

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES' COMMISSION

MICHAEL ZUVELA,  
Grievant,

v.

WASHINGTON STATE FERRIES,  
Respondent.

MEC CASE NO. 25-07

DECISION NO. 534 - MEC

DECISION AND ORDER  
DISMISSING REQUEST FOR  
ARBITRATION

TO: STEPHEN CONNOR, Counsel for Grievant  
AND TO: AAG DAVID SLOWN, Counsel for WSF

On June 12, 2007, Michael Zuvela, a former employee of Washington State Ferries (WSF), filed the above-captioned request for arbitration of a grievance concerning retroactive payment and benefits. The Commission could not discern from the facts presented whether it could appropriately exercise jurisdiction over this matter and therefore issued an Order to Show Cause on July 13, 2007.

On July 27, 2007, Mr. Zuvela's attorney, Stephen Connor, responded to the Commission's Order to Show Cause. On July 31, AAG David Slown filed a response on behalf of WSF. On August 30, the Commission requested the parties provide it with a copy of the agreement between the Masters, Mates and Pilots (MM&P) and WSF, referenced in Mr. Zuvela's statement of facts. Mr. Connor provided an unsigned copy of the document on September 10; Mr. Slown provided a signed copy on September 13.

On the basis of the foregoing information, the Commission makes the following decision.

## DECISION

RCW 47.64.280 instructs the Commission to “adjust all complaints grievance, and disputes between labor and management arising out of the operation of the ferry systems as provided in RCW 47.64.150.” RCW 47.64.150 governs the Commission’s role in grievance arbitration and cautions that an arbitrator’s decision on a grievance “shall not change or amend the terms, conditions, or applications of the collective bargaining agreement.” This section also contains the statutory language at issue here:

Ferry System employees shall follow either the grievance procedures provided in a collective bargaining agreement of *if no such procedures are so provided*, shall submit the grievance to the marine employees commission as provided in RCW 47.64.280.”

*Id* (emphasis added). Where a class of disputes is contractually excluded from the grievance process, the MEC exercised jurisdiction over requests for arbitration filed by individual employees. See *Marine Employees Beneficial Association v. WSF (Fay)*, Dec. No. 26-MEC (1986)(probationary period); *Gage v. Washington State Ferries*, Dec. 362-MEC (2003); *Moser v. WSF*, Dec 492-MEC (2006). Otherwise, the statute requires employees to follow the contractual grievance procedure. In this case, the collective bargaining agreement between the Masters Mates and Pilots Union and the WSF reserves to the Union the decision whether or not to bring a grievance to arbitration. *Declaration of Stephen P. Connor, Exhibit 1*. The subject matter of this dispute – lump sum payments of retirement benefits – is not excluded from the parties’ grievance and arbitration provisions. Therefore, the Commission is not free to exercise jurisdiction over this grievance.

If Mr. Zuvella alleges that his union failed to represent him fairly in either the negotiation of the retirement agreement or its failure to bring an arbitration on his behalf, that claim would

properly be brought to this Commission as an unfair labor practice charge against the Union.  
That is not the circumstance in which this case is presented to us.

**ORDER**

For the foregoing reasons, the Commission hereby DISMISSES this grievance.

**RIGHT TO REQUEST REVIEW**

This Order dismissing the Request for Arbitration is, in essence, a denial of an adjudicative proceeding or hearing. As a consequence, pursuant to WAC 316-02-620, any party to this proceeding may request that the Marine Employees' Commission review this decision. Any such request for review must be filed with the Marine Employee's Commission within 30 days of the receipt of this Order. If no Request for Review is filed, this Order becomes final and binding in accordance with RCW 47.64.280.

DATED this 30<sup>th</sup> day of November 2007.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN SWANSON, Chairman

/s/ JOHN SULLIVAN, Commissioner

/s/ ELIZABETH FORD, Commissioner