

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION)	MEC Case No. 17-97
OF THE PACIFIC,)	
)	DECISION NO. 193 - MEC
Complainant)	
)	
v.)	DECISION AND ORDER
)	
WASHINGTON STATE FERRIES,)	
)	
Respondent.)	
_____)		

Schwerin, Campbell and Barnard, attorneys, by Michelle Mentzer, appearing for and on behalf of the Inlandboatmen's Union of the Pacific.

Christine Gregoire, Attorney General, by Stewart Johnson, Assistant Attorney General, for and on behalf of Washington State Ferries.

THIS MATTER came on regularly before the Marine Employees' Commission on May 8, 1997 when the Inlandboatmen's Union of the Pacific (IBU) filed an unfair labor practice against the Washington State Ferries (WSF).

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.

Specifically, IBU alleged that WSF committed an unfair labor practice by unilaterally changing the parking privileges afforded to IBU members, without bargaining. The union alleged that prior to May 12, 1997, WSF employees, assigned to Colman Dock, were permitted to park in three lanes of the parking area. As a part of the 1995-1997 collective bargaining agreement and in settlement of MEC Case 13-96 (Decision No. 167– MEC, dated April 30, 1997), WSF agreed to “make a good faith effort to explore ways to address the parking concerns of the IBU employees located at Colman Dock.” As a result, IBU and WSF were engaged in negotiations concerning this issue. On May 1, 1997, WSF issued a notice to employees limiting parking available to them to only one lane. IBU asserted that parking privileges are a mandatory subject of bargaining and WSF failed to bargain in good faith.

As a remedy for the alleged unfair labor practice, IBU requested an order requiring WSF to: 1) return the parking privileges previously enjoyed by employees assigned to Colman Dock; 2) make all employees who have been forced to find other parking, whole for their losses; and 3) pay costs and attorneys’ fees associated with bringing this unfair labor practice charge and such other relief as the Commission deems just and proper.

Background

The Commission reviewed the charges pursuant to WAC 316-45-110, and determined that the facts, as alleged by the IBU, may constitute an unfair labor practice if later found to be true and provable. Chairman Henry L. Chiles, Jr. was assigned to act as Hearing Examiner.

Commissioner David E. Williams conducted a settlement conference on June 26, 1997. A hearing in this matter was initially scheduled for September 16, 1997 but later continued to October 16, 1997. Commissioner John P. Sullivan was reassigned to preside over the hearing. The notice directed that an answer to the complaint be filed

on or before August 27, 1997. WSF's answer was timely filed. The hearing was commenced on October 16 and concluded on October 22, 1997. Post-hearing briefs were timely filed by the parties.

POSITIONS OF THE PARTIES

Position of the Inlandboatmen's Union of the Pacific

Prior to May 12, 1997, WSF employees assigned to the Colman Dock were permitted to park in lanes one, two and three in the parking area in front of the ticketing booths.

As part of the parties' 1995-1997 collective bargaining agreement and in settlement of MEC Case No. 13-96, WSF agreed to "make a good faith effort to explore ways to address the parking concerns of the IBU employees located at Colman Dock." IBU and WSF engaged in negotiations regarding ways to make parking more accessible and convenient for employees assigned to Colman Dock.

On May 1, 1997, without notice to IBU, WSF issued a notice to employees limiting the parking available to them to lane one. If there was no space available, employees were to park off the dock.

Parking privileges are part of the terms and conditions for employment for WSF employees and are therefore a mandatory subject of bargaining.

Position of Washington State Ferries

IBU's complaint is unfounded and legally insupportable. IBU members do not have a contracted right to park at Pier 52. WSF parking policy has been dictated by: DOT

policy requiring secure parking for state vehicles, WSF business needs, HOV and disabled parking, and parking for Marriott food services. WSF needs more parking than the 42-stall restriction requiring for zoning compliance.

Admittedly, as far back as 1980 or earlier, Pier 52 was used on an informal basis as a parking facility. WSF did agree to make a good faith effort to explore ways to address the parking concerns of IBU employees located at Colman Dock. Earlier in 1997, prior to WSF's May publication of its written parking policy, WSF management representatives discussed the parking issue extension with employees. This subject was not "negotiated" with IBU. WSF requests that the complaint be dismissed.

STATEMENT OF THE ISSUE

1. Did the Washington State Ferries violate RCW 47.64.130(1)(a) and (e) when it issued a new parking policy at Colman Dock on May 1, 1997?
2. If so, what is the remedy?

Having read and carefully considered the entire record, including the unfair labor practice complaint, the hearing transcript and exhibits, and the post-hearing briefs, this Commission now hereby enters the following Findings of Fact.

FINDINGS OF FACT

1. The IBU and WSF are parties to a valid collective bargaining agreement that expired on June 30, 1997. The parties have been and are involved in extensive collective bargaining for a new contract. As part of its proposal, IBU made a

request for parking spaces at Pier 52.

