STATE OF WASHINGTON

BEFORE THE MARINE EMPLOYEES COMMISSION

In the matter of a grievance between:	)	
MARINE ENGINEERS BENEFICIAL ASSOCIATION (on behalf of James Fay)	)	MEC Case No. 6-86
	)	Decision No. 26-MEC
and	)	Findings of Fact, Conclusions of Law and Order
WASHINGTON STATE FERRIES	)	

Webster, Mrak and Blumberg, by James H. Webster, Attorney at Law, appeared for the complainant.

Kenneth Eikenberry, Attorney General, by D. Thomas Wendell, Assistant Attorney General, appeared for the employer.

On September 8, 1986, the Marine Engineers beneficial Association (union) submitted a grievance to the Marine Employees' Commission (MEC) pursuant to RCW 47.64.150 regarding the discharge of James Fay from employment with Washington State Ferries (WSF). A hearing was held in Seattle, Washington, on November 24, 1986, before Frederick J. Rosenberry, Examiner. The parties submitted post-hearing briefs on January 13, 1987.

BACKGROUND

The Grievant

James Fay graduated from a school for marine engineers and became licensed by the U.S. Coast Guard as a marine engineer in 1981. He obtained a diesel certification in February, 1986. The record

discloses that the grievant had been employed occasionally by WSF as a temporary relief employee, and that he had been employed elsewhere in the maritime industry prior to the employment in question here.

James Fay was hired as a probationary employee by WSF on April 1, 1986, to fill an assistant engineer position within the bargaining unit represented by the Marine Engineers Beneficial Association. The grievants' normal work schedule consisted of seven consecutive twelve-hour work shifts (commencing at either 5:50 a.m. or 5:50 p.m.) in alternate weekly cycles with seven days off between the shift rotation.

In a meeting with the port engineer (a member of WSF management) on April 30, 1986, the grievant was warned that he needed to work more harmoniously with his fellow employees, that he was not following directions and that he should listen to instructions more carefully. The grievant was also advised that the chief engineer on his shift had lodged a number of complaints regarding the grievant's performance, had refused to work with the grievant any longer, and was transferring to a different shift.

On May 23, 1986, the grievant was given a written warning alleging that there had been several complaints regarding the grievant's comments to fellow employees, that there had been complaints about the grievant's technical knowledge, and that there had been complaints concerning the grievant's relations with co-workers in the engine room, deck, and galley. The grievant was advised that there were serious doubts about his level of competence to perform his duties, and he was accused of ignoring earlier corrective interviews. The grievant was advised that the employer was by-passing the written warning phase of progressive discipline.

On June 9, 1986, the grievant was warned orally that he must pay

more attention to the instructions given by his superiors, that there had been ongoing complaints regarding his performance, and that there had been incidents that cast questions on his technical ability as well as his ability to get along with his co-workers. The grievant was warned that if one more incident of wrongdoing on his part occurred, he would be terminated.

On August 1, 1986, the employer summoned the grievant and the grievant's union representation to a "pre-determination" meeting, the purpose of which was to determine if a preliminary management decision to discharge the grievant was warranted. Because of the absence of two WSF officials (the personnel manager and the operations director) who were to have attended that the meeting, the port engineer decided to postpone a decision on the discharge of the grievant until the other members of management could participate in the determination. The port engineer advised the grievant that there had been numerous complaints registered against him while three other engineers hired at the same time had received none. The complaints and the grievant's prior responses were discussed, but the grievant continued to deny that there was any problem.

The "pre-determination" meeting was re-convened on August 18, 1986. In attendance at that time were the grievant, two union representatives and two members of WSF management. The grievant's performance record was reviewed and the grievant was given an opportunity to respond to the complaints against him. At the conclusion of the meeting, WSF advised the grievant that his employment was terminated based on his unsatisfactory employment record during his probation period.

The Collective Bargaining Agreement

The union and WSF entered into their current collective bargaining agreement on July 1, 1983. Although the parties have had a long-standing bargaining relationship, their current agreement is the first in their history to contain provisions for a "probationary" period during which new employees would be subject to discharge without recourse under the collective bargaining agreement. In the past, employees dispatched by the union for work at WSF received the full benefits of the parties' entire labor agreement, including seniority provisions, discipline standards and grievance procedure, immediately upon commencing their employment with WSF.

