STATE OF WASHINGTON

BEFORE THE MARINE EMPLOYEES' COMMISSION

ROBERT O'HARA, Complainant, v. WASHINGTON STATE FERRIES and INLANDBOATMEN'S UNION OF THE PACIFIC, Respondents.	)	MEC CASE NO. 2-90 DECISION NO. 53 EXAMINER'S DECISION AND ORDER

Robert O'Hara, pro se, appearing for and on behalf of the complainant.

Kenneth Eikenberry, Attorney General, by Patricia Nightingale, Assistant Attorney General, appearing for and on behalf of Washington State Ferries.

Hafer, Price, Rinehart and Schwerin, attorneys, by John Burns, appearing for and on behalf of the Inlandboatmen's Union of the Pacific.

INTRODUCTION AND BACKGROUND

Robert O'Hara is an Able Bodied Seaman, employed by Washington State Ferries (WSF) since 1981. He is a member of the Inlandboatmen's Union of the Pacific (IBU) and a member of the IBU collective bargaining unit in the Deck Department of WSF. On March 2, 1990, 0'Hara filed an unfair labor practice complaint (ULP) against both WSF and IBU.

His complaint alleged that WSF had violated RCW 47.64.130(1)(a) by interfering with, restraining or coercing him in the exercise of his rights as a ferry employee. He alleged that after eight years of service and four requests for transfer, WSF unfairly denied him the right to transfer from a full-time (40 hour/week) positions to a 32 hour/week position by selective enforcement of a "new rule."

O'Hara claimed that the precipitating factor in the denial of his right had been statements attributed to O'Hara in the Port Townsend Jefferson County Leader (hereafter P.T. Leader).

Complainant also alleged that IBU had violated RCW 47.64.130(2)(a) by restraining or coercing O'Hara in abetting WSF's decision to deny O'Hara's right to transfer, based upon the aforesaid new rule.

O'Hara further alleged that RCW 47.64.130(3) was violated by the punitive actions or threats of punitive action against him in exercising his right to express his views and disseminate them to the public.

MEC INVESTIGATION PROCEDURE

Following the filing of O'Hara's ULP on March 2, 1990, Janis Lien, MEC Administrative Assistant, served notice to O'Hara that his complaint would be discussed by MEC at its next regular meeting for the purpose of determining under WAC 316-45-140 whether or not the facts he alleged would constitute a violation of law. MEC did schedule said discussion on its March 30, 1990 agenda and did discuss and consider the O'Hara complaint. O'Hara and representatives of WSF and IBU took part in the discussion.

On April 2, 1990, MEC notified all parties of its decision that the facts O'Hara alleged may constitute unfair labor practices if later found to be true and provable. MEC appointed Commissioner Louis O. Stewart to be the examiner pursuant to WAC 316-45-130.

On April 13, 1990. Examiner Stewart notified O'Hara and WSF and IBU that he had scheduled a hearing to be held on May 30, 1990. That notice also notified the respondents, WSF and IBU, that they "may make answer to . . . (the) complaint by filing an answer thereto with (MEC). The answer shall be served on (MEC) on or before May

16, 1990, and on the same date a copy of the answer shall be served on Robert S. O'Hara, . . ."

That notice also essentially repeated WAC 316-45-210, informing respondents that "a respondent shall specifically admit, deny or explain each of the facts alleged in the complaint. . . . The failure of a respondent to file an answer or the failure to specifically deny or explain in the answer a fact alleged in the complaint shall, except for good cause shown, be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of the respondent of a hearing as to the facts so submitted."

Both WSF and IBU filed timely answers.

Examiner Stewart convened the hearing as scheduled at 10:30 a.m., May 30, 1990, and then offered to recess the hearing to allow time for the parties to discuss settlement. None of the parties expressed an interest in private discussion.