2. Parts of Colman Dock have been used for employee parking as far back as 1980. From time to time, WSF has issued a revised parking policy.
3. More recently, WSF issued a parking policy on April 14, 1994. Thereafter, IBU requested an opportunity to negotiate about the changes. As a result, WSF issued a revised parking policy on April 27, 1994. That policy remained essentially unchanged until a new parking policy was issued on January 12, 1995, followed by the instant change on May 1, 1997.
4. As part of the IBU/WSF 1995-1997 collective bargaining agreement, in a separate letter of understanding, WSF agreed to “make a good faith effort to explore ways to address the parking concerns of the IBU employees located at Colman Dock.” The letter of understanding was signed by WSF on November 18, 1996.
5. At one point, WSF declined to abide by the letter of understanding, which resulted in IBU filing an unfair labor practice charge with the MEC (Case No. 13-96). The case was settled with WSF agreeing to honor its agreement to meet on the parking problem.
6. WSF and IBU have been parties to parking studies in the past. While WSF has proposed some remedies, it has never followed through and done anything that would help employees find safe parking, except allow them to park on the dock. After settling MEC Case No. 13-96 and agreeing to meet and bargain on the issue of parking, WSF Human Resources Director Jim Yearby failed to meet with the union for a period of six months. On April 23, 1997, Jim Yearby and WSF Labor Relations Manager Gary Baldwin met with an IBU committee that included Dennis Conklin, IBU Patrolman, and Sue Lowery, and IBU delegate. The group

discussed several parking options.

The IBU representatives were concerned about member safety. The area around Colman Dock was known to be a dangerous place. More information was needed. Construction of an elevator was then under way at the Dock entrance. Management agreed to find out how many places were needed for construction worker parking. WSF also agreed to research whether a vehicle was available to transport employees from the Dock to a warehouse parking area.

The IBU members agreed to find data on how many parking spaces were actually needed by employees and what problems IBU members encountered.

The IBU committee members left the meeting with the understanding that they meet again with the management representatives in several weeks to discuss the information that each side was able to obtain.

7. Ms. Lowery conducted a survey of WSF employees using the Colman Dock area. As a result of her survey, Ms. Lowery determined that there was a need for 43 parking places for employees on the dock.

Over 59 percent of the individuals polled reported that they had had their autos vandalized and 74.5 percent reported that they had been assaulted or threatened on their way to or from work.

8. Ms. Lowery contacted the Seattle Police Department and determined that Census Tract 81, which included Colman Dock, has more crime committed than any other census tract in the city of Seattle.

9. Ms. Lowery determined that WSF was in violation of RCW 43.01.240(3) which

states: "In situations where there are fewer parking spaces than employees at a work site, parking must be allocated equitably, with no special preference given to managers." The parking assignment chart for Colman Dock indicates that four managers park there.

10. Theodore W. Bell, a civil engineer for WSF, testified about the various construction projects that have taken place at Colman Dock and how the parking situation was affected by this projects. WSF is not in compliance with the 1989 building permit for the number of parking places needed.
11. There are approximately 82 parking spaces around the perimeter of the Colman Dock area. Management assigns all for specific purposes.

Some parking spaces are used for state owned autos, HOV spaces, disabled parking spaces, managers and police officers assigned to work at Pier 52. A number of spaces are assigned to various individuals and departments. No testimony or facts were offered to show how often those spaces are utilized for state business versus personnel parking.

12. In addition to meeting with IBU and discussing parking as a result of the settlement in MEC Case 13-96, WSF also met and bargaining with IBU in the regular contract negotiations. One of the proposals on the table was parking. At those meetings, Gary Baldwin, Labor Relations Manager represented WSF.
13. On May 1, 1997, WSF issued a notice to all employees, vendors and visitors that daytime parking in the holding lanes would cease on May 12, 1997. A complete parking policy was issued on May 12, 1997. Parking was no longer provided for persons attending training classes or meetings.
14. The IBU was not notified of the change in the parking policy even though they

had been bargaining on a new contract with Gary Baldwin and they had met with Jim Yearby on the Parking Committee.

15. WSF Human Resource Director Jim Yearby objected to meeting and discussing parking in two forums, but did not formally attempt to change the process until June 12, 1997 when he wrote to IBU and unilaterally discontinued the parking committee. The work of the parking committee was not finished.
16. Jim Yearby stated that he did not believe bargaining for parking privileges was a mandatory subject of collective bargaining. He thought bargaining for parking privileges was a permissive subject of collective bargaining.

