

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION
OF THE PACIFIC,

Complainant,

v.

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION, FERRIES
DIVISION,

Respondent.

MEC CASE NO. 15-08

DECISION NO. 552 - MEC

ORDER GRANTING WSF'S
MOTION TO DISMISS IBU'S
COMPLAINT

APPEARANCES

Schwerin, Campbell, Barnard and Iglitzin, by *Robert Lavitt*, Attorney, appearing for the Inlandboatmen's Union of the Pacific.

Robert McKenna, Attorney General, by *David Slown*, Assistant Attorney General, appearing for the Washington State Ferries.

On February 14, 2008, the Inlandboatmen's Union of the Pacific (IBU) filed an unfair labor practice charge alleging the Washington State Ferry system (WSF) failed to negotiate over the effects of implementing an Electronic Fare System (EFS).

RECORD BEFORE THE MARINE EMPLOYEES COMMISSION

The Hearing Examiner considered the following records in deciding the issue.

1. The IBU's complaint charging unfair labor practices filed February 14, 2008.
2. The Settlement Agreement reached between the parties during the April 18, 2008 settlement conference.
3. The WSF's September 25, 2008 Motion to Dismiss.
4. The IBU's October 7, 2008 Response to the Motion to Dismiss.

ORDER GRANTING
WSF'S MOTION TO
DISMISS IBU'S COMPLAINT

ISSUE

Did the WSF meet its bargaining obligation during the negotiations for the 2009—2011 collective bargaining agreement over the effects of its implementation of the EFS?

FINDINGS OF FACT

1. On February 14, 2008, the IBU filed the instant unfair labor practice.
2. On April 18, 2008, a settlement conference was held. During the settlement conference, the WSF agreed to make a proposal on the subject of the Electronic Fare System (EFS) during the negotiation session for the 2009—2011 negotiations scheduled for April 23, 2008.
3. On April 23, 2008, the WSF submitted a proposal per their agreement.
4. The IBU rejected the proposal.
5. The IBU did not make a counterproposal.
6. The parties did not reach agreement during negotiations.
7. Both the WSF and the IBU submitted a list of issues to the MEC for certification for interest arbitration.
8. The EFS was not submitted as an issue by either party.

POSITION OF THE PARTIES

The WSF argues it has no legal obligation to bargain since the IBU failed to respond to the proposal during negotiations. It cited in support of its position WAC 316-45-210. In essence, the WSF argues the IBU waived its right to bargain since it failed to respond to the proposal and did not certify the issue for interest arbitration.

The IBU argues the WSF had an obligation to bargain over the effects of the implementation of the EFS. It further argues no impasse was reached during negotiations and

the obligation to bargain continues. IBU acknowledges the WSF made a proposal during negotiations and that it did not respond to that proposal. However, Margaret Pelland, point person for the IBU on this issue, was not present the day the proposal was made. Ms. Pelland did not agree to drop the IBU's request to bargain over the EFS.

ANALYSIS

The WAC citation provided by the WSF is misplaced. It governs the Respondent's obligation to respond to the allegations in an unfair labor practice case. Here, the IBU filed the charge and is therefore the complainant, not the respondent. The Motion can be more properly analyzed as an argument the IBU has waived its rights to bargain.

It is well settled that an employer is obligated to negotiate over changes in wages, hours and working conditions. The implementation of the Electronic Fare System clearly falls under this umbrella. The WSF has not argued no bargaining obligation existed.

It is also well settled that a union can waive its right to bargain through inaction. *Pinkston-Hollar Construction Services, Inc. d/b/a Construction Services, Inc.*, 312 NLRB 148 (1993). That case involved the employer's unilateral discontinuation of payments into the union's health and welfare fund and movement to a company medical plan. The Board found that even where the employer had failed to provide a specific proposal (it had notified the union of its plan to move to the company medical without providing specifics on its medical plan), the burden shifted to the union. The union failed to respond.

The Commission finds the IBU waived its rights. Here, the WSF met its obligation by making a proposal to the IBU during negotiations. The IBU failed to respond at the table, and did not request to have the issue resolved at interest arbitration. The WSF has met its bargaining obligation.

CONCLUSIONS OF LAW

On the basis of the record before her, the findings of fact and analysis, the Hearing Examiner makes the following conclusions of law:

1. The Marine Employees Commission has jurisdiction over the parties and the subject matter pursuant to RCW 47.64.280 and 47.64.130.
2. The WSF had an obligation to bargain over the effects of implementation of the EFS.
3. The IBU's failure to address the matter during negotiations over a successor agreement to the 2007—2009 collective bargaining agreement constitutes a waiver of its rights to bargain.
4. The WSF has met its obligation to bargain.
5. The Motion to dismiss is granted.

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RECONSIDERATION

Pursuant to the provisions of RCW 34.05.470, any party may file a petition for reconsideration with the Commission within ten days from the date this final order is mailed. Any petition for reconsideration must state the specific grounds for the relief requested. Petitions that merely restate the party's previous arguments are discouraged. A petition for reconsideration does not stay the effectiveness of the Commission's order. If no action is taken by the Commission on the petition for reconsideration within twenty days from the date the petition is filed, the petition is deemed to be denied, without further notice by the Commission. A petition for reconsideration is not a prerequisite for seeking judicial review.

DATED this 14th day of November 2008.

MARINE EMPLOYEES' COMMISSION

/s/ PATRICIA WARREN, Hearing Examiner

Approved by:

/s/ JOHN SWANSON, Chairman

/s/ JOHN COX, Commissioner