

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES' COMMISSION

DISTRICT NO. 1 – NATIONAL	)	
MARINE ENGINEERS BENEFICIAL	)	MEC CASE NO. 3-87
ASSOCIATION,	)	
	)	DECISION NO. 35-MEC
Petitioner,	)	
	)	
v.	)	DENYING IBU's MOTION TO
	)	DISMISS MEBA'S PETITION
INLANDBOATMEN' S UNION OF	)	
THE PACIFIC,	)	
	)	
Intervenor.	)	
_____	)	

Webster, Mrak & Blumberg, Attorney at Law, by James H. Webster, appeared on behalf of the Petitioner.

Hafer, Price, Rinehart & Schwerin, Attorney at Law, by John Burns, appeared on behalf of the Intervenor.

BACKGROUND

On August 31, 1987, the Marine Employees' Commission received from District 1, Pacific Coast District, the National Marine Engineers Beneficial Association (hereinafter referred to as MEBA) a petition for investigation of a Question Concerning Representation. The Petition described the bargaining unit involved as all employees of the Washington State Ferries-Department of Transportation in the classifications of Oiler and Wiper. The basis given for the requested investigation is dissatisfaction with the current bargaining unit represented by the Inlandboatmen's Union, and with continued representation by the Inlandboatmen's Union. The questions to be investigated pursuant to the petition are the inclusion of Oilers and Wipers in the same bargaining unit as engineer officers represented by MEBA; or in the alternative, the formation of a separate bargaining unit for Oilers and Wipers, likewise to be represented by MEBA.

The Inlandboatmen's Union (hereafter referred to as IBU) filed a motion and brief with the Commission, requesting the dismissal of MEBA's petition. The Commission also received a brief

from MEBA, and a reply brief from IBU. On November 23, 1987, the Commission held a hearing on the motion to dismiss, at which both the IBU and MEBA were given an opportunity to present evidence and oral arguments in support of their respective positions on the motion to dismiss.

### POSITIONS OF THE PARTIES

The basis for dismissal asserted by the IBU is that neither chapter 47.64 CW nor chapter 316-25 WAC provide the Commission with the authority to conduct an investigation pursuant to MEBA's petition. The IBU argues that it was the purpose of the Legislature, when it enacted chapter 47.64 RCW in 1983, that the existing ferry employee bargaining units and bargaining representatives remain as they existed in 1983. The Commission's role, argues the IBU, is limited to overseeing labor relations between ferry system management and the employee organizations representing these existing bargaining units, but that the Commission has been given no authority to become involved in disputes concerning what are appropriate bargaining units and the certification (or decertification) of bargaining unit representatives. To support this position, the IBU points to the absence in chapter 47.64 RCW of express provisions instructing the Commission to certify bargaining representatives and designate appropriate bargaining units. The IBU further contends that chapter 316-25 WAC does not purport to authorize the MEC to investigate the appropriateness of separating a part of an existing bargaining unit for inclusion in a different bargaining unit, or to create a new bargaining unit.

MEBA contends that the Commission has jurisdiction to conduct an investigation pursuant to its petition. MEBA argues that chapter 316-25 WAC provides for a hearing on the kind of questions raised by its petition, and that the regulation is presumptively valid. MEBA argues that not only does the Commission have express statutory authority to resolve all labor disputes relating to the ferry system, but that the Commission's authority to hear this petition is implied by language found in chapter 47.64 RCW and that such authority is necessary to carry out the purposes of that chapter. In support of its petition, MEBA also points to the opportunity available to ferry employees prior to 1983 to have labor disputes such as representation questions heard, first under the original Marine Employees' Commission and subsequently under the Public Employment Relations Commission.

Having reviewed the briefs of the parties and the transcript of the hearing, the Commission has reached the following conclusion.

### CONCLUSION

The Marine Employees' Commission has the authority to conduct the investigation requested by MEBA's petition for the reasons that follow.