Examiner Stewart asked whether or not any party wished to amend its complaint or answer. WSF amended its answer as follows: Although WSF had admitted the allegations contained in paragraph 8 of the complaint (viz., that WSF had denied O'Hara's original grievance and "in consultation with IBU had denied O'Hara's pleas for hardship"), WSF counsel now asserted that answer was not true. But WSF did not deny the allegation in paragraph 8. WSF orally amended that answer to show that WSF deemed O'Hara's grievance to be abandoned when he filed this present ULP with MEC.

Both IBU and WSF moved for dismissal. Those motions are described, infra, under "Positions of the Parties."

Examiner Stewart explained the procedures to Complainant O'Hara, pro se, including the information that O'Hara had the burden of proof by a preponderance of credible evidence.

POSITIONS OF THE PARTIES

Complainant

O'Hara contends that he was unjustly denied a right to transfer to a different position.

When WSF Port Captain Jerry Mecham had approved O'Hara's fourth request for transfer to the Port Townsend-Keystone route on October 6, 1989, Captain Mecham informed O'Hara that "C"-watch-Port Townsend, to which he was transferring would be limited to 32 hours per week, "but that additional hours might be available on an 'on-call' basis." With that understanding O'Hara had served notice on the tenants of his Port Townsend home to vacate, had moved permanently from Winslow to Port Townsend, and had enrolled his son in the Port Townsend school. O'Hara began work on the "C"-watch-Port Townsend on October 10, but was notified on the same date by Captain Mecham that O'Hara was prohibited by the WSF/IBU collective bargaining agreement from transferring to any position of less than full-time (40 hours per week), but that O'Hara could plead "hardship."

On October 16, 1990, when O'Hara came to see Captain Mecham with his hardship plea, he was confronted by four top WSF officials, who informed him that he didn't need representation because he wasn't charged with anything, but who then proceeded to interrogate him for one hour and forty minutes about an article in the P.T. Leader in which O'Hara was quoted. He claims his transfer was rescinded because of that article. He further asserts that the pertinent rule in the WSF/IBU agreement had never been enforced; there was no way an employee could be expected to know the job in question was

not available to him; and other paragraphs in the contract would seem to allow the transfer.

O'Hara argues that interpretation and enforcement of the rule was not based on the merits of his situation but was in retaliation for inviting a newspaper reporter to a meeting of the WSF Safety Committee. This tacitly constituted a violation of RCW 47.64.130(3) (expression or dissemination of his view of WSF safety procedure to the public).

O'Hara requests that MEC order (1) his reinstatement to "C"-watch-Port Townsend or any other year-round position in Port Townsend, (2) an annotation on the yearly seniority list designating those jobs not available to year-round employees, and (3) compensation for lost time.

Washington State Ferries

WSF admits that on or about October 6, 1989, O'Hara was assigned to "C"-watch, Prot Townsend-Keystone, but denies O'Hara's assertion that he was told he might be able to pick up additional hours "on-call."

WSF denies that Port Captain Mecham didn't inform O'Hara until October 10 about the rule which bars full-time employees from transferring to less than full-time positions. WSF avers that on October 6, 1989, prior to his assignment to "C"-watch-Port Townsend, O'Hara had actually presented a plea of extreme hardship (i.e., that O'Hara is a single parent), and that, pursuant to WSF/IBU Rule 21.15, Captain Mecham agreed that an "extreme hardship" existed. Further WSF avers that on October 12, 1989 IBU contacted Captain Mecham and informed him that being a single parent does not constitute an "extreme hardship" under Rule 21.15. Accordingly, Mecham ordered O'Hara back to his prior full-time position on the Winslow watch.

