

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES' COMMISSION

TEAMSTERS UNION LOCAL 117	)	MEC Case No. 20-95
On behalf of RALPH SCHRAW,	)	
	)	DECISION NO. 148 - MEC
Grievant,	)	
	)	
v.	)	DECISION AND ORDER
	)	
WASHINGTON STATE FERRIES,	)	
	)	
Respondent.	)	
_____	)	

Schwerin, Burns, Campbell & French, attorneys, by John Burns and Cheryl French, attorneys at law, appearing for and on behalf of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 117.

Christine Gregoire, Attorney General, by Bryce Brown, Assistant Attorney General, appearing for and on behalf of Washington State Ferries.

James J. Johnson, union representative appearing for and on behalf of the Office and Professional Employees International Union, Local 8.

THIS MATTER came on regularly before the Marine Employees' Commission (MEC) on October 27, 1995 when Teamsters Local 117 (Teamsters) filed a request for grievance arbitration against Washington State Ferries (WSF).

In its grievance arbitration request, Teamsters asserted that WSF violated the terms of the Puget Sound Metal Trades/WSF Collective Bargaining Agreement. Specifically, Teamsters alleges that WSF has

transferred work properly performed by Teamsters Local 117 warehousemen to WSF personnel represented by the Office and Professional Employees International Union, Local 8 (OPEIU) in violation of Articles 2 and 28 of the collective bargaining agreement.

Teamsters certified that the grievance procedures in the Puget Sound Metal Trades/WSF Collective Bargaining Agreement have been utilized and exhausted. Teamsters also certified that the arbitrator's decision shall not change or amend the terms, conditions or applications of said collective bargaining agreement and that the arbitrator's award shall be final and binding.

The request for grievance arbitration was docketed as MEC Case No. 20-95 and assigned to Commissioner John P. Sullivan to act as arbitrator pursuant to WAC 316-65-090.

A prehearing conference was scheduled pursuant to WAC 316-02-210 and held on Friday, January 5, 1996. A hearing was scheduled pursuant to RCW 47.64.150 and 47.64.280 and chapters 316-02 and 316-65 WAC and held on January 22, 1996.

On January 18, 1996 James J. Johnson, OPEIU Union Representative, advised MEC and counsel for the parties that he would make an Oral Motion for Intervention on behalf of his union at the hearing on January 22, 1996.

At the start of the arbitration hearing on January 22, 1996, James Johnson did make a motion to Intervene on behalf of OPEIU. Counsel for WSF and Teamsters had no objection to such intervening and the arbitrator ruled that OPEIU could participate in the hearing as a party, pursuant to WAC 316-65-510.

Briefs were filed by the parties by the scheduled date of March 18, 1996.

## POSITIONS OF THE PARTIES

### Position of Teamsters Local 117

The position of Storekeeper at the WSF Shipyard at Eagle Harbor is covered by the contract between WSF and Teamsters Local 117.

In 1981 when the Eagle Harbor Warehouse was created or expanded, the Storekeepers were in Teamsters Local 117. OPEIU Local 8 made inquiries regarding the duties and responsibilities of the Storekeeper, also known as Storeroom Personnel. It was decided that the Storekeepers work was Teamsters' work. Storekeeper Clem Aquino is still a member of Teamsters Local 117.

In 1993, the Teamsters and Ralph Schraw filed a grievance alleging that an OPEIU person was working at the Seattle Warehouse. The matter was administratively reviewed; the parties determined that the work did indeed belong to the Teamsters. Ralph Schraw was transferred to the Seattle Warehouse in October 1993, leaving Clem Aquino as the only Storekeeper at the Eagle Harbor Warehouse.

In November 1994, WSF created a position of Materials Coordinator which was filled by Lynn Broderick, an OPEIU member.

The Teamsters contend that the work of the Materials Coordinator is the same as the Storekeeper who was transferred from Eagle Harbor to the Seattle Warehouse, and that pursuant to the contract between WSF and Teamsters Local 117, the Materials Coordinator position belongs to the Teamsters and not to OPEIU.

### Position of WSF

WSF's position is that the transfer of Mr. Schraw from Eagle Harbor Warehouse to the Seattle Warehouse was totally unrelated to the creation of a position of Materials Coordinator at Eagle Harbor, which was filled by Lynn Broderick, a member of OPEIU Local 8.

The transfer of Storekeeper Schraw from Eagle Harbor Warehouse to the Seattle Warehouse was the result of increased work in Seattle and a decrease of Storekeeper work at Eagle Harbor in October 1993.

