

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES COMMISSION

BRETT FULMER,)	
)	
Complainant,)	
)	
vs.)	
)	
INLANDBOATMEN'S UNION OF)	
THE PACIFIC,)	
)	
Respondent.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	AND ORDER
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Brett Fulmer, Pro Se.

Hafer, Cassidy and Price, by John Burns, Attorney at Law, appearing on behalf of respondent.

Robert McIntosh, Assistant Attorney General, appearing on behalf of employer, Washington State Ferries.

The above-named complainant filed a complaint with the Public Employment Relations Commission on August 17, 1982, wherein he alleged the above-named respondent had committed unfair labor practices within the meaning of RCW 41.56.150(1). The Commission docketed the case as Case No. 4186-U-82-667. Ronald L. Meeker, a member of the Commission staff, was designated to act as examiner and to make and issue findings of fact, conclusions of law and order. The hearing was held on February 23, 1983. Post hearing briefs were not filed.

Chapter 15, Laws of 1983, transferred jurisdiction for the administration of Chapter 47.64 RCW from the Public Employment Relations Commission to the Marine Employees Commission. Pursuant to notice issued to the parties, the Marine Employees Commission took action to accept jurisdiction over all cases which had been pending before the Public Employment Relations Commission under Chapter 47.64 RCW on the effective date of Chapter 15, Laws of 1983.

Subsequently, the Marine Employees Commission has designated Ronald L. Meeker as Examiner under its rules for the purposes of the above-entitled case.

POSITIONS OF THE PARTIES

The complainant contends that he made application to the union for employment in the September of 1981; that a union official gave preferential treatment to a daughter of the official's fiancée; and therefore, that the union denied him the opportunity by unfairly operating the Hiring Hall.

The respondent in filing its answer to the charge denied it violated RCW 41.56.150(1) or any part of RCW 41.56 in any dealings with complainant, Brett Fulmer. By way of affirmative defense the union argued:

1. That PERC lacked jurisdiction of the complaint;
2. That the complaint did not state a claim under the statute, nor did it comply with WAC 391-45-050;
3. That an indispensable party (the employer) was omitted from the complaint; and,
4. That the union's action at issue here was required by and protected by RCW 49.60.

The employer was represented at the hearing by an assistant attorney general. Referring to previous correspondence directed to the parties by the Executive Director of the Public Employment Relations Commission, the employer took the position that its conduct was not at issue in the proceedings and that its appearance was strictly as an observer unless some employer conduct were called into question during the course of the hearing.

DISCUSSION:

The respondent, Inlandboatmen's Union of the Pacific, represents unlicensed deck and engine department employees employed by Washington State Ferries, as well as ticket personnel employed by the ferry system at its terminals. Those parties have a collective bargaining agreement which provides, in Appendix A, for a hiring hall procedure. That provides, in part:

The Union shall maintain all registers on a current basis and shall promptly advise the Employer of any deletions of applications which are made. An applicant shall be deleted from the particular register in question whenever the applicant:

1. is employed by WSF in any position,
2. rejects an offer by WSF of employment in an position covered by the register in question,
3. is rejected by WSF for employment based on lack of minimum qualifications with respect to positions covered by the register in question,
4. fails to report after being contacted concerning employment,
5. voluntarily withdraws his application as to positions covered by the register in question, or
6. cannot be contacted by the Union within seven days after employers notice of nonavailability.

An applicant who has been deleted from a register may reapply at any time and shall have the same opportunities as set forth herein for new applicants except that an applicant who has previously been discharged for cause by WSF shall not be added to any register without the written approval of WSF.

Testimony of a management official called as a witness in these proceedings establishes that the union does not actual hiring for the ferry system. Instead, the Personnel Manager for the ferry system determines the qualifications of applicants referred by the union and makes the actual hiring decisions.

Prior to June 10, 1980 the union had a method of registering people seeking employment with the Washington State Ferries, under which applicants would come into the union office and sign an "official" register. They had to personally come into the union office each month to renew their registration. The collective bargaining agreement permits the union to collect a registration fee from prospective applicants to offset the costs of operating the registration and renewal system, and it did so.

On June 10, 1980 it was determined to be unfair for people to pay a registration fee with no jobs available, so the register was closed. Later in that same month, the union office was swamped with people looking for work. Thereafter, a book was made available for these people to sign showing their qualifications, name and home address. Those who did sign were advised the official register was closed and this book would only be used in an emergency.