WSF denies the allegation that when O'Hara attempted to see Captain Mecham on October 16 about his hardship plea, O'Hara instead was confronted by four WSF officials. WSF avers that O'Hara requested to see Captain Mecham, but did not inform Mecham as to the subject matter. WSF admits that when O'Hara arrived for the meeting, three other WSF officials were present. And WSF admits that O'Hara was advised he did not need representation because he was not being accused of anything at that time. WSF denies that O'Hara was "interrogated" at the meeting, but avers that the article in the P.T. Leader was "discussed." WSF avers that no disciplinary action was presented, and had any been intended, O'Hara would have been given proper notice and an "opportunity to present his case with an attorney present." WSF admits that Captain Mecham did deny O'Hara's extreme hardship plea at the end of the meeting, but did not know until then that O'Hara had intended to present the plea at that meeting.

WSF denies O'Hara's assertion that he secured a leave of absence from WSF on October 23, 1989, but avers that O'Hara secured a leave of absence on October 29, 1989, that the leave was extended on January 30, 1990 to expire on April 20, 1990, and that to date O'Hara has not returned to work with WSF.

WSF admitted in its answer the allegations that WSF denied O'Hara's grievance and averred that, in consultation with IBU, WSF denied O'Hara's plea for hardship. At the hearing WSF amended that answer by asserting that WSF deems the grievance to have been abandoned when O'Hara filed the instant ULP.

WSF argues in its answer that the appropriate forum for allegations of contract violations is the grievance procedure set forth in RCW 47.64.150, that contract violations do not constitute unfair labor practices, and therefore that this ULP is beyond the scope of this hearing.

Also, in its answer WSF asserts that the complaint fails to state a cause of action under which relief can be granted.

At the first opportunity at the hearing WSF moved for dismissal on the basis of these two foregoing affirmative defenses. WSF also moved that the allegation of violation of RCW 47.64.130(3) be dismissed as inappropriate. RCW 47.64.130(3) is similar to the NLRB 290.S.C. Section 168 C, which entitles employers and unions to freedom of speech for unions and employees with regard to unionization matters, and is limited to those matters.

Examiner Stewart deferred ruling on both of the foregoing motions until O'Hara had opportunity to present his case.

Inlandboatmen's Union of the Pacific

IBU filed its answer to O'Hara's complaint on May 3, 1990. The answer neither admits nor denies O'Hara's specific alleged facts. The answer asserts that: (1) IBU has not violated the statutory sections cited on the complaint form; (2) IBU did review O'Hara's plea of "extreme hardship" pursuant to Rule 21.15 in good faith and in a non-arbitrary fashion and made the determination that no showing of "extreme hardship" had been made; and O'Hara was not eligible for the "downgrade" to the part-time position; and (3) the foregoing decision was a good faith decision, and a good faith decision cannot be the basis of a ULP.

At the hearing IBU moved for dismissal on the foregoing grounds.

As in the case of WSF motions, Examiner Stewart deferred ruling until Complainant O'Hara could present his case.

ISSUES

The issues were not stipulated by the parties. The following statement of issues is formulated by Examiner Stewart (See Conclusion of Law No. 2, supra.).

I. Did WSF violate RCW 47.64.130(1)(a) by interfering with, restraining or coercing Complainant O'Hara in the exercise of his rights under chapter 47.64 RCW (Marine Employees' Act)? If so, what is the remedy?

II. Did IBU violate RCW 47.64.130(2)(a) by restraining or coercing Complainant O'Hara in the exercise of his rights under chapter 47.64 RCW? Did IBU refuse or fail to bargain collectively with WSF in its duty to represent O'Hara? If so in either instance, what is the remedy?

III. Did either WSF or IBU violate RCW 47.64.130(3) by restricting Complainant O'Hara's right to express his views or disseminate said views to the public, if that expression contained no threat of reprisal or force or promise of benefit? If so, what is the remedy?

Having reviewed the complaint, the respondents' answers, the positions of the parties and the statement of issues, Examiner Stewart now enters the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Robert S. O'Hara was employed in the WSF Deck Department as an Able Bodied Seaman for eight years. During the latest two years of his full-time (forty hours per week) employee on the Winslow-Seattle route, he requested transfer to the Port Townsend-Keystone route four times.