In the negotiations between the union and WSF during 1983, WSF sought provisions for probationary employment. The parties failed to reach agreement on the matter, and each party submitted its proposal to an interest arbitrator. The employer's intent in submitting the probationary employee proposals to the arbitrator was to establish a probationary period of six continuous months, during which the employer would have the opportunity to observe performance and to terminate an unsatisfactory employee without having the action subject to the "just cause" requirement or grievance provisions of the parties' labor agreement. The arbitrator's award adopted the employer's proposal concerning probationary employment. Consequently, Sections V, XX and XXIII of the collective bargaining agreement, which are relevant to this proceeding, were implemented.

ISSUES

The parties were unable to stipulate that the dispute is properly before the Examiner, or to stipulate the issue(s) to be decided.

The Examiner frames the dispute as follows:

1. Does the grievant, a probationary employee, have the right to seek adjustment of his grievance directly from the Marine Employees' Commission? And

2. If issue 1. is found in the affirmative, was the discharge of employee James Fay proper? And

3. If the discharge was improper, what is the correct remedy?

RELEVANT CONTRACT PROVISIONS[1]

SECTION V
DISCIPLINE AND DISCHARGE

The Employer shall not discharge or otherwise discipline any Engineer Officer without just cause.

SECTION XX - SENIORITY

(b) PROBATIONARY PERIODS: Newly employed Engineer Officers will complete a six (6) continuous month probationary period. At the conclusion of six (6) continuous months employees will establish seniority with the Employer, as of the date they began continuous service, provided they have successfully completed their probationary period. The Employer retains the right to terminate employees at any time during their probationary period, and this decision will not be subject to Sections V and XXIII of the Agreement.

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[1] The July 1, 1983, collective bargaining agreement expired on June 30, 1985. At the time of the instant hearing the parties had not entered into a successor agreement. Pursuant to RCW 47.64.170(7) the terms and conditions of the 1983-1985 collective bargaining agreement are to remain in effect until a successor agreement is arrived at.

SECTION XXIII - DISPUTES

(a) In the event a controversy or a dispute arises resulting from the application or interpretation of any provision of this Agreement or because an employee covered by this Agreement feels grieved, a conference shall be held between a duly authorized representative of the Employer and a duly authorized representative of the Union, both of the aforementioned representatives having full authority to settle the controversy or disputes, within thirty (30) working days from the date the Union became aware of the grievance or dispute.

(b) In the event the parties fail to agree on a resolution of the matter within thirty (30) working days of the conference either party may submit the matter to arbitration as herein provided.

(c) In the event either party decides to submit the matter to arbitration, it will notify the other party of this action and will refer the dispute to the Marine Employees' Commission for a final resolution. If mutually agreed between the Employer and the Union, the matter may be referred to another independent third party instead of the Marine Employees' Commission for a final resolution.

(d) The arbitrator's decision shall be final and binding on the Union, affected employee(s) and the Employer.

RELEVANT STATUTORY PROVISIONS

RCW 47.64.150 GRIEVANCE PROCEDURES. An agreement with a ferry employee organization that is the exclusive representative of ferry employees in an appropriate unit may provide procedures for the consideration of ferry employee grievances and of disputes over the interpretation and application of agreements. Negotiated procedures may provide for binding arbitration of ferry employee grievances and of disputes over the interpretation and application of existing agreements. An arbitrator's decision on a grievance shall not change or amend the terms, conditions, or applications of the collective bargaining agreement. The procedures shall provide for the invoking of arbitration only with the

approval of the employee organization. The costs of arbitrators shall be shared equally by the parties.

Ferry system employees shall follow either the grievance procedures provided in a collective bargaining agreement, or if no such procedures are so provided, shall submit the grievances to the marine employees' commission as provided in RCW 47.64.280.

RCW 47.64.280 MARINE EMPLOYEES' COMMISSION.

. . .

(2) The marine employees' commission shall: (a) 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;

(3) In adjudicating all complaints, grievances, and disputes, the party claiming labor disputes shall, in writing, notify the marine employees' commission, which shall make careful inquiry into the cause thereof and issue an order advising the ferry employee, or the ferry employee organization representing him or her, and the department of transportation, as to the decision of the commission.

