

STATE OF WASHINGTON

BEFORE THE MARINE EMPLOYEES' COMMISSION

In the Matter of the Petition of	)	
WASHINGTON STATE FERRIES	)	MEC Case No. 2-00
for a Declaratory Ruling.	)	
	)	
	)	DECISION NO. 233-MEC
	)	
_____	)	DECISION AND ORDER

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

Schwerin, Campbell & Barnard, attorneys, by Jason S. Kelley, attorney at law, appearing for and on behalf of the Inlandboatmen's Union of the Pacific.

THIS MATTER came on regularly before the Marine Employees' Commission (MEC) on March 7, 2000, when the Washington State Ferries (WSF) filed a Petition for a Declaratory Ruling, pursuant to WAC 316-02-500. The WSF cites the applicability of RCW 47.64.080 Employee Seniority Rights; rules of the Collective Bargaining Agreement between WSF and the Inlandboatmen's Union of the Pacific (IBU), including Rule 21, Appendix A, Rule 1.04 and Appendix B, Rule 1.06.

WSF reasonably believes that the funding shortfall incident to the passage of Initiative 695 will mandate reductions of ferry service starting with the summer schedule in June 2000. IBU represented employees may face layoffs. WSF seeks a declaratory ruling from the MEC as to the proper method for conducting layoffs of IBU represented employees under the existing agreement.

WSF and IBU have discussed this issue and do not agree on the manner in which layoffs should be conducted. WSF included with its Petition, a list of 25 questions that need proper answers and can then be published to IBU represented employees, so that they will have all the facts they need to make proper bids for the reduced summer schedule.

WSF requested expedited consideration of this matter by the MEC and requested that a settlement conference be scheduled prior to final hearing.

The matter was docketed as MEC Case No. 2-00. On March 10, 2000, the MEC served notice of the Petition on IBU and was advised in writing on March 22, 2000, that IBU would consent to a declaratory ruling by the MEC on the above issue, provided the union has opportunity for its witnesses to testify at a formal hearing. On March 24, 2000, MEC received a second letter from Pete Jones, IBU, in which he advised the MEC that WSF and IBU have agreed that 1) “whatever decision came out of the declaratory ruling would be binding, and neither party may appeal the decision.” and 2) “MEC would address the outstanding grievances, and that whatever was decided by the MEC would then be accepted by both parties.” Mike Manning’s letter of April 3, 2000, corrected the inaccuracy of the second statement above, noting that he and Dennis Conklin, IBU, agree that “the parties will use the declaratory decision to resolve any outstanding grievances.” It is not WSF’s or IBU’s intent or agreement that MEC specifically address outstanding grievances at this time.

MEC inquired of AAG Slown, whether the subject of this Petition would affect any other bargaining unit. Following his response, MEC served notice of the Petition on MM&P as a possible necessary party. MM&P counsel, Steve Ross, responded on March 24, 2000, stating that at this time it does not appear that MM&P is a necessary party in this case. In addition, Mr. Ross asked that MEC provide MM&P with notice of hearings and of the issues to be considered by the Commission as this matter progresses, so that MM&P will have opportunity to file a motion to intervene, if circumstances warrant. MEC complied with the request.

WSF stated in its Petition that the bidding process was scheduled to begin in early-April and resolution of this matter at the earliest possible time is absolutely critical to preservation of good relationships with its employees and the union. In order to accommodate the request for expedited consideration, MEC scheduled a settlement conference for April 6, 2000 and a hearing for April 18, 2000. Chairman Henry L. Chiles, Jr. was designated as Hearing Examiner. The parties were requested to file briefs at the close of the hearing. An expedited transcript was requested from the Court Reporter.

Commissioner John P. Sullivan met with the parties on April 6 and 10, 2000 to facilitate settlement. Working together, the parties resolved the majority of the original 25 layoff questions. Following the second day of settlement, the parties agreed that questions 9b, 13 and 15 of the original layoff "Question and Answer" list would be presented to the MEC for resolution. Two additional side agreements were signed by IBU and WSF: one

concerning voluntary lay-off rights of on-call employees and a second concerning recall rights of employees laid off from on-call status.

