

STATE OF WASHINGTON

BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION)	MEC Case No. 22-97
OF THE PACIFIC,)	
)	DECISION NO. 187 - MEC
Complainant)	
)	
v.)	DECISION AND ORDER
)	
WASHINGTON STATE FERRIES,)	
)	
Respondent.)	
_____)	

Schwerin, Campbell and Barnard, attorneys, by Michelle Mentzer, appearing for and on behalf of the Inlandboatmen's Union of the Pacific.

Christine Gregoire, Attorney General, by Ann MacMurray, Assistant Attorney General, for and on behalf of Washington State Ferries.

THIS MATTER came on regularly before the Marine Employees' Commission on June 26, 1997 when the Inlandboatmen's Union of the Pacific (IBU) filed an unfair labor practice against the Washington State Ferries (WSF).

IBU's complaint charged WSF with engaging in unfair labor practices within the meaning of RCW 47.64.130(1) by interfering with, restraining or coercing employees in the exercise of rights; and refusing to bargain collectively with representatives of employees. Specifically, IBU alleged that WSF committed an unfair labor practice by refusing to place Loriann Niemeyer, Brenda Garner and Dan Kampman, employees who had bid into temporary summer positions, in the appropriate classification.

On October, 7, 1997, IBU filed an amended complaint. IBU additionally charged WSF with refusing to implement two agreements between the parties, (1) to list separately OS positions on the Summer Temporary Preference Sheets and (2) to place Ms. Niemeyer and Ms. Garner in OS 1 positions for the summer of 1997.

Remedy Requested

As a remedy for the alleged unlawful conduct, the IBU requested that WSF be ordered to place Loriann Niemeyer, Brenda Garner and Dan Kampman in the correct positions and compensate them retroactively for the pay and benefits which they lost by virtue of WSF's unlawful conduct. IBU further requested such other relief as MEC deems just and proper.

Background

On August 5, 1997 the Commission determined that the facts alleged in the complaint may constitute an unfair labor practice if later found to be true and provable (WAC 316-45-110). The hearing was scheduled for October 8, 1997. Commissioner John P. Sullivan was assigned as Hearing Examiner pursuant to WAC 316-45-130.

The hearing notice directed that WSF file an answer on or before September 23, 1997. The hearing was held on October 8, 1997. Post-hearing briefs were timely filed by the parties.

POSITIONS OF THE PARTIES

Position of the Inlandboatmen's Union of the Pacific

WSF violated the collective bargaining agreement and made unilateral changes in the conditions of employment by failing to implement a settlement agreement reached concerning the summer placement of Brenda Garner and Loriann Niemeyer. Further, WSF

violated those same provisions and committed the same unfair labor practice with regard to Dan Kampman by refusing to consider his bid, which was timely submitted, for summer preference assignment.

Position of Washington State Ferries

Washington State Ferries followed the provisions of the collective bargaining agreement as well as the letter of understanding pertaining to summer hires. All bids that were timely received were considered; Ms. Garner and Ms. Niemeyer were awarded their first choice. Mr. Kampman never submitted a timely bid; WSF did not receive a bid from him at all.

There was no official agreement in the fall of 1996 as to how the Summer Temporary Preference Bid System would operate to list Ordinary Seamen in positions 1, 2 and 3 for the summer of 1997. There had been discussions of a general nature.

The question of changing the bid positions made and awarded to Ms. Garner and Ms. Niemeyer was discussed by IBU and WSF, but there was no agreement as to whether and if these issues were going to be resolved. Upon further investigation into the matter WSF had no basis upon which to resolve the issues.

STATEMENT OF THE ISSUE

1. Did WSF commit an unfair labor practice in violation of RCW 47.64.130(1)(a) and (e) by unilaterally changing the terms and conditions of the collective bargaining agreement when it failed to list on the 1997 Summer Temporary Preference sheets all bargaining unit positions, as specified in Appendix A, Rule 1.06(A) of the collective bargaining agreement?

2. Did WSF commit an unfair labor practice in violation of RCW 47.64.130(1)(a) and (e) by failing to fill summer temporary vacancies in the deck department by seniority pursuant to the 1995-1997 collective bargaining agreement?
3. Did WSF commit an unfair labor practice in violation of RCW 47.64.130(1)(a) and (e) by failing to implement an agreement to upgrade the temporary summer positions bid on and received by Ms. Garner and Ms. Niemeyer?
4. If WSF committed unfair labor practices as alleged, what is/are the remedy/remedies?

Having read and carefully considered the entire record, including the initial unfair labor practice complaint, the hearing transcript and exhibits, and the post-hearing briefs, this Commission now hereby enters the following findings of fact.