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

RELEVANT ADMINISTRATIVE CODE PROVISIONS

WAC 316-02-003 POLICY—CONSTRUCTION—WAIVER. The policy of the state being primarily to promote peace in labor relations in the Washington state ferry system, these rules and all other rules adopted by the agency shall be liberally construed to effectuate the purposes and provisions of the statutes administered by the marine employees' commission and nothing in any rule shall be construed to prevent the commission and its authorized agents from using their best efforts to

> adjust any labor dispute. The commission and its authorized agents may waive any requirement of the rules unless a party shows that it would be prejudiced by such a waiver.

POSITION OF THE UNION

The union acknowledges that the discharge at issue in this case is not governed by the parties' collective bargaining agreement, because the provisions of the contract imposing a "just cause" standard for discipline, the seniority provisions, and the grievance and arbitration provisions of the agreement are not applicable in the event of the dismissal of a probationary employee.

The union claims the grievance may be submitted directly to the Marine Employees' Commission pursuant to RCW 47.64.150 and RCW 47.64.280, however, because there is no collective bargaining agreement grievance procedure available under these circumstances. Thus the union claims that RCW 47.64.280(2)(a) provides the MEC statutory authority to:

> [a]djust all complaints, grievances, and disputes between labor and management arising out of the operation of the ferry system

so that the instant dispute is properly placed before it for adjudication. The union maintains that the Marine Employees' Commission rules set forth in Title 316 WAC do not clearly address the processing of grievances directly before the MEC, but are intended to implement Chapter 47.64 and cannot alter the intent of the statute. The union thus urges that the procedures set forth in the Washington Administrative Code be read in a manner that will carry out the mandate of the statute.

Addressing the standard to be applied, the union contends that the employer has established a standard of fair and equitable treatment

for all of its employees, and that it is not free to act arbitrarily or capriciously in its dealing with probationary employees. The union claims that the employer has a four-step progressive discipline policy (consisting of oral warning, written warning, and suspension prior to discharge) which is a long-standing written policy applicable to all employees, without exception for probationary employees. The union claims that the grievant was dismissed in a manner that contravenes the employer's internal progressive discipline standards, and that the discharge was not fair and equitable. The union further claims that the disciplinary procedures required by the employer's internal policies preclude the dismissal of the grievant, because the third step of the progressive discipline process (disciplinary suspension) was not imposed prior to discharge. Therefore, the union reasons that the ferry system violated its own requirement of imposition of progressive discipline, and that the discharge should be set aside.

The union also claims that the allegations against the grievant are, for the most part, unsubstantiated hearsay. Even if they are true, the union contends that they do not warrant discharge.

POSITION OF THE EMPLOYER

The employer contends that the instant matter is regulated by Chapter 316-65 WAC, which governs proceedings before the MEC relating to the arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement. The employer raises a threshold issue involving procedural requirements. Contending that the request for arbitration used by the union to initiate this proceeding is not sufficient under any other chapter of the Washington Administrative Code, the employer reasons that this proceeding must be an arbitration, which is unavailable to the grievant because of his

probationary standing.

The employer rejects the notion of direct MEC jurisdiction in the matter under RCW 47.64.150 and RCW 47.64.280(2)(a), contending that because the parties' collective bargaining agreement provides a grievance procedure that includes arbitration, it is the only source of relief for an aggrieved employee. The employer maintains that the purpose of arbitration before the MEC is for interpretation of a collective bargaining agreement, not the interpretation of a statute. The employer maintains that probationary employees who are discharged cannot perfect a claim alleging improper discharge under either the statute or the collective bargaining agreement.

Notwithstanding the foregoing, the employer maintains that it has a policy of treating probationary employees in a fair and equitable manner. The employer maintains that the reason for the introduction of a probationary employee status into the parties' collective bargaining agreement was to allow the ferry system some scrutiny over its new employees, and an opportunity to review their performance prior to commitment to a long term employer/employee relationship. WSF contends that the probationary period allows WSF to dismiss probationary employees at any time within the six month period, without the necessity of imposing progressive discipline, without need to demonstrate "just cause" for the discharge, without employee recourse under either the terms of the collective bargaining agreement or Chapter 47.64 RCW, and without need for the employer to meet any standard for discipline that impinges on its unencumbered right to discharge a probationary employee. WSF maintains that, during a employee's probationary period, the employer is looking at the total performance of the new employee, as opposed to isolated incidents of wrongdoing of the type addressed by its discipline policy. Therefore, the employer

contends that the policy has no applicability to probationary employees.