2. On October 4, 1989 the P.T. Leader published a front page story in which O'Hara was prominently quoted as critical of the preparedness to disembark passengers from a ferry in case of emergency.

3. On or about October 6, 1989, WSF Port Captain Jerry Mecham approved the requested transfer; and O'Hara was assigned to a vacancy on the "C"-watch-Port Townsend, which is normally a 32-hour per week watch.

4. O'Hara immediately moved to Port Townsend and enrolled his son in school there.

5. O'Hara began work on the "C"-watch-Port Townsend on October 10, 1989 and worked three days on that watch.

6. Transfer of full-time deck hands to part-time work is governed by Rule 21.15 in the WSF/IBU collective bargaining agreement (hereafter Agreement), as follows:

> RULE 21 - SENIORITY AND ASSIGNMENTS
>
> . . . .
>
> 21.15 Full-time employees may bid for a part-time shift without loss of seniority provided the employee demonstrates that retaining full-time work would create an extreme hardship. Hardship status shall require Employer and Union agreement. (emphasis added)

7. "Part-time shift" is not defined in the Agreement, but "part-time employee is defined in Rule 1, as follows:

RULE 1 – DEFINITIONS

. . . .

1.14 PART-TIME EMPLOYEE. The term "part-time employee" shall be an employee who may or may not be working on a year around basis, and is not guaranteed forty (40) hours of straight time pay per week. The employee should be scheduled to work the greatest number of hours per work week based on his hire date. The part-time employee may work, on a daily basis, any additional non-scheduled hours at the applicable rate of pay. When requested by a part-time employee, his schedule will include at least two (2) consecutive days off each work week.

8. Rule 21.15 was added to the pre-existing WSF/IBU Agreement (effective July 1, 1985 to June 30, 1987) at the time it was renewed. The record is ambiguous as to the date of adoption of the renewed contract (effective July 1, 1987 to June 30, 1989). The cover (Ex. 1) indicates March 28, 1989. The signature sheet indicates approval as to form by the Attorney General on 9/22/89. Approval by WSF is indicated by signature of Transportation Commission Vice Chairman Albert Rosellini on 9/29/89 and by IBU President Burrill Hatch and Regional Director Larry Mitchell, both on 6/26/89. The record is silent as to when the renewed contract with the addition of Rule 21.15 was submitted to the members for ratification or otherwise made known to the deck crews.

9. Evidence is contradictory as to when O'Hara was specifically notified concerning the addition of Rule 21.15 to the prior Agreement, and its effect on his contemplated transfer.

O'Hara asserts that he was notified on October 6th that his assignment to "C"-watch-Port Townsend would be limited to 32 hours per week, that he could pick up more hours "on-call," but he was not notified about the prohibition against his transfer without demonstrating "extreme hardship" until October 10 after he had accepted the terms of employment and had moved his residence. WSF denies O'Hara's assertion and avers that Captain Mecham did so inform O'Hara on October 4th, two days prior to assigning O'Hara to "C"-watch-Port Townsend.

10. Port Captain Jerry Mecham did agree that when he approved the transfer, he did believe that O'Hara's "single-parent" status did constitute "extreme hardship."

11. IBU did not agree that "single-parenting" constitutes extreme hardship. It is undisputed that during the bargaining process "single-parenting" and "baby-sitting" were described as ordinary hardships suffered by half of the crew members. IBU did object to the commitment made by Port Captain Mecham.

12. No evidence was presented to show that O'Hara suffered extreme hardship while working his watch on the Winslow-Seattle route. He had been living in Suquamish which was convenient to his work assignment.

13. O'Hara did not discuss his hardship situation with any IBU representative prior to October 6, 1989.

14. O'Hara was not able to identify any employee on the seniority roster as having transferred from a full-time watch to a part-time watch after the addition of Rule 21.15 to the Agreement.