FINDINGS OF FACT

1. The MEC takes judicial note of the existence of a collective bargaining agreement between the Washington State Ferries and the Inlandboatmen's Union of the Pacific. The effective dates of the contract are July 1, 1995 through June 30, 1997.
2. Appendix A, Rule 1.06 of the contract states as follows:

1.06. Employees may request an intra-department transfer to a different run, vessel, shift, watch or terminal. Except as provided for in this Rule, employees who accept temporary intra-departmental transfer [sic] shall remain on that assignment until the temporary assignments ends. Temporary vacancies that occur will be filled by the use of preference sheets in the following manner:

A. Summer Temporary Preference Sheets – Employees will be assigned to temporary summer vacancies that result from the implementation of the Summer Schedule through the use of Summer Temporary Assignment sheets. This Preference Sheet will list all bargaining unit positions and will indicate which positions are the extended temporary vacancies for the Summer Schedule. The vacancies will be filled in the following manner using these preferences sheets:

1. Route Lateral Assignment – When the summer schedule is published, those employees on routes to which positions have been added or shifts have been rescheduled (for example, Port Townsend and Anacortes routes) will be allowed to request lateral transfers (no upgrades) within their route.

2. Summer Temporary Assignments – Vacancies that are created by the addition of positions for the Summer schedule and temporary vacancies resulting from Summer temporary promotions out of the bargaining unit, will be filled, by classification seniority, from the Summer Temporary Preference Sheets. Employees assigned under the Route Lateral Assignment section will also be considered under this section.

3. Vacancies that remain unfilled after honoring all Summer Temporary Preference Sheets will be filled in the following manner:

- a. Qualified employees on the existing crew where the vacancies exists will be offered the position (upgrade).
- b. The resulting vacancy will be filled from the on-call list.

3. During the summer season, the Anacortes ferry runs receive extra watches and vessels. As set forth above, the two phases to summer bidding system for deck personnel are governed by seniority. In the first phase, permanent employees can make lateral changes to a different watch, vessel, route or job classification, (AB to AB or OS to OS), but may not upgrade. The second phase allows on-call employees to bid on remaining vacant positions.

4. Anacortes 1997 Summer Temporary Preference Sheets were sent out by WSF on April 3, 1997 with a return deadline of 5:00 p.m. Tuesday, April 22, 1997. The sign-

up was only for lateral moves for the Anacortes/San Juan Island IBU deck personnel. The result of summer lateral bids were posted April 25, 1997.

5. On Wednesday, April 9, 1997 IBU Summer Temporary Preference Sheets were mailed to all IBU deck employees for summer temporary assignments; the bidding closed on Monday, April 28, 1997.
6. The Summer Temporary Preference Sheets sent by WSF on April 3, 1997 and on April 9, 1997 to WSF employees failed to include a listing of "all bargaining unit positions," as specified in Appendix A, Rule 1.06(A).
7. In April, 1997, WSF ordinary seaman Brenda Garner was classified as an on-call employee.
8. In April, 1997, WSF ordinary seaman Loriann Niemeyer was classified as an on-call employee.
9. The Washington State Ferries AB & OS 1997 Summer Bid Form asked employees to indicate their first, second and third position choices.
10. On April 22, 1997, Loriann Niemeyer made one choice only, for OS 1, "P" watch on the MV KALEETAN. On April 25, 1997, the Anacortes lateral assignments were posted, showing that on the "P" watch on the KALEETAN there was no opening for an OS 1, but there were an OS 2 and an OS 3 positions vacant. Bids closed at 5:00 p.m. on April 28, 1997. Ms. Niemeyer, knowing she could not have the OS 1 on "P" watch, could have bid for another OS 1 position, but she did not turn in another bid.
11. The two OS 1 positions on the "P" watch were filled by regular crew members on a lateral assignment. Brenda Garner obtained her first preference on the "P" watch.

Because Garner was senior to Niemeyer, the only remaining OS position available, an OS 2, went to Brenda Garner.