Further, the employer contends that its disciplinary policies originated many years ago and were last revised in 1981, at a time when there were no probationary period provisions in the collective bargaining agreement. Thus, the system of progressive discipline was never intended to apply to probationary employees. Moreover, the employer contends that there is no policy or contractual obligation on the part of the employer to follow the pre-existing progressive discipline procedures in the imposition of discipline or the discharge of a probationary employee.

WSF points out that there is no allegation or evidence of any discrimination on the basis of the grievant being a member of a protected class of people.

Finally, the employer alternatively maintains that if a showing of cause is requisite for the discharge of a probationary employee, such a showing exists in the instant case. It contends that the grievant was discharged based on the totality of his performance and conduct, that he was given advance warnings on several occasions of the probable adverse consequences of poor performance, and WSF substantially complied with its disciplinary rules.

DISCUSSION

Direct Appeal to MEC

James Fay's rights concerning the appeal of his discharge are different from the rights of most other employees of the state of Washington, because his terms and conditions of employment are not established under the state civil service laws set forth in chapter

41.06 RCW. His rights arise exclusively under Chapter 47.64 (Marine Employees – Public Employment Relations) and the terms of the collective bargaining agreement for the bargaining unit in which he was employed.[2]

Chapter 47.64 RCW provides authority for the employer and union to enter into a collective bargaining agreement that includes a grievance procedure. The statute provides for recognition of and deferral to a negotiated grievance procedure, but that is not the set of rights asserted by the union in this case.

The Marine Employees' Commission has previously held that RCW 47.64.150 establishes two distinct methods for resolution of disputes. The employee may utilize procedures set forth in a collective bargaining agreement or, in the absence of such procedures, may submit the dispute to the MEC. Washington State Ferries, Decision 8 (MEC, 1985). The statute does not contain a provision that allows the employer and the union to waive or restrict an employee's right to appeal directly to the MEC. Such a waiver would violate the literal terms of the statute. The employer did not present evidence demonstrating that the interest arbitrator imposed such a limitation on the rights of individual employees, or that the employees, acting through their union, knowingly accepted such a waiver.

The history of Chapter 47.64 RCW also indicates that the Legislature intended that individual employee rights be maintained so as to allow individuals to bring grievances and appeals before the statutory body charged with administration of law. While it

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[2] At no time in the course of the hearing did the grievant allege that WSF discriminated against him in some manner that would suggest that a state or federal anti-discrimination law or any other law may have been violated in conjunction with his discharge.

administered Chapter 47.64 RCW, the Public Employment Relations Commission also held that the parties to a collective bargaining agreement could not deprive an individual employee of the rights conferred by essentially similar statutory language. Washington State Ferries, Decision 1228 (MRNE, 1981); Washington State Ferries, Decision 1370 (MRNE, 1982).

The Examiner concludes that the MEC has the authority in the instant case to adjust Fay's grievance, which clearly arises from the operation of the ferry system, pursuant to RCW 47.64.150 and RCW 47.64.280(2). Fay does not have access to a contractual mechanism for the resolution of this dispute because of the specific provisions of the labor agreement which prohibit the arbitration of the discharge of a probationary employee. The grievant can proceed under the statute directly to the MEC.

The Probationary Period

The probationary period contained in the parties' collective bargaining agreement is similar to that established for most other state employees. RCW 41.06.170(2) provides that civil service employees must complete a six (6) month probationary period, during which an employee does not have the right to appeal a dismissal. Holeman v. Washington State Patrol, Decision D83-115 (Personnel Appeals Board, 1984), Corporon v. Department of Social and Health Services, Decision V83-83 (Personnel Appeals Board, 1984).