15. O'Hara testified that "I never saw that the Union had done any harm at all."

16. O'Hara was a member of the WSF Safety Committee, representing employees in the Deck Department. Following the grounding of the ferry "Klickitat" on August 31, 1989 he had attempted to get the location of the Safety Committee moved from a Clinton/Mukilteo ferry to a Port Townsend/Keystone ferry, without success. O'Hara either invited a reporter from the P.T. Leader or invited the P.T. Leader to send a reporter to the WSF Safety Committee meeting where the grounding of the "Klickitat" would be discussed.

17. O'Hara has been "safety-conscious" ever since he was "electrocuted" during his first year of employment with WSF. His invitation to the P.T. Leader to cover the Safety Committee was an effort to gain the attention of WSF administration. However, O'Hara asserted he had previously obtained corrections to safety problems by filing complaints with both the Washington State Department of Labor and Industries and the U.S. Occupational Safety and Health Administration.

18. WSF Port Captain Mecham disclaims knowledge of the October 4th P.T. Leader article during the period of October 4 through October 10, and insists that the article had no bearing on his decision to rescind his October 6th approval of O'Hara's single-parenting hardship. This examiner finds that Mecham's approval was rescinded because of the IBU disapproval and the Rule 21.15 requirement that both WSF and IBU agree on the "extreme hardship."

19. WSF asserts that O'Hara violated WSF policy on dissemination of information, but the record is silent as to whether O'Hara had access to or was informed about said WSF policy.

20. Although the sudden exposure to a meeting of four high-level WSF administrators and the ensuing long discussion of inviting

a reporter to a Safety Committee meeting and the ensuing P.T. Leader article was psychologically threatening to O'Hara, this examiner finds no evidence of any tangible threat, except for the warning that it better not happen again.

21. O'Hara did not suffer a job loss, demotion or other penalty by the rescission of Port Captain Mecham's approval of O'Hara's "hardship" plea and loss of the transfer to "C"-watch-Port Townsend. He simply was reassigned to his former full-time watch assignment on the Winslow-Seattle route.

Having reviewed the complaint, the answers, the positions of the parties and the statement of issues, Examiner Stewart now enters the following conclusions of law and order.

CONCLUSIONS OF LAW

1. The Marine Employees' Commission (MEC) has jurisdiction over the parties and this subject matter. (Chapter 47.64 RCW; particularly RCW 47.64.130 and 47.64.280)

2. Because the issues were not stated precisely or stipulated by the parties, MEC may derive the issues on the basis of the complaint, the answers from WSF and IBU, the hearing transcript, and the exhibits, using the principle in Elkouri and Elkouri, How Arbitration Works, 4th Ed., p 231 (1988), even though this case is an ULP.

3. If this matter were limited only to interpretation of Rule 21.15, the dispute procedures in Rule 16 of the WSF/IBU Agreement would have to be utilized and exhausted. (RCW 47.64.150, WAC 316-65-020, and Rule 16, WSF/IBU Agreement.) Rule 16 specifically assigns settlement of Agreement interpretation impasse to an arbitrator from a list provided by the Federal Mediation and Conciliation Service, thereby

removing arbitration of a grievance from MEC jurisdiction. However, the complainant alleges that the rescission of his previously approved transfer was punitive and that his rights to views and dissemination of those views were unlawfully hampered. Those allegations, if found to be true and provable, would constitute violation of RCW 47.64.130.

