

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION  
OF THE PACIFIC,

Complainant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC CASE NO. 47-04  
(Marc Larkin)

DECISION NO. 408 - MEC

ORDER CLOSING  
SETTLED COMPLAINT

Schwerin, Campbell and Barnard, by *Judith Krebs*, Attorney, appearing for the Inlandboatmen's Union of the Pacific.

Christine Gregoire, Attorney General, by *David Slown*, Assistant Attorney General, appearing for the Washington State Ferries.

THIS MATTER came on regularly before the Marine Employees' Commission (MEC) on February 26, 2004, when the Inlandboatmen's Union of the Pacific (IBU), filed an unfair labor practice complaint against the Washington State Ferries (WSF). The matter was docketed as MEC Case No. 47-04.

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 unlawfully interfered with Marc Larkin's (IBU Shop Steward's) right to engage in protected, concerted activity by threatening him with discharge over his witness statement related to Larry Dunlap and events of December 29, 2004. IBU further alleged that WSF unlawfully interfered with Mr. Dunlap's right to engage in protected

activity and his right to due process when it threatened him with arrest during his Loudermill hearing.

Following initial review of the complaint, the Commission determined that the facts alleged may constitute unfair labor practices, if later found to be true and provable.

Commissioner John Sullivan was assigned to act as Mediator at a settlement conference scheduled for April 2, 2004. Commissioner John Byrne was designated to act as Hearing Examiner for the hearing scheduled on April 29, 2004.

The parties did not resolve this matter during the conference on April 2. On April 15, 2004, AAG David Slown, WSF counsel, filed a Motion which sought to sever the Marc Larkin matter from the Larry Dunlap matter. On April 21, IBU counsel, Judith Krebs, filed in opposition to the Motion to Sever.

On April 23, 2004, Examiner Byrne granted WSF's Motion to Sever. The parties were orally notified. The Marc Larkin matter was to be heard first. Separate hearing dates were rescheduled for both portions of the complaint—Larkin for May 20 and Dunlap for June 21.

The parties resolved the Larkin portion of MEC 47-04 during a second settlement conference with Commissioner Sullivan on April 29, 2004. On May 3, the MEC received the parties' signed settlement agreement, which includes IBU's withdrawal of the Marc Larkin portion of the complaint. That agreement is appended to and becomes a part of this Order by reference.

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**ORDER**

It is hereby ordered that the **Marc Larkin portion of the unfair labor practice complaint**, filed by IBU against WSF and docketed as MEC Case 47-04, is closed in acknowledgment of the parties' agreement.

DATED this 13th day of May 2004.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN SWANSON, Chairman

/s/ JOHN SULLIVAN, Commissioner

/s/JOHN BYRNE, Commissioner

## Larkin Settlement

- (1) With matters directly witnessed by a shop steward, the steward may be required to provide a written statement or answer questions regarding occurrences prior to a matter becoming disciplinary in nature. For instance, a shop steward may be required to provide a written statement or answer questions regarding what he or she witnessed during the routine auditing of a safe.
- (2) Where the shop steward is being required to be a witness to occurrences prior to a matter becoming disciplinary in nature, WSF may require the shop steward to address certain matters in his or her written statement. The shop steward may present additional written statements to supplement any previous written statements.
- (3) No shop steward shall be subject to discipline arising out of any oral or written statements he or she provides WSF unless the steward intentionally provides information he or she knows to be wrong.
- (4) Once the matter becomes disciplinary in nature, the shop steward shall be considered the employee's Weingarten representative.
- (5) No Weingarten representative shall be subject to interrogation by WSF regarding the matter in which he or she is acting as a representative.
- (6) No Weingarten representative shall be required to submit a written statement as part of the investigation of the matter except as outlined in (1) and (2).
- (7) WSF may request that the Weingarten representative give a written statement as part of the investigation. WSF may also request the Weingarten representative to address certain matters. However, WSF may not ask for additional statements. The representative may present additional written statements to supplement any previous written statements.
- (8) No Weingarten representatives shall be subject to discipline arising out of any act or omission constituting lawful protected activity regarding the disciplinary matter in which they are acting as a representative except as outlined in (1), (2) and (3).
- (9) At hearing, WSF may call a Weingarten representative as a fact witness but may not inquire as to the private conversations between the grievant and the Weingarten representative.
- (10) WSF may not request the Weingarten representative's personal notes, unless the representative uses the notes at hearing.
- (11) If the IBU intends to call a Weingarten representative to testify at any hearing touching upon the matter in which he or she represented an employee, and that representative has not already provided a statement, the IBU shall provide WSF with a summary of the representative's expected testimony one week prior to hearing. Failure by the IBU to provide such a summary may be grounds for a continuance, if requested by WSF, to conduct further investigation and prepare cross-examination or rebuttal, in the discretion of the hearing officer. Nothing in this paragraph is intended to limit the discretion of the hearing officer in any way. The IBU need not provide a Weingarten testifying witness summary where WSF has not previously requested one.

(12) IBU agrees to withdraw its unfair labor practice charge regarding the Marc Larkin portion of MEC Case No. 47-04. A copy of this settlement agreement shall constitute its withdrawal and may be presented by either party. The IBU reserves the right to introduce evidence regarding the Larkin ULP in any subsequent matter.

/s/ Dennis Conklin, IBU Regional Director 4/29/04

/s/ Jay Ubelhart

/s/ Michael Manning, WSF Labor Relations Manager 4/29/04

/s/ Judith Krebs, IBU Counsel 4/29/04

/s/ David J. Slown, Attorney for WSF 4/29/04