The purpose of probationary employment periods generally is to allow the employer the opportunity to observe an employee's overall job knowledge, performance and contribution on a trial basis, without an initial commitment of continued employment. Thus, in Trumbaur v. Group Health, 635 F.Supp 543, 122 LRRM 2384 (D.C W.Wash, 1986), the court held that an employee who was discharged

within the probationary period established by a collective bargaining agreement may not maintain an action for wrongful discharge under the laws of the state of Washington. The terms of the collective bargaining agreement between the parties to this case similarly provides that the employer retains the right to terminate at any time during their probationary period.[3]

Both generally and in this bargaining relationship, the employer/employee relationship changes significantly once an employee completes the probationary period and obtains "permanent" status. From that point forward, the employer is required to recognize the principal of seniority, must demonstrate "just cause" as a basis for termination, and must submit any disputes on those matters for determination under the grievance

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3 The instant proceeding has some elements that are similar to those that appear in "employment at will" litigation. In Perri v. Aytch 724 F.2d 362, 115 LRRM 2257 (3rd Cir. 1983), a probationary employee who was discharged by her public employer, filed a lawsuit seeking to reverse the dismissal, the appeals court reviewing the employers personnel regulations, stated:

> …These regulations apply to permanent employees and probationary employees. Although probationary employment is commonly at the will of the employer, in this instance the regulations fixed probationary employment for a period of six months and specifically provided that dismissal during the probationary period shall be "for just cause only."

Perri aids in evaluating the merits of the case at hand because of the distinguishing fact that the employer's regulations there granted an employee an expectation interest in continued employment even during the six-month probation period, and conferred a property interest in probationary employment. The case at hand is directly opposite to Perry v. Aytch, because the parties labor agreement clearly excludes the "just cause" standards applicability to probationary employment. Thus, the grievant here has no property interest because of his probationary status.

procedures of the labor agreement grievance procedure. The Examiner thus concludes that the concession ordered by the interest arbitrator made a substantial change in the rights of the affected employees.

Progressive Discipline

The employer's "progressive discipline" policies were spelled out in two WSF memoranda dated June 15, 1981. One memorandum describes a four stage disciplinary process, calling for the imposition of an oral warning at the first stage, imposition of a written warning at the second stage, and imposition of a suspension at the third stage of discipline, all prior to the imposition of the ultimate discharge penalty. The second memorandum advised supervisors that, under certain circumstances, immediate discharge could be imposed without the necessity of following the progressive discipline steps.

The union is not persuasive with its argument that the employer has an obligation to follow its progressive discipline policy in its dealings with probationary employees. The record does not reflect that there has been any specific agreement between the parties making the progressive discipline procedure applicable to probationary employees. The policy relied upon was adopted two years prior to the introduction of the probationary period concept into the parties' labor agreement. Thus, it is reasonable to accept the employer's contention that probationary employees were not contemplated at the time of the progressive discipline procedures were adopted. Conversely, it is reasonable to conclude that progressive discipline was among the restrictions on employer discretion which were eliminated by the adoption of the probationary period concept in the parties' labor agreement.

Even if the progressive discipline principle were to be made applicable in the determination of this dispute, questions would

arise as to the degree of reliance to which the employee was entitled and the employer's substantial compliance. The WSF discipline policy memoranda issued in 1981 were internal managerial guidelines that were addressed to and intended for use by "all supervisory staff". They were not addressed to, and the record does not reflect that they have been distributed to, all WSF employees. They were never made a part of the contract between the employer and the union. Accordingly, the union puts more weight on them than they will bear when it argues that, in essence, the union and the employees could reasonably infer that they constitute some form of a binding contract. Compliance with the memos in the event of the imposition of discipline on a non-probationary employee may make sound management sense, and can continue to be viewed as a practical administrative procedure to follow in order to ensure compliance with the terms of the labor agreement, but it goes too far to suggest that the progressive discipline procedure is required for probationary employees. Further, the record here discloses that the employee involved had multiple oral warnings and a written warning before being called in with his union representative for the first of two meetings at which more serious discipline was to be discussed. Another 17 days passed before the meeting at which the discharge was announced, meaning that the employee had at least one additional work cycle on duty to prove his worth or convince the employer there was no need for discharge.

The Decision to Discharge

WSF management officials testified that, because of educational and licensing prerequisites, the employer assumes that an employee referred to it by the union as a licensed engineer has the technical knowledge and skills necessary to perform the mechanical functions for which they are hired. After employees are hired, their total performance is reviewed from the multiple standpoints of technical skills, ability to understand the overall system

operation, and the ability to fit into a team concept working with others in the engine room.