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

CONCLUSIONS OF LAW

1. MEC has jurisdiction over this matter pursuant to chapter 47.64 RCW generally and specifically, RCW 47.64.130 and RCW 47.64.280.
2. The IBU clearly did not waive its right to bargain on the issue of parking. The WSF has issued a series of parking policies. The IBU was successful in obtaining changes in a 1994 parking policy that benefits their members. WSF management has knowledge of employees parking in the holding lanes but did not enforce their policy and thereby accepted the practice. See, Dist. No. 1 MEBA v. WSF, MEC Case NO. 2-95. Decision No. 140 – MEC, dated October 10, 1995.

The IBU asked for bargaining on parking in both the 1995-1997 and 1997-1999 contract proposals and participated in the parking committee. There has clearly been no waiver by the IBU. The WSF argument on waiver fails for lack of proof. See, City of Yakima, Decision 3564 (PECB 1990).

3. The IBU made it clear to WSF that the safety of IBU members coming and going to their workstations was very important to its membership. The IBU was trying to obtain parking for their members in a safe place. If members lost their parking privileges on the dock they would be forced to pay for parking and walk longer distances to work, often in the dark in an unsafe area. Their cars would be subject to vandalism. Parking is a mandatory subject of bargaining. See, Boland Marine & Mfg., 225 NLRB 824 (1976). Requiring employees to leave the relative safety of the Colman Dock area and park on the Seattle streets or other parking places further away and to pay for parking would be a material change in employees' working conditions, requiring collective bargaining for safe parking. George Webel d/b/a Pike Transit Co., 217 NLRB 815 (1975).
4. Both parties cited Port of Pasco, Decision 4021 (PECD 1992) and the balancing test described therein. The balancing test requires an examination of both employee and employer interests concerning parking practices.

In the instant matter, we must balance the right of the WSF to manage its dock holding lanes with the right of employees to obtain safe parking. Washington State Ferries does not need all of its holding lanes for travelers every day. Some are needed only on a holiday weekend or during the summer months. During the balance of the year, there is space to accommodate employee parking. On the other side of the balancing test, we must consider safe parking or a number of employees on the dock. If they were forced to leave their spaces they would have to compete for parking places in a crowded downtown area noted to be the most crime filled in the inner Seattle area. Their cars may

be subject to vandalism. Employees are fearful for their safety walking to and from work. Many would have to walk longer distances to find parking and pay for their parking.

The MEC concludes that the balancing test favors employees in their need for safe parking. Having to pay for parking would have an effect on employees' wages. The Employer has not provided reasonable alternatives.

The Port of Pasco case clearly supports the IBU position that the unilateral issuance of the parking policy is a violation of the RCW 47.64.130(1)(a) and (e). The WSF parking policy is a mandatory subject of bargaining. See, Diversified Industries, 208 NLRB 223 (1974) and Rudy's Farm Co., 295 NLRB 43 (1979). See also, Oregon Executive Dept. and Oregon Health Services University, 111 NPER OR-20023 (Ore. ERB, 1989) where parking was found to be a mandatory subject of bargaining. Parking regulations are plant rules and are considered mandatory subjects of bargaining. See, Schrafts Candy Co., 244 NLRB 581 (1979).

5. Washington State Ferries unilaterally issued a revised parking policy on May 1 and May 12, 1997. WSF did not give notice to the IBU of the changes, even though they were negotiating with IBU through Gary Baldwin on the new contract and through Jim Yearby on the Parking Committee. They had a duty to give notice and bargain about the parking policy. WSF's failure to do so is a clear refusal to bargain and a violation of RCW 47.64.130(1)(a) and (e). The parking privilege was an established condition of employment. Any unilateral change in that term whatsoever violates the law. See, Intermountain Rural Electric Association, 305 NLRB 783 (1991).

The revised Parking Policy must be rescinded, employees harmed made whole and WSF must return to the bargaining table and bargain in good faith.

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Having entered the foregoing Findings of Fact and Conclusions of Law, the Commission now enters the following order.

ORDER

1. The unfair labor practice complaint (ULP), filed by IBU on May 8, 1997, is hereby sustained.
2. WSF is hereby found to be in violation of RCW 47.64.130(1)(a) and (e) by unilaterally issuing a parking policy on May 1 and 12, 1997.
3. WSF is ordered to rescind the parking policy issued on May 1 and 12, 1997 and to restore the status quo ante.
4. WSF is ordered to "make whole" any employee that suffered a loss because of the illegal parking policy.
5. WSF is ordered to return to both the Parking Committee and the Contract Bargaining Committee and resume negotiations in good faith.
6. WSF is ordered to inform the Commission in writing within 30 days of this order of the steps it has taken to comply with this order. The Commission will retain

jurisdiction over this matter until it is satisfied that full compliance has been achieved.

7. MEC carefully considered the IBU's request for attorney fees and costs but declines to make any award in this matter.

DATED this 20th day of March 1997.

MARINE EMPLOYEES' COMMISSION

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

/s/ JOHN P. SULLIVAN, Commissioner

/s/ DAVID E. WILLIAMS, Commissioner