Complainant Fulmer appeared at the hearing without the assistance of legal counsel or other representative. Without objections from respondent, he testified in narrative form. The highlights are as follows:

In September of 1981, Fulmer placed his name on a register as seeking employment with the Washington State Ferries. He indicated his availability for work as ordinary seaman, wiper or ticket taker. He was accompanied to the union office by Sue Wheeler. While registering, union representative Neil Lovelace informed him that the ferry system was not hiring at the present time, and the union would notify him when they started to hire. Fulmer was also informed he should call the union office by the tenth of each month to renew his registration. From September of 1981 to April of 1982, Fulmer worked part-time for Saga Foods, the operator of food concessions on the ferries. Sometime after April 5, 1982, he discovered that the union had held a special registration for

approximately 40 entry level positions at Washington State Ferries. Upon calling the union to ask why he had not been notified of the job openings, he was told to talk with union representatives Hank Hood and Burl Hatch. He met with Hood, Hatch and Larry Minor, another union representative, on April 22, 1982, where he was informed of an ad run in the Seattle newspapers on April 2, 3 and 4 as well as publicity in the union newsletter. Fulmer asked why he had not received the union newsletter and was initially informed the union must have an incorrect mailing address. Upon checking the computer mailing list, however, they discovered his home address was correct. Fulmer then asked, since he had not been notified, to have his name added to the list for hiring consideration. He was informed they could not do this, but that he could appeal to the Executive Committee. Fulmer met with the Executive Committee on May 6, 1982. The Executive Committee would not consider adding Fulmer's name to the list and informed him if he did not like it he could hire a lawyer. Fulmer then wrote to Hatch requesting a meeting with the Executive Council. A meeting with the Council was held on August 16, 1982, and again Fulmer's request was denied.

The Improper Removal Allegation

The complainant contends that his name was removed from the register for reasons not be to be found among the six reasons specified in the collective bargaining agreement, and that his rights were hereby violated. The allegation fails, because the evidence does not support a conclusion that Fulmer was ever registered in the manner specified in the collective bargaining agreement.

Called as a witness by Fulmer, Susan Wheeler, the individual who accompanied the complainant to the union office at the time he registered, testified that Fulmer was told the official register was closed. Wheeler had been hired by Washington State Ferries through the hiring hall procedure, and had registered for employment by signing a different book than the one Fulmer signed. The

register which she signed was closed shortly after she was employed.

Neil Lovelace, the union representative who accepted Fulmer's registration, testified that the book signed by Fulmer was the temporary book from which employees were to be called only in an emergency. He further testified that it was his practice to inform those who signed the temporary book that the official register was closed and that the temporary book was being used to get on the official register some time in the future.

On cross-examination, the complainant himself admitted that he was informed when he signed the register that the official register was closed and that the book he was signing was only going to be used in an emergency for extra people. It should have been clear to the complainant and to any others similarly situated that their "registration" made them members of a subordinate class and that some further action would be necessary to elevate them to the "official" register. Contrary to the complainant's allegations, the evidence does not establish that Fulmer's name was ever deleted from the temporary book he signed. More important is that the evidence does not establish any basis for the complainant's claim that he was ever entitled to placement on the "official" register.

The Lack of Notice Allegation

The official register was reopened on April 5, 1982. It is clear that the ferry system had given the union notice that approximately 40 new employees would be needed for the coming summer tourist season. Fulmer quotes union official Hood as having stated that the decision to reopen the register was made jointly by Hood and ferry system Personnel Manager Dave Rice because the old list was outdated and a new list was needed. That information does not establish wrongdoing by either the employer or the union. On the contrary, the procedure adopted reverted to the "official" registration system called for by the collective

bargaining agreement. Notice of the reopening of the register was published in the January-February-March, 1982, issue of the union newsletter, which came out about the middle of February. The reopening of the register was also advertised in both the Seattle Times and Seattle Post-Intelligencer editions of Thursday, April 1, Friday, April 2, and Saturday, April 3, 1982. The reopening of the register was announced for April 5, 1982, with a cost to register of \$10.00 per applicant.

The complainant's claim that the union had his correct mailing address was not contradicted by the union. Susan Wheeler's testimony supported Fulmer's claim that the union undertook at the time of Fulmer's registration to notify Fulmer when the ferry system began to hire again. Lovelace denied that he advised Fulmer that the union would give him a mailed notice when the official register was going to be opened. On the other hand, Lovelace's statement concerning the temporary book being used to get on the official register some time in the future stands in contradiction to the union's position and gives some credence to Fulmer's claim of a right to notice from the union. The conflicts in testimony need not be resolved, however, as other facts in the evidence indicate that they are irrelevant. Notice was, in fact, published in the union newsletter. On first hearing of Fulmer's claim of a lack of notice, the union's first reaction was not to defend itself as to its obligations, but rather to question whether the notice which it did publish had been mis-sent. The more reasonable interpretation of the evidence is that the union did publish the notice and that it was mailed in due course to the correct address recorded for Fulmer on the union's computerized address list. Questions as to whether the newsletter was lost in the mail or ignored by its addressee will be remain unanswered. The union newsletter was not the exclusive means of notice, and the complainant offers no explanation for his failure to respond to the notices published in the newspapers. The evidence does not establish any action or inaction on the part of the union or any of its officials to deprive the complainant of notice that the official register was being

reopened.

