

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

WASHINGTON STATE FERRIES,)	MEC CASE NO. 15-98
)	
)	
Petitioner,)	Decision No. 208 – MEC
)	
and)	
)	
INTERNATIONAL ORGANIZATION OF)	MEC CHAIRMAN'S
MASTERS, MATES & PILOTS,)	ORDER OF DISMISSAL
)	
Labor Organization.)	
_____)	

Christine Gregoire, Attorney General, by David Slown, Assistant Attorney General, appearing for and on behalf of the Washington State Ferries.

Steven N. Ross, Attorney at Law, appearing for and on behalf of the International Organization of Masters, Mates and Pilots.

Schwerin, Campbell and Barnard, attorneys, by Dmitri Iglitzin, appearing for an on behalf of the Inlandboatmen's Union of the Pacific.

This matter came on regularly before the Marine Employees' Commission on October 21, 1998, when the Washington State Ferries filed a Petition Seeking Clarification of an Existing Bargaining Unit. The Petition was filed under the provisions of WAC 316-35-250. The Petition met the requirements of WAC 316-35-050, Contents of Petition.

WSF essentially wants the MEC to determine if a new position of Senior Deckhand should belong to a recognized bargaining unit represented by the Masters, Mates & Pilots or to a bargaining unit of seamen represented by the Inlandboatmen's Union of the Pacific.

On November 12, 1998, MM&P counsel Steven N. Ross filed a response to the petition on behalf of the MM&P. On November 18, 1998, IBU counsel Elizabeth Ford filed a response to the petition on behalf of the IBU.

REVIEW BY CHAIRMAN

Pursuant to WAC 316-35-090, MEC Chairman Henry L. Chiles, Jr. has reviewed the facts alleged in the Petition for Unit Clarification, as well as the correspondence submitted by the two unions. Chairman Chiles hereby dismisses the Petition for Unit Clarification for the reason stated herein.

WSF's Petition stated that for a number of years the WSF has operated three passenger-only vessels, the MV Tye, MV Kalama and MV Skagit. These vessels were staffed with a Captain and three Deckhands. Neither a Mate nor a Senior Deckhand was part of the crews of these vessels.

In 1991, the United States Coast Guard promulgated new rules for Deckhands on small passenger vessels. Qualifications for a Senior Deckhand position were set for vessels without a mate aboard. Since 1991, Certifications of Inspection (COI) issued for the three ferries named above allowed their operation without a Mate, as long as a qualified Senior Deckhand was aboard. The Senior Deckhand was to be a person trained in navigation of the vessels in an emergency, such as the Master becoming incapacitated.

In the summer of 1998, WSF was informally told that the Coast Guard would start enforcing the requirement for Senior Deckhand. As a result, the WSF determined that a training program should be instituted to ensure that one Senior Deckhand would be aboard the vessels at all times.

The MM&P objected to the plan on the grounds that the Senior Deckhand training in navigation and that individuals assigned to navigate the vessel if the Master became

incapacitated while under way, invaded areas that were the traditional responsibilities of deck officers.

WSF believes that the new work is very minor and will only be used by a Deckhand in an emergency. WSF further believes that the work should be assigned to Deckhands, who are represented by IBU.

Since August 30, 1998, for safety reasons the WSF has assigned a Mate to each of the three vessels. WSF alleges that the vessels are over staffed and that further, it is not economical for the WSF. At the present time, the position of Senior Deckhand is not staffed.

The MM&P and the IBU have each stated their opposition to the Petition. However, both unions claim to stand ready to bargain about any change in job duties.

The Senior Deckhand position creates a new job with new duties: either a navigation-trained Deckhand or a line-handling Mate. When a change in a bargaining unit position is contemplated, the employer has a duty to bargain about those changes with the employees' collective bargaining representative. WSF has not bargained with the two unions about the change in duties.

The petition is premature. At the present time, there are no persons working as Senior Deckhands. In order to have a valid unit clarification petition, there must be employees in the classification sought to be added to a unit. See Coca-Cola Bottling Co., 310 NLRB 844 (1993). Similarly, work assignment disputes are not appropriate for a unit clarification proceeding. See Coatings Application Co., 307 NLRB 806 (1992) and The Cincinnati Gas and Electric Co., 235 NLRB No. 63 (1978).

The parties have not met and bargained about the issue. They need to do so. This matter could be and needs to be resolved in the collective bargaining process. See Union Electric Company, 217 NLRB No. 124 (1975).

ORDER

Based on the reasons set forth herein, Chairman Chiles orders that the Petition for Clarification of Bargaining Unit, docketed as MEC Case No. 15-98, be dismissed. WAC 316-35-090, WAC 316-02-620.

RIGHT TO PETITION FOR REVIEW

Pursuant to WAC 316-35-210 – WAC 316-35-230, the WSF has the right to petition for a review of the MEC Chairman's Order of Dismissal to the entire Commission. WSF may file a Petition for Review with the entire MEC within twenty dates following the date of the order issued by Chairman Chiles. The original Petition for Review shall be filed with the Commission at its Olympia office. A copy thereof shall be served on MM&P and the IBU. Respondents will have fourteen days following the date on which it is served with a copy of the Petition for Review to file a responsive brief or written argument. Pursuant to WAC 316-02-620, unless the petitioner files a request for review within thirty days following receipt of the order of dismissal, the dismissal shall be entered as an order which shall be final and binding in accordance with RCW 47.64.280.

DATED this 7th day of December 1998.

MARINE EMPLOYEES' COMMISSION

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