. 1975); Cf., NLRB v. John S. Barnes Corp., 178 F.2d 156 (7th Cir., 1949). In other words, we cannot give responsibility for final determination of such matters to another person or entity.

RCW 41.58.020(4), quoted above, provides the strongest support for a deferral to contractual procedures, but the general applicability of that statute gives it a position that is inferior to the specific instructions of RCW 47.64.040. 2A J.Sutherland, Statutory Construction, Sec. 51.05 (Sands, ed., 1975). The union argues that the proposed private arbitrator procedure is consistent with the Commission's authority under the statute because the proposed procedure is a means of "administering labor relations", as the Commission is directed to do. While this may be true, we nevertheless cannot avoid the proscription against delegation of final determinations in adjudicatory or quasi-adjudicatory matters.

If the parties wish to use a private arbitrator, they are free to do so. The determinations of such an arbitrator cannot be final and binding, and any dissatisfied party could seek a redetermination of the same issue(s) from this Commission. It is not clear whether the proceedings would need to be conducted de novo, and we are not called upon to decide that now. It would seem, however, inefficient to hold a second hearing in all cases absent showing of prejudice in the conduct of the hearing, and we suggest that the parties to any private arbitration proceeding which the parties would seek to have reviewed by this Commission without a second hearing would want to consider transcription of the hearing before the arbitrator and preservation of a full documentary record.

As a final note, we express our concern for the rights of the aggrieved employee. It is not clear whether he or she necessarily is bound to the procedure contained in the Memorandum of Understanding between the employer and the union, particularly in view of the express statutory standing of individual employees to bring cases before the Public Employment Relations Commission. We therefore suggest that if any alternative procedure be utilized, the written consent of the affected employee be obtained.

FINDINGS OF FACT

1. Washington State Ferries, Washington State Department of Transportation, is the employer of employees under RCW 47.64, and is successor to the Washington Toll Bridge Authority.
2. National Marine Engineers Beneficial Association is the recognized collective bargaining representative of licensed marine engineers employed by Washington State Ferries aboard its ferries, wharves or terminals.
3. The parties presently have in effect a collective bargaining agreement with a duration of June 30, 1983.
4. The parties have entered into a Memorandum of Understanding dated May 19, 1981 which provides for implementation, upon approval by the Public Employment Relations Commission, of an alternative grievance procedure to that contained in the collective bargaining agreement referred to in paragraph 3 of these findings of fact, whereby grievances concerning the discipline of employees are to be submitted for final and binding arbitration before an arbitrator selected under the procedures of the Federal Mediation and Conciliation Service.
5. The parties stipulate that they anticipate that, during the life of the collective bargaining agreement referred to in paragraph 3 of these findings of fact, situations have arisen or will arise in which employees of Washington State Ferries represented by National Marine Engineers Beneficial Association are subjected to disciplinary action which the employee and/or the National Marine Engineers Beneficial Association may desire to have reviewed under the provisions of the collective bargaining agreement.
6. The parties have a genuine disagreement as to whether the alternative grievance procedure referred to in paragraph 4 of these findings of fact may lawfully be implemented in light of RCW 47.64 in case of a disciplinary action imposed by Washington State Ferries on an employee represented by National Marine Engineers Beneficial Association.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction pursuant to RCW 34.04.080 to issue a declaratory ruling as to the applicability of RCW 47.64 to the alternative grievance procedure referred to in paragraph 4 of the foregoing findings of fact.
2. Grievance concerning the discipline of employees by Washington State Ferries are labor disputes within the meaning of WAC 391-08-007(4) and RCW 47.64.

3. The determination of grievances concerning the discipline of employees by Washington State Ferries is an adjudicatory or quasi-adjudicatory function delegated by RCW 47.64 to the Public Employment Relations Commission. The Commission may not delegate the authority to make final and binding determinations in such matters.

4. The Memorandum of Understanding referred to in paragraph 4 of the foregoing findings of fact, insofar as it would seek to limit the statutory standing of employees of Washington State Ferries to file and prosecute grievances before the Public Employment Relations Commission by substitution of private arbitration procedures invoked by the union, is beyond the statutory authority of the employer and the union to negotiate.

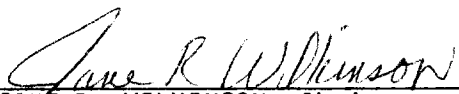
DECLARATORY RULING

1. The Memorandum of Understanding referred to in paragraph 3 of the foregoing findings of fact, cannot lawfully be implemented as written, for the reasons indicated in paragraphs 3 and 4 of the foregoing conclusions of law.

2. This declaratory ruling is binding on the employer, the union and on the Commission on the state of facts submitted by stipulation of the parties.

DATED this 16th day of September, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
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JANE R. WILKINSON, Chairman

  
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R. J. WILLIAMS, Commissioner

  
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MARK C. ENDRESEN, Commissioner