The Favoritism Allegation

The complainant offered no direct testimony or other evidence concerning his allegations of favoritism on the part of union officials in the operation of the hiring hall. The evidence which became part of the record comes from the testimony of union witnesses.

Debbie Koivu's mother was, on April 5, 1982, engaged to be married to union official Hank Hood. Hood arrived at the union offices, where the registration was to take place, at approximately 6:00 A.M. on April 5, 1982. At that time, approximately thirty (30) persons, including Debbie Koivu, were already lined up waiting to register. Registration commenced at 9:00 A.M. on that date, with the first person in line being assigned "number one", the second in line being assigned "number two", etc. Each potential registrant was given a form to complete on which they were to indicate the position they were seeking and their experience in that category. Three hundred and sixty potential registrants were given the form. Two hundred and sixty-five completed the form and paid the \$10 registration fee. Debbie Koivu was eighteenth (18th) on the registration book. A day or so after the registration, Hood gave Koivu an application form for employment with Washington State Ferries so that she could have it completed in the event she received a call from the ferry system.

Koivu was later hired by Washington State Ferries, but was subjected to the same interviewing and hiring procedures as all other applicants. Hood testified that nobody from the ferry system called him concerning Koivu, and that nobody knew of his relationship with Koivu.

The complainant has not sustained his burden of proof. The evidence

volunteered by the union tends to confirm that Koivu was given the same treatment as others who presented themselves at the union office at a very early hour on the morning of April 5, 1982. The large number of persons who picked up forms on that day, and the large number of persons who paid their money to register indicate both the widespread notice of the registration opportunity and the lack of merit to the claim that the union or any of its officials conducted the registration in a manner partial to their friends. The only possible advantage given Koivu, i.e., the advance copy of the ferry system's application form, did not come until she was already on the official register.

FINDINGS OF FACT

1. Washington State Ferries, a division of the Washington State Department of Transportation, is an employer within the meaning of Chapter 47.64 RCW.
2. Inlandboatmen's Union of the Pacific (IBU) is a labor organization which has been recognized as the exclusive bargaining representative under Chapter 47.64 RCW of Washington State Ferries employees working in the deck, engine, ticket and traffic information departments, excluding licensed officers and management personnel.
3. Washington State Ferries and Inlandboatmen's Union of the Pacific had a collective bargaining agreement effective for the period from April 1, 1980 through March 31, 1983. Under the terms of that agreement, applicants for employment with Washington State Ferries registered with and were referred by the union through a hiring hall procedure. The official register for making of employment referrals to Washington State Ferries was closed on June 10, 1980 and a temporary register was opened at that time.

4. Brett Fulmer went to the offices of IBU in September, 1981, seeking to register for employment with Washington State Ferries. He was advised that the official register was closed but was permitted to and did register in the temporary register. Fulmer's name and address were correctly listed on the computerized records of the IBU.
5. The official register was reopened at 9:00 A.M. on Monday, April 5, 1982 for the purpose of registration of persons seeking employment for approximately 40 summer season temporary positions with Washington State Ferries. Notice of reopening of the register was published in the IBU newsletter issued during or about the middle of February, 1982 and in the major Seattle area newspapers on the Thursday, Friday and Saturday preceding reopening of the official register.
6. Approximately 360 persons responded to notice of reopening of the official register, of which 265 actually completed the registration process and paid the required fee. The 18th person to register was one Debbie Koivu, whose mother was then engaged to be married to an official of the IBU.
7. After the official register was again closed, Fulmer contacted officials of the IBU concerning his complaint that he had not been included on the official register. Fulmer subsequently appealed to the Executive Committee of the IBU, which denied his claim and advised him to seek legal counsel. Fulmer then took his appeal to the Executive Council of the IBU, which also denied his claim. On August 17, 1982, Fulmer filed a notice of labor dispute with the Public Employment Relations Commission alleging that his rights had been violated by the IBU in connection with the operation of the hiring hall.
8. The evidence does not establish that Brett Fulmer was deprived of notice of the April 5, 1982 reopening of the official register by any discriminatory

action or inaction on the part of the Inlandboatmen's Union of the Pacific or any of its agents.

9. The evidence does not establish that Debbie Koivu or any other person obtained or received any preferential treatment in connection with operation of a hiring hall by the Inlandboatmen's Union of the Pacific.

CONCLUSIONS OF LAW

1. The Marine Employees' Commission has jurisdiction in this matter pursuant to Chapter 47.64 RCW as amended by Chapter 15, Laws of 1983, and the resolutions to that effect adopted by the Marine Employees Commission.
2. The evidence does not establish that Inlandboatmen's Union of the Pacific, its officers or agents, have discriminated against Brett Fulmer or in any other way violated his rights as a prospective employee of Washington State Ferries.

ORDER

The Notice of labor dispute filed in the above entitled matter is dismissed.

DATED at Olympia, Washington, this 17th day of October, 1983.

MARINE EMPLOYEES COMMISSION

/s/ RONALD L. MEEKER, Examiner