The hearing was conducted as scheduled. All parties were accorded an opportunity to be heard. IBU and WSF filed briefs at the close of the hearing.

#### STATEMENT OF THE ISSUES

1. How do the parties decide what positions are eliminated in the Terminal Department?
2. What rights does a Terminal Department employee whose position is eliminated or who is bumped have?

Having read and carefully considered the entire record, including briefs and the transcript, the Marine Employees' Commission now hereby enters the following findings of fact.

#### FINDINGS OF FACT

1. The layoff procedure is based upon the 1997-1999 WSF/IBU Collective Bargaining Agreement and certain applicable rules as noted below:

## **RULE 21- SENIORITY AND ASSIGNMENTS**

**21.01.** The Employer recognizes the principle of seniority in the administration of promotions, transfers, layoffs and recalls. In the application of seniority under this Rule, if an employee has the necessary qualifications and ability to perform in accordance with the job requirements, seniority by classification shall prevail.

**21.02.** In reducing or increasing personnel in the respective departments, seniority shall govern. When layoffs or demotions become necessary, the last employee hired in a classification shall be first laid off, or demoted to a lesser classification for job retention. When employees are called back to service, the last laid off or demoted in a classification shall be the first restored to work in that classification.

**21.03.** Elimination of Year Around Assignments. When a year around assignment is eliminated the affected employee shall have the right to exercise their seniority by classification in selecting a new assignment of their choice. Any displaced employee will also have the right to exercise their seniority by classification in selecting a new assignment of their choice.

**21.04.** Establishing Seniority:

...

4. Department Seniority: Seniority shall be established by classification(s) within the following departments. For seniority purposes, classifications(s) of Terminal Department personnel shall fall into three (3) categories, Deck Department into two (2) categories, and Informational Department into two (2) categories.

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### **Appendix B**

#### **Terminal and Information Department**

The following rules are in addition to Rule 1 through Rule 36 and apply to the Terminal and Information Personnel Only.

### **TERMINAL AND INFORMATION DEPARTMENTS**

**1.04** Terminal Shift Change. In the event that shifts change or new shifts are established for seasonal purposes, full-time, year around employees at each terminal shall bid on shifts according to seniority in their classification and shall have preference in such bidding over employees at all other terminals. For the purposes of this rule a shift change means when any shift changes by more than one hour and/or the days off change, then all shifts will open up for bids at that terminal. (Sunday schedule may

prevail on holidays without constituting a shift change). Full-time shifts will not be open for bid at schedule change unless there has been a change in shifts as provided in this rule.

2. There are three categories of job classifications in the Terminal

Department as set out below. Each job position is a separate classification.

CATEGORY	CLASSIFICATIONS
1.	Terminal Agent
2.	Auto Ticket Seller Passenger Ticket Seller
3.	Passenger Ticket Taker Auto Ticket Taker Dock Watchman Terminal Attendant

3. The passage of Initiative 695 has caused the WSF to reasonably believe that a funding shortfall may mandate reductions in ferry service, starting with the summer schedule in June 2000. IBU represented employees may face layoffs.

4. WSF provided 25 questions that needed answers so the parties and the employees involved will have all the facts they need to make proper bids for the summer schedule.

5. Of the 25 questions outlining WSF's proposed layoff procedures, the parties reached agreement on all but 9B, 13 and 15, which are included in the statement of the issues.
6. It is clear from the IBU contract that seniority prevails in promotions, bidding, transfers, layoffs and recalls.
7. When layoffs are necessary, the last employee hired in a classification shall be first laid off. When employees are recalled to work the last laid off shall be the first restored to work.
8. Terminal Department employees select a terminal or group of terminals as their choice of a place to work. They progress upward from on-call to part-time, then full-time employment, as their seniority accrues.
9. Employees bid for available work shifts within their classification at a particular terminal.
10. Determining the position to be eliminated in a reduction in service hours cannot always be determined in advance.
11. Any reduction in ferry service as the result of the passing of Initiative 695 will result in terminal shift changes and consequentially the possible loss of one or

more terminal positions. The parties recognize the principle of seniority in the administration of transfers, layoffs and recalls. The application of seniority to the reduction of employees results with the employee with the least seniority being laid off subject to recall.

