

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION
OF THE PACIFIC,

Complainant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC CASE NO. 32-04

DECISION NO. 404 - MEC

ORDER CLOSING
SETTLED COMPLAINT

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

Christine Gregoire, Attorney General, by *David Slown*, Assistant Attorney General, appearing for the Washington State Ferries.

THIS MATTER came on regularly before the Marine Employees' Commission (MEC) on January 20, 2004, when Dennis Conklin, Inlandboatmen's Union of the Pacific (IBU), filed an unfair labor practice complaint against the Washington State Ferries (WSF). The matter was docketed as MEC Case No. 32-04.

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 and refusing to bargain collectively with representatives of employees.

Specifically, IBU alleged that WSF: 1) failed to timely respond to December 1, 2003 employee vacation bids; 2) has continued to deny vacation requests even when there are sufficient relief personnel to grant them; 3) unilaterally implemented a portion of its contract proposal requiring employees to take vacation in one-week increments; 4) unilaterally implemented a new policy denying employees leave without pay in violation of Decision 310-

MEC; 5) unilaterally implemented a new policy denying employees time off when there are on-call employees available; and 6) unilaterally changed a contract provision when it awarded vacations before December 1 to some employees without looking at seniority dates or the date requests were submitted.

Following initial review of the complaint, the Commission determined that the facts alleged may constitute an unfair labor practice, if later found to be true and provable.

Commissioner John Sullivan was assigned to act as Mediator at a settlement conference scheduled for February 24, 2004. Commissioner John Byrne was designated to act as Hearing Examiner for the hearing scheduled on May 4, 2004.

The parties did not reach agreement during the February 24 settlement conference. On February 26, 2004, IBU counsel Robert Lavitt requested the hearing date be moved ahead to March 22, given the time sensitive nature of the case. Case 32-04 was rescheduled for March 22, 2004.

Prior to opening the hearing on March 22, Examiner Byrne pointed out that IBU's case appeared to be based, in part, on a settlement agreement he was involved in working out in 1996. He asked if the parties had any objection to his participation in this case. In response to WSF's objection, Examiner Byrne withdrew from the case. Chairman John Swanson was reassigned as Hearing Examiner and the hearing was continued to April 6, 2004.

The parties appeared on the scheduled April 6 hearing date, but asked for time to continue settlement discussions. They were able to finalize an agreement; no hearing was conducted.

On April 7, 2004, WSF provided the MEC with a copy of the signed settlement agreement, which includes IBU's withdrawal of the complaint. That agreement is appended to and becomes a part of this Order by reference.

ORDER

It is hereby ordered that the unfair labor practice complaint, filed by IBU against WSF and docketed as MEC Case 32-04, is closed in acknowledgment of the parties' agreement.

DATED this 14th day of April 2004.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN SWANSON, Chairman

/s/ JOHN SULLIVAN, Commissioner

/s/ JOHN BYRNE, Commissioner

SETTLEMENT AGREEMENT

MEC Case No. 32-04

APR 07 2004
MARINE EMPLOYEES' COMMISSION
OLYMPIA, WA

IN FULL AND COMPLETE SETTLEMENT of MEC Case No. 32-04, the parties, The Inlandboatmen's Union of the Pacific (IBU), and Washington State Ferries (WSF), do agree as follows:

THE PARTIES MUTUALLY AGREE:

1. To the implementation, on a trial basis, of the attached modifications to their collective bargaining agreement, hereinafter referred to as the "On-call Agreement." The period of implementation shall be the 2004 Summer Schedule at WSF, June 13, 2004 through September 18, 2004. The terms and conditions of the agreement shall be in force only during the summer schedule, and at the end of summer schedule, the On call Agreement shall lapse, and the parties will revert to doing business on the basis of the collective bargaining agreement as it now exists, together with such practices under the agreement as have been adopted by the parties at the time of this agreement.
2. That no party, in any proceeding of any type, including interest arbitration, may introduce evidence of this agreement, for the purpose of showing that any party agreed to or conceded the reasonableness of the underlying On-call Agreement. The temporary implementation of the On-call Agreement shall be without prejudice to the rights of the parties to negotiate, or reach impasse over, any provisions relating to vacations or to the employment of on-call personnel.