Eagle Harbor needed an updated computer inventory system and to provide better communication for the ordering of supplies and parts for the working crafts. Therefore, WSF created a new position, Materials Coordinator at Eagle Harbor. The Materials Coordinator work was different from Storekeepers work and not within the Teamsters jurisdiction, but correctly belonged to OPEIU.

WSF has the exclusive right to manage its business. That is what WSF has done with its Warehousing Operations, pursuant to Article XXVIII - Management Rights, of the collective bargaining agreement. Further, there is no violation of the Union Recognition Clause contained in the CBA Article II.

The action of WSF has not resulted in the loss of any Teamsters position and WSF actions can not be considered in any way anti-union.

### Position of OPEIU Local 8

The Materials Coordinator was a new position in WSF operations at Eagle Harbor. The specifications and job descriptions are such that it was not a job that the Teamsters could fill, but was a job that was properly within the jurisdiction of OPEIU.

Lynn Broderick, a member of OPEIU Local 8, properly bid and obtained the Materials Coordinator position at Eagle Harbor.

#### STATEMENT OF THE ISSUE

1. Did WSF violate Article II, "Recognition," and Article XXVIII, "Management Rights" of the Puget Sound Metal Trades/WSF Collective Bargaining Agreement? Were duties which were the exclusive jurisdiction of Teamsters Local 117 transferred to OPEIU Local 8 when WSF created the Materials Coordinator position?
- 2, If the answer us "yes", what is/are the remedy/remedies?

Having read and carefully considered the entire record, the Marine Employees' Commission now hereby enters the following findings of fact.

#### FINDINGS OF FACT

1. WSF maintains a ship repair yard at Eagle Harbor on Bainbridge Island, located across from Seattle. At the ship repair yard, WSF maintains a warehouse where parts and material are received, identified and stored. The different crafts in the yard request parts and materials that are supplied from the warehouse by a Storekeeper, a Teamsters member. When the warehouse was established at Eagle Harbor in the early 1980's, there were three Storekeepers: Les Barlow, Lead Storekeeper, and two Storekeepers, Clem Aquino and Ralph Schraw.

2. In the summer of 1981, the OPEIU Local 8 made inquiries about their members doing the work at Eagle Harbor warehouse (EX 11). WSF replied, outlining the duties of Storekeeper done by Teamsters Local 117 (EX 2-12). The Storekeepers remain members of Teamsters Local 117 to the present time.
3. WSF had a warehouse initially at 656 South Orchard Street in Seattle, then a larger warehouse at 6000 - 6<sup>th</sup> Avenue, also in Seattle. The Eagle Harbor warehouse started with three (3) Storekeepers, then continued with two (2) Storekeepers and then in 1993, one Storekeeper covered the work, when Ralph Schraw was transferred to 6000 - 6<sup>th</sup> Avenue. The drop in the number of Storekeepers was directly related to the decrease in their warehouse work at Eagle Harbor—there was not enough work for two storekeepers. (Aquino, p. 130; Choate, p. 189, 191; Kressin p. 164. 165. 166) (EX 9).
4. A decrease in Storekeeper work at Eagle Harbor resulted in a reduction from three to two Storekeepers when the Lead Storekeeper, Les Barlow, retired and was not replaced; at that time Clem Aquino became Lead Storekeeper.
5. In 1993, the continued decrease in work at Eagle Harbor and the increased work at the Seattle warehouse at 6000 6<sup>th</sup> Avenue South resulted in WSF having OPEIU members doing Teamsters work at the 6<sup>th</sup> Avenue South Warehouse.
6. In a grievance filed by Teamsters Local 117 on behalf of Ralph Schraw alleging that OPEIU was doing Teamster work at the 6000 6<sup>th</sup> Avenue warehouse in Seattle it was administratively decided that in fact an OPEIU Local 8 member was doing Teamster work and the work was reassigned to Local 117.

7. In October, 1993, Ralph Schraw, a Teamsters Local 117 member, was transferred from Eagle Harbor warehouse to the Seattle warehouse. There remained one Teamsters Storekeeper at Eagle Harbor warehouse, Lead Storekeeper Clem Aquino, who has continued to do the work by himself; Mr. Aquino has at times worked up to six to eight hours a pay period in overtime.
8. On April 4, 1994, the Washington State Ferries acknowledged its bargaining obligation with Teamsters Local 117 and OPEIU Local 8 in a memorandum in which it requested that Local 117 examine a proposal related to OPEIU and Teamster positions at the Seattle Warehouse and Eagle Harbor facilities:

. . . "Our intent is to satisfy emerging operational requirements through the most efficient use of the human resources available to us at these facilities. Both Teamster and OPEIU jurisdictions are affected by the proposals described in this memo." . . .
- The proposal set forth in the memorandum did not include any reference to the creation of a new position at Eagle Harbor entitled Materials Coordinator. EX 9, Letter from Armand Tiberio, WSF Director of Marine Operations to Ken Troup, Teamsters Local 117 Representative.
9. Thereafter, WSF prepared specifications for the position of "Maintenance Materials Coordinator" and placed it out for bids. Lynn Broderick, a member of OPEIU, bid for the position and won the bidding; she was appointed Materials Coordinator in November 1994.
10. Article II - "Recognition," of the agreement which covers the group of unions collectively known as the "Metal Trades," states:

The Employer recognizes the Union as set forth in the Preamble and signatory hereto as the sole and exclusive bargaining representative of the full-time employees and all regular part-time employees covered by the classifications contained in Schedule "A" of this Agreement."

Schedule "A" includes Journeymen, Leadmen, Foremen and Helpers.

11. Under the CBA, Article XXVIII - Management Rights, the union, including Teamsters Local 117, recognizes that WSF

...retains the exclusive right to manage its business, including but not limited to the right to determine the methods and means by which its operations are to be carried on, to direct the work force, and to conduct its operations in a safe and effective manner. ...

12. There was no definitive testimony at hearing that the WSF met its obligation to meet and confer with Local 117 about the effects the new position would have on its bargaining unit.

13. The record is similarly unclear as to whether WSF met its obligation to meet and confer with OPEIU Local 8 over wages, hours and working conditions of the new position.

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



## CONCLUSIONS OF LAW

1. MEC has jurisdiction over the parties and subject matter in this case. Chapter 47.64 RCW; specifically, RCW 47.64.150 and 4.64.280.
2. MEC may not change or amend the terms of the collective bargaining agreement by and between the Puget Sound Metal Trades, including Teamster Local 117 and WSF.
3. WSF failed to bargain with Teamsters Local 117 regarding the position of Materials Coordinator in violation of the "recognition" clause of the Metal Trades/WSF contract.
4. Exercising their "management rights" clause, WSF created the position of Materials Coordinator and assigned the position to the OPEIU Local 8 bargaining unit.
5. WSF failed to give notice to Teamsters Local 117 before creating the Materials Coordinator position, which was to perform some of the bargaining unit work stated in the Storekeeper's job description.
6. WSF, without bargaining, assigned some of the Teamster's Local 117 bargaining unit work to the Materials Coordinator position. The bargaining unit work assigned to the Storekeeper is protected by the Puget Sound Metal Trades/WSF contract.
7. It is the obligation of the Washington State Ferries to meet and negotiate with Teamsters Local 117 about the effects of the creation of a new position on its bargaining unit members. AFGE and Department of Human Services, 91-1 ARB ¶8099 (Rosen, 1990); Goodyear Aerospace and UAW Local 856, 81-2 ARB §¶8511

Strasshofer, 1981); Pioneer Press Inc. - Chicago Newspaper Guild Local 71, 89-1 ARB para 8284 (Berman, 1989).

8. The MEC concludes that the Washington State Ferries violated Article 2, "recognition," of the Puget Sound Metal Trades/WSF collective bargaining agreement by failing to meet and confer with Teamsters Local 117 regarding the effects of the creation of the new position of Materials Coordinator on its members.

Having read the entire record including, but not limited to, the complaint, the hearing transcript, the exhibits, briefs and having entered its Findings of Fact and Conclusions of Law, this Commission now hereby enters the following order:

#### ORDER

1. WSF shall restore to the bargaining unit, Teamsters Local 117, all the Storekeeper work that was bargaining unit work before creation of the Materials Coordinator position.
2. WSF shall give notice to and negotiate in good faith with Teamsters Local 117 before transferring bargaining unit work outside the bargaining unit.
3. The work that did not belong to the Teamsters Local 117 Storekeeper position shall remain with the Materials Coordinator, an OPEIU Local 8 member.
4. WSF is ordered to meet and bargain with Teamsters Local 117 and OPEIU Local 8 if WSF wishes to consider transferring any

of the bargaining unit work from the Storekeeper to the Materials Coordinator.

5. The request for grievance arbitration filed by Teamsters Local 117 on October 27, 1995 on behalf of Ralph Schraw filed docketed as MEC case 20-95 is hereby sustained.

DATED this 8<sup>th</sup> day of May, 1996.

MARINE EMPLOYEES' COMMISSION

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

/s/ JOHN P. SULLIVAN, Commissioner

/s/ DAVID E. WILLIAMS, Commissioner