4. Elements both of contract interpretation and of unfair labor practice are intertwined in this matter. MEC cannot effectively make a judgment on the unfair labor practice complaint without arriving at certain conclusions regarding WSF and IBU interpretations of Rule 21.15 of their Agreement. The existence of an uncompleted grievance procedure is not a bar to the processing of an unfair labor practice charge. In Carey v. Westinghouse Elec. Corp., (375 US 261, 55 LRRM 2042 (1964))the U.S. Supreme Court held that "legislative history, precedent and the interest of efficient administration all led to the conclusion that the Board does not exceed its jurisdiction when it construes a labor agreement when necessary to decide an unfair labor practice case." In several cases the Court "recognized that the Board has jurisdiction over contract disputes to the extent necessary to resolve unfair labor practice cases." (Emphasis added.) (See Morris, et al, The Developing Labor Law, 2nd Ed., (1983) p. 909, citing Mine Workers v. NLRB, 257 F.2d 211, 214-15; Independent Petroleum Workers v. Esso Standard Oil Co., 235 F.2d 401, 405; NLRB v. Pennwoven, Inc., 194 F.2d 521, 524. See also Modjeska, Lee, NLRB Practice p. 318 (1983), citing 385 U.W. 421, 17L.Ed.2d 486.)

5. Although chapter 47.64 RCW is silent concerning the application, uses, and defenses of and under RCW 47.64.130 (definitions of unfair labor practices), MEC must recognize that ULPs commonly refer to the rights of employees to form, join, or assist labor organizations or to refrain from such

activities and other concerned activities (Morris, et al), The Developing Labor Law, 2nd Ed., vol 1, at 72-3 (1983)) An employee may take individual action to question some aspect of employment policy as long as the employee's efforts are directed at goals shared by other employees (ibid, at 73-4). MEC must assume that safety matters are included among the mandatory subjects of collective bargaining shared by other ferry employees. Therefore, determination as to whether or not O'Hara's protected rights were violated under chapter 47.64 RCW is properly before MEC. (WAC 316-45-550)

6. Although the resolution of an ULP under RCW 47.64.130 does not have the statutory restrictions of RCW 47.64.150 (Grievance Procedures), absent a judicial determination MEC should recognize the principle that MEC should not alter the collective bargaining agreement between WSF and IBU. Such a decision would undermine the policy that parties to the agreement must have reasonable assurances that their contract will be honored. (See discussion of W.R. Grace Co., v. Rubber Workers Local 759, 103 S.Ct. 2177, 113 LRRM 2641, 2647 (1983).) Therefore unless Complainant O'Hara produced evidence that WSF and IBU violated RCW 47.64.130 by their collective agreement to Rule 21.15, MEC must limit its inquiry to whether or not Rule 21.15 was fairly interpreted and applied. The record is clear that WSF and IBU did in fact confer over Captain Mecham's approval of O'Hara's "hardship" status. Such conferences were clearly intended by the bargainers' final language in Rule 21.15, ". . . Hardship status shall require Employer and Union agreement." See Finding of Fact No. 6.

7. The duty of fair representation is an obligation which has been judicially fashioned. Although chapter 47.64 RCW does not specifically impose a duty of fair representation, MEC may assume that IBU has a duty to represent fairly the employees

for whom it acts as exclusive bargaining agent pursuant to RCW 47.64.006, 47.64.011(6), 47.64.130, 47.64.130, et passim. See the discussion in Morris, et al., The Developing Labor Law, Vol. II, Ch 28 (1983). The U.S. Supreme Court stated that the "undoubted broad authority of the union as exclusive bargaining agent in the negotiation and administration of a collective bargaining contract is accompanied by a responsibility of equal scope, the responsibility and duty of fair representation." Humphrey v. Moore, 375 US 335, 66 LRRM 2031 (1964), cited in Morris, ibid, at 1288. Thus, MEC may paraphrase the Court in Humphrey v. Moore, at 342, the "duty of fair representation is implicit in the Marine Employees' Act (Ch 47.64 RCW) because that statute affords IBU exclusive power to represent all unlicensed personnel in the WSF Deck Department. See Morris, ibid, at 1289. The Supreme Court upheld the NLRB in deciding that a breach of duty to represent constitutes an unfair labor practice. See Miranda Fuel Co. 140 LNRB 181, 51 LRRM 1584 (1962), rev'd, 326 F2d 172, 54 LRRM 2715 (CA 2, 1963), cited in Morris, ibid at 1288, 1289. MEC then must examine whether IBU failed in its duty to represent O'Hara.