RCW 47.64.280 (3) states that the Commission, "in adjudicating all complaints, grievances, and disputes" (emphasis supplied) shall make careful inquiry and come to a decision. The Commission is mindful that the quoted language appears as well in subsection (2) of RCW 47.64.280, and that the language in subsection (2) appears to be a limited reference to the grievance resolution procedures found in RCW 47.64.150. Nevertheless, the Commission concludes that its authority to adjust labor disputes was not intended to be limited to the adjustment of grievances under RCW 47.64.150. Rather, the Commission concludes that, pursuant to RCW 47.64.280 it has the authority to adjudicate this dispute involving rights expressly provided to ferry employees by chapter 47.64 RCW.

In RCW 47.64.006, the Legislature declared that "it is the public policy of the State of Washington to...(3) promote harmonious and cooperative relationships between the ferry system and its employees by permitting ferry employees to organize and bargain collectively; [and]...(6) to protect the rights of ferry employees with respect to employee organizations." (Emphasis supplied). Chapter 47.64 RCW provides for and contemplates that ferry employees will belong to appropriate bargaining units, which units will be represented by certified bargaining representatives. The Legislature used specific language in chapter 47.64 RCW that assumes there will exist: (1) exclusive bargaining representatives, RCW 47.64.120, .130(c) (2) appropriate bargaining units, RCW 47.64.150; and (3) certified bargaining representatives, RCW 47.64.170.

In light of these provisions, the Commission rejects the notion that the lack of specific instructions to the Commission to certify bargaining representatives and designate bargaining units evinces a legislative intent that the Commission have no authority in these areas.

The Commission concludes that the express language of chapter 47.64 RCW indicates the necessity of appropriate bargaining units and bargaining representatives in the ferry system and that the Commission's authority to hear MEBA's petition is necessarily implied in chapter 47.64 RCW.

Harmonious labor relations in the ferry system is the public policy in Washington State and a purpose underlying chapter 47.64 RCW. See RCW 47.64.006(3). The Commission is the sole public body with authority to resolve disputes in the area of ferry labor relations. Based on the experience gained in the last four years in carrying out its duties under chapter 47.64 RCW, the Commission concludes that conducting an investigation on the questions raised by MEBA's petition is necessary to the continuance of labor harmony within the ferry system. Chapter 47.64 RCW restricts ferry employees' rights in significant respects, such as denying them altogether the opportunity to strike. Among those rights remaining to ferry employees must be the right to changes in bargaining units or representatives if the passage of time renders such changes appropriate. As demonstrated by the IBU's opposition to such changes with respect to the Oilers and Wipers, the only mechanism by which such changes can be accomplished is through a neutral dispute resolver. As the only public entity with authority in this area, it is necessary that the Commission act on MEBA's petition.

The authority of the Commission to hear MEBA's petition is further supported by the regulations adopted pursuant to RCW 47.64.280(3) shortly after the enactment of chapter 47.64 RCW. The Commission's regulations provide for a hearing on the questions presented by MEBA's petition. WAC 316-25-030(1) and (2) contemplate that a question concerning representation might involve any or all employees in a bargaining unit. WAC 316-25-070(2) and (4) provide that petitions may raise questions concerning what is an appropriate bargaining unit and whether there should be a change in exclusive bargaining representative. Under WAC 316-25-290, the Commission holds a hearing if it has reasonable cause to believe that a question concerning representation exists. Such a hearing is held for the purpose of determining the existence of a question concerning representation and the appropriateness of a bargaining unit, WAC 316-25-350.

Pursuant to its rule-making authority, the Commission promulgated the above regulations in order to provide a procedure to determine the bargaining units and certified exclusive bargaining representative called for by chapter 47.64 RCW, and to implement chapter 47.64's purposes with

respect to the rights of ferry employees.

DECISION

NOW THEREFORE, it is the decision of the Marine Employees' Commission that it has jurisdiction to conduct the investigation requested by MEBA's petition.

DATED at Olympia, Washington, this 9<sup>th</sup> day of December 1987.

MARINE EMPLOYEES' COMMISSION

/s/ DAVID P. HAWORTH, Chairman

/s/ DONALD E. KOKJER, Commissioner

/s/ LOUIS O. STEWART, Commissioner