12. After Niemeyer received the OS 3 position, and after the closing date for submitting summer temporary position bids, Niemeyer contacted WSF Personnel Assistant Kathleen Flynn and requested an OS 1 position. Ms. Flynn could not do this without opening the bids for everyone else.
13. The 1995-1997 contract, Appendix A, Rule 1.06, required WSF to list the OS positions separately on the summer bid sheets. The first time that summer bidding took place under this contract was summer, 1997. The 1996 and 1997 fall bidding process for scheduling of jobs broke down the OS positions to OS 1, OS 2, and OS 3.
14. The “Letter of Understanding, 1997 Summer Bids, WSF/IBU,” which was signed by Dennis Conklin on March 21, 1997 and Jim Yearby on March 25, 1997 did not mention a breakdown of the OS positions to OS 1, 2 and 3. However, there was no need to mention this because the language was provided in the 1995-1997 collective bargaining agreement.
15. While there was some discussion between Dennis Conklin, Jim Yearby and Kathleen Flynn about the possibility of upgrading Ms. Niemeyer and Ms. Garner, there was no agreement reached on the subject.
16. There was a subsequent meeting between IBU Business Agent Dennis Conklin, WSF Labor Relations Manager Gary Baldwin and Personnel Assistant Kathleen Flynn. However, the evidence presented is inconclusive as to the contents of a written proposal in which IBU was asked to waive the right to file further grievances in exchange for Ms. Garner and Ms. Niemeyer being assigned to OS 1 positions.

17. In April, 1997, WSF ordinary seaman Dan Kampman was assigned as OS 2 on the Bainbridge route on "D" watch.
18. On April 27, 1997, Kampman hand-delivered a summer bid form to WSF for the AB position on his watch and vessel. Although he claims he placed this bid in the interoffice mail slot in the employee break room at Pier 52, WSF never received his bid. Therefore he was not assigned to his requested AB position.
19. Kathleen Flynn has worked as a WSF Personnel Assistant since 1990 as a Personnel Assistant and has been involved in the bid process since July 1992. Flynn did not receive a bid from Dan Kampman in 1997. The first time she saw his bid was on the day of the hearing. When Dan Kampman called to inquire why he was not assigned the AB position he had bid, Ms. Flynn advised him she had never received his bid.

Having entered the foregoing findings of fact, the Marine Employees' Commission now enters the following conclusions of law.

CONCLUSIONS OF LAW

1. MEC has jurisdiction over the subject matter and the parties involved in this case. Chapter 47.64 RCW, especially 47.64.130 and 47.64.280.
2. WSF unilaterally changed the terms and conditions of the collective bargaining agreement, in violation of RCW 47.64.130(1)(a) and (e), by failing to implement changes in the summer temporary assignment bidding procedures negotiated between the parties in the 1995-1997 contract. The procedures required WSF to separately list all of the bargaining unit positions on the bid sheets. Unilateral changes by an employer during the course of a collective bargaining relationship concerning matters that are mandatory subjects of bargaining, constitute a per se refusal to bargain.

Developing Labor Law, 3rd Ed. 1992, pp. 596-597, citing NLRB v. Katz, 369 US 736, 50 LRRM 2177 (1962).

3. Garner and Niemeyer chose not to indicate a second or third choice on their bid sheets for summer temporary positions. Each had a number of days during which they could have submitted a second bid for an unavailable OS position on another watch. MEC therefore concludes that they were not harmed by WSF's actions, which we have found to constitute an unfair labor practice.
4. Because there is no conclusive evidence that WSF attempted to have IBU waive its duty of fair representation of other possible summer grievances by signing an agreement to that effect in exchange for assigning Ms. Garner and Ms. Niemeyer to OS 1 positions, Mec cannot sustain charges that WSF committed an unfair labor practice.
5. MEC must conclude, based on a lack of credible evidence that, for reasons unknown, the WSF Human Resources office did not receive Dan Kampman's bid for a 1997 summer upgrade, and therefore did not commit an unfair labor practice.

Having entered the foregoing findings of fact and conclusions of law, the Marine Employees' Commission now enters the following order.

ORDER

1. By its failure to separately list OS positions on the Summer Temporary Preference Sheets, pursuant to Appendix A, Rule 1.06(A) of the 1995-1997 collective bargaining agreement, WSF committed an unfair labor practice. WSF is hereby ordered, in all future bidding, to list all bargaining unit positions in accordance with that contract.

2. The unfair labor practice committed by WSF did not in fact in any way contribute to Ms. Garner and Ms. Niemeyer not obtaining OS 1 positions. They each had an opportunity to bid for open OS 1 positions on other watches after the lateral moves were made and they failed to avail themselves of the opportunity. They are not entitled to any monetary adjustment for their summer work they performed.
3. The charges alleging WSF's failure to implement an agreement to upgrade the temporary summer positions bid on and received by Ms. Garner and Ms. Niemeyer, are hereby dismissed.
4. The charges alleging WSF's failure to fill OS positions by classification seniority pursuant to the 1995-1997 collective bargaining agreement are hereby dismissed.

DATED this 30th day of December 1997.

MARINE EMPLOYEES' COMMISSION

/s/ HENRY L. CHILES, JR., Chairman

/s/ JOHN P. SULLIVAN, Commissioner

/s/ DAVID E. WILLIAMS, Commissioner