8. This examiner must conclude on the basis of the record that there was not the slightest evidence that IBU had breached its duty to represent the employees in the Deck Department fairly. While IBU's decision that single-parenting is a common problem and not an "extreme hardship" was obviously unacceptable to O'Hara, the decision was made in accordance with the IBU position at the bargaining table, and patently in good faith. Even O'Hara declared during the hearing, "I never saw that the Union had done any harm at all." This examiner has no other option than to sustain the motion of IBU and order dismissal of IBU as a respondent in this case.

9. By the same token, both the original approval by Captain Mecham of O'Hara's single parenting situation as "extreme hardship" and the rescission of that approval approximately one week later appear to be decisions made in good faith, and in and of themselves should only be the subject of grievance arbitration, which was commenced but was aborted by the filing of the instant ULP. Although actual assignments are made by Dispatchers under the Port Captain, Captain Mecham decided that since he had given an erroneous approval to O'Hara's "hardship" plea, he, Captain Mecham, should call O'Hara personally to inform O'Hara of the reason for the rescission. Insofar as the transfer itself is concerned, this examiner can find no violation of RCW 47.64.130(1)(a).

10. There remains the question of whether the job transfer was really the issue, or whether the WSF hierarchy was unfairly penalizing O'Hara (and the other employees of the Deck Department) for his role as a Deck Department representative on the Safety Committee, leading up to the publication of the P.T. Leader article. The principal evidence tending to support O'Hara's contention that he was being discriminated against because of that activity was the one-hour-plus confrontation by four WSF administrations, whether they were "interrogating" as O'Hara claims, or only "discussing the situation" as WSF claims. However, the only evidence in the record was the implicit threat in the statement to the effect that "it better not happen again."

10. A question also remains as to whether WSF objecting to O'Hara's contacts with the P.T. Leader constitutes a violation of RCW 47.764.130(3). This examiner concludes that, although O'Hara's intention may have been intended to get WSF management more active in solving deck crew safety problems in passenger evacuations (NOTE: MEC does not consider that passenger safety per se is in the jurisdiction of MEC.),

O'Hara had other avenues for that purpose. His response to Examiner Stewart's questions indicated that he had achieved safety improvements by using his protected right to file safety complaints with WISHA and OSHA (under both Federal and State statutes). Whether O'Hara was cognizant of WSF policy regarding public statements or whether he exercised proper judgment in attempting to use news media is not before MEC. This examiner can find no violation of O'Hara's right to express or disseminate his views. Whether or not RCW 47.64.130(3) applies solely to unionization matters can remain moot until that is the key subject of another case.

This examiner, having reviewed the complaint, the answers, the positions of the parties, the issues, the findings of fact, and the conclusions of law, now enters the following decision and order, under the authority of WAC 316-45-150.

DECISION AND ORDER

1. The alleged facts in the unfair labor practice complaint (ULP), filed by Robert S. O'Hara on March 1, 1990, against Washington State Ferries and the Inlandboatmen's Union of the Pacific, were not proven to be true by a preponderance of evidence, and MEC Case No. 2-90 should be and hereby is dismissed.

2. Pursuant to WAC 316-45-350 the foregoing findings of fact, conclusions of law, and order is subject to review by MEC on its own motion, or at the request of any party made within twenty days following the date of entry of this order. In the event no timely petition for review is filed, and no action is taken by the commission on its own motion within thirty days following the date of entry of this order, the foregoing findings of fact, conclusions of law, and order shall automatically become the findings of fact, conclusions of law,

and order of MEC and shall have the same force and effect as if issued by that Commission.

Dated this 13th day of July, 1990, at Olympia, Washington.

/s/ LOUIS O. STEWART, Examiner