The final decision to discharge the grievant was made by Armand Tiberio, the employer's operations director. The decision was based on reports obtained from members of management and a review of numerous negative incident memos involving the grievant's technical skills and co-worker relations, as well as a review of corrective interviews that had previously been conducted with the grievant. As a result of the foregoing, WSF management believed that the grievant's skills and performance were not satisfactory during his probationary period and that there was little likelihood that the grievant would meet the employer's standards in the near future. The operations director felt that a disciplinary suspension would be fruitless and not serve to accomplish anything because the separation from employment was based on an evaluation of skills and interpersonal relations with co-workers. The grievant had been warned repeatedly by the employer and by fellow union employees (both as individuals and as the grievant's superiors on the vessels) that there were problems, and that if matters did not change he would not survive his probationary period. Rather, it was his belief that the discharge during the probationary period would be the least disruptive, and would not be a violation of the labor agreement.

The grievant acknowledges that he was confronted by management on April 30, May 23, June 9 and August 1, 1986, and that he was advised that his performance and co-worker relations were not up to standards. In each case, the grievant denies the allegations of wrongdoing. He contends that the incidents were taken out of context, or that he had not been given adequate training or explanation from his employer. The grievant believes that he has done nothing to warrant discharge.

This case presents precisely the type of situation that demonstrates the need for and use of a probationary period. After the grievant had more than four months on the job, the employer determined that a harmonious long-term employment relationship could not be reasonably expected, and it promptly terminated the employment relationship before the employee or the employer had contributed substantial time and investment to it. The employer did not act arbitrarily or capriciously in making its decision to terminate the grievant's employment.

In the presentation of its case in this proceeding, the employer did not call witnesses to support or authenticate several of the negative reports regarding the grievant. If the employer were required to demonstrate "just cause" for the discharge, such an omission (and the consequent heavy reliance on hearsay evidence) could damage the employer's case. The instant proceeding is not controlled by the labor agreement, but is most definitely affected by it. If the Examiner were to reverse the discharge on the basis of reliance on hearsay, the decision would in effect render the employer's bargained-for right to terminate a probationary employee "at any time" meaningless, and would amount to a modification of the terms of the parties' collective bargaining agreement. Such an order would be inconsistent with the intent of the statute, which states in RCW 47.64.150 that a:

> ...decision on a grievance shall not change or amend the terms, conditions, or applications of the collective bargaining agreement.

In the instant case, the omission of better evidence does not negate the fact that the employer has only to meet a lesser standard for the discharge of a probationary employee. The employer has adequately established that its discharge of James Fay was the result of a reasoned decision based on facts actually reported to it.

FINDINGS OF FACT

1. Washington State Ferries, Washington State Department of Transportation, is the employer under RCW 47.64.

2. The Marine Engineers Beneficial Association is the collective bargaining representative under Chapter 47.64 RCW of licensed engineer officers employed by Washington State Ferries.

3. Prior to his discharge, James Fay was a ferry system employee as defined in RCW 47.64.011(5).

4. Washington State Ferries and the Marine Engineers Beneficial Association are parties to a collective bargaining agreement that became effective on July 1, 1983 which provides, in Section XX(b), that newly employed engineer officers must complete a six (6) continuous months probationary period. The employer retains the right to terminate employees at any time during the probationary period, and such decisions are not be subject to provisions at Section V of the contract concerning discipline and discharge or at Section XXIII concerning resolution of disputes.

5. James Fay was hired on April 1, 1986 and remained a probationary employee within the meaning of Section XX(b) when he was discharged on August 18, 1986 after being employed for four months and eighteen days.

6. The discharge of James Fay was based on a reasoned decision by employer officials based on reports made to management concerning the performance of James Fay and records held by management concerning previous warnings given to James Fay.

CONCLUSIONS OF LAW

1. James Fay was a probationary employee according to the terms of the collective bargaining agreement so that no contractual grievance and arbitration procedures within the meaning of RCW 47.64.150 were applicable to him with respect to his discharge. The Marine Employees Commission has jurisdiction in this matter pursuant to RCW 47.64.280(2).

2. The discharge of James Fay by Washington State Ferries during his probationary period was not arbitrary or capricious and did not violate any rule or order of management, and was within the prerogatives of the management.

ORDER

The grievance of James Fay should be and is hereby DISMISSED.

Dated at Olympia, Washington, this 27th day of March, 1987.

MARINE EMPLOYEES' COMMISSION

/s/ FREDERICK J. ROSENBERRY
Examiner