12. The available shifts are posted, the senior employees bid on the shift of their choice.
13. The junior employee will not have a work shift and that is the shift or position that has been eliminated.
14. The employee who has involuntarily lost his/her shift or position has two choices:
  - A. To use the seniority in the employee's present classification, such as a ticket seller, to bid fleetwide in that same classification at another terminal as a ticket seller.
  - B. To stay at the employee's own terminal, if the employee has the necessary qualifications and ability to perform in accordance with the job requirements and use any seniority the employee has in a lower classification to step down; for example, from a ticket seller to a ticket taker.



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

#### CONCLUSIONS OF LAW

1. The Marine Employees' Commission has jurisdiction over the subject matter and the parties involved in this case, pursuant to chapter 47.64 RCW generally, and specifically, RCW 47.64.280, 34.05.240 and WAC 316-02-500 through 316-02-520. Orders of the Marine Employees' Commission are final and binding upon ferry employees and their representatives affected thereby and upon the Department of Transportation. RCW 47.64.280(3).
2. MEC Case No. 2-00 is a special, expedited arbitration of the layoff dispute between WSF and the IBU. All parties were served with proper notice of the proceedings and have been accorded an opportunity to be heard. As indicated in pleadings, a substantial and actual dispute exists concerning possible layoff of IBU represented employees. Therefore, the adjudicative proceedings held herein are within the meaning of WAC 316-02-500 through 316-02-520.
3. The MEC may not change or amend the terms, conditions or applications of the IBU/WSF collective bargaining agreement. RCW 47.64.150.

4. Questions 9B, 13 and 15 involve Terminal Department employees. Terminal Department employees are one of three departments represented within the WSF/IBU contract. The other two departments are Deck and Information.
5. Terminal employees bid on available jobs in a terminal that they have chosen to work. They move upward from on-call/part time to regular full time jobs working through the classifications.
6. Seniority prevails in all aspects of work. Senior persons through the bid process will select the shifts that their seniority entitles them to. Section 21.01 of the CBA.
7. In a reduction of shifts, the eliminated shift may not always be determined until the bidding takes place. The junior employee in a classification will be without a shift or position. That is the shift that has been eliminated or reduced.
8. The junior employee in a service reduction has a choice. He/she can bid in his/her classification on available shifts at another terminal, or can downgrade in his/her own terminal to a lower classification. Section 21.02 and 21.03 of the CBA.
9. The downgrade bid to remain at the same terminal is involuntary as it is the result of a layoff. "Arbitrators have ruled that the term 'layoff' must be interpreted to include any suspension from employment arising out of a reduction in the work

force...” Elkouri and Elkouri, How Arbitration Works 770 (5<sup>TH</sup> ed. 1997). The junior employee will have to use the seniority previously accumulated in a lower classification to bump an employee with lower seniority in that classification. “Bumping is defined as a displacement of employees with less seniority by workers of more seniority during layoffs.” 37 LA 14.1.

10. The bumping employee could not use the seniority from a higher (category 2) classification to bump an employee in a lower (category 3) classification. The employee must use the seniority previously earned in the lower classification. Since the employee’s departure from the higher classification is involuntary, the seniority earned in that category is saved by being frozen or locked-in and cannot be added to by service in the lower classification.

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ORDER

1. Washington State Ferries and the Inlandboatmen's Union of the Pacific, pursuant to the parties agreement, are ordered to comply with the above conclusions of law, when conducting Terminal Department layoffs of IBU-represented employees under the existing agreement, in deciding the two issues presented to the Marine Employees' Commission.

DATED this \_\_\_\_\_ day of May 2000.

MARINE EMPLOYEES' COMMISSION

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HENRY L. CHILES, JR., Hearing Examiner

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DAVID E. WILLIAMS, Commissioner