WASHINGTON STATE FERRIES AGREES:

1. That, upon the signing of this agreement, WSF will assign additional vacation days during the summer schedule, up to the amounts specified in the On-call Agreement. The assignment process will be to add additional employees authorized to take annual leave, based upon the vacation bids received in November, 2003, for 2004 vacations. In the assignment of additional days, WSF shall follow the procedures established for vacation bids in Rule 20.03.
2. That, after assigning additional vacation days as described above, WSF will notify the affected employees of their right to take the additional days off as vacation leave. Such notification will be made as soon as practical, but in no event later than 21 days after the signing of the agreement. If an employee notifies WSF that he or she no longer wishes to take leave on the day or days in question, WSF will reassign the day of in the manner described above.
3. To bid such additional relief positions as are specified in the On-call Agreement. Such positions shall lapse at the end of summer schedule, and the assignment and use of relief positions will revert to the present practice.
4. To award additional vacation days to certain individuals, as listed below. This award of additional vacation days is done for the purpose of achieving settlement of disputed claims, and at the express request of the IBU. It does not constitute an admission by WSF that any errors in the vacation scheduling process occurred. The IBU acknowledges

that the grants of additional vacation days as listed below were made at the express request of the IBU, and agrees that no bypass or other grievance shall arise out of the awards listed below.

SEPTEMBER 2004

<u>Name</u>	<u>Date(s)</u>
Qvigstad, Nils	9/1-3
Hansen, Craig	9/7
Skelley, Nathan	9/3
Parris, Mark	9/8
Parini, Gene	9/9

NOVEMBER 2004

<u>Name</u>	<u>Date(s)</u>
Moe, Peter	11/26

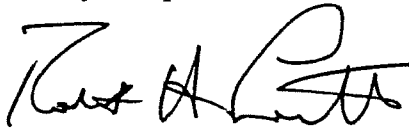
DECEMBER 2004

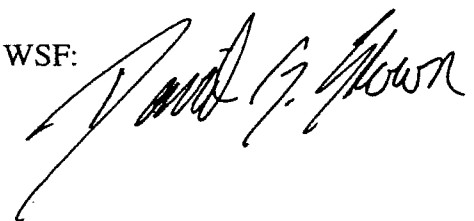
<u>Name</u>	<u>Date(s)</u>
Haley, Loa	12/24
Kennedy, Chris	12/22
Shrenk, Jerry	12/21

THE INLANDBOATMEN'S UNION OF THE PACIFIC AGREES:

1. That, after this agreement is signed, WSF may inform all IBU-represented employees of the terms and conditions of the agreement in reasonable ways, including Fleet Focus, Fleet Advisory, mailing with Summer bid packages and as a part of new employee orientation. The IBU agrees to participate in the process of informing employees of the temporary changes in any way deemed effective by the union. No party will impugn the other, or make any representations that the changes here agreed will last longer than summer ~~season~~ ^{schedule 11}, in any such communication.
2. To the withdrawal of MEC Case No. 32-04. A fully executed copy of this agreement shall constitute a request for withdrawal, and may be presented by any party.

Dated this 6th day of April, 2004

For the IBU:  Robert H. Lavitt, Counsel for IBU
4.6.04

For WSF:  David J. Slown, AAG WSBA 24943

RULE 10 - RELIEF EMPLOYEES

10.01 Employees shall be relieved at the same terminal where they began their duties, and such terminal shall be designated by the Employer. When it becomes necessary for a relief crew to deadhead from their original terminal to another terminal in order to begin and complete their tour, they shall be paid for travel time and mileage in accordance with Rule 10A.

AMEND 10.02 TO READ:

10.02 The Employer will furnish the Union with the names of the employees designated as relief personnel.

- a. For the summer schedule 2004 the number of Deck Department reliefs shall be forty (40) AB relief positions and six (6) OS relief positions. All reliefs are non-exempt employees regarding use of respirator masks. The WSF shall permit up to forty (40) employees to be off on vacation/comp time each day throughout the summer schedule. If operational requirements allow, WSF may permit additional employees to be off on vacation/comp. time.

10.03 Employees designated as AB/OS relief personnel shall be designated home terminals as close as possible to the employee's residence. Mileage and travel time shall be paid in accordance with Rule 10A.

10.04 A designated relief employee shall forfeit their relief position and return to on call status if such employee accepts any work assignment outside of the bargaining unit, except in the summer season when the designated relief bids or takes a temporary assignment of thirty (30) days or more that will only last during the Summer Schedule.

NEW RULE 10.05:

10.05 AB/OS Relief Employees. WSF and the IBU will meet to evaluate staffing needs, in establishing the number of free days to allocate to each work day. If agreement is not reached in one day, WSF has the right to assign free days. A free day is a pre-scheduled single calendar day assigned on a seniority basis. Free days will be assigned for each seasonal bidding period. It is the parties' intention to maintain the current practice in this regard.

NEW RULE 10.06:

10.06 Dispatcher's Inquiry. Before offering any job assignment the dispatcher's first statement to an employee for job assignments will be, "Are you available for work today"? If the employee says "no" due to illness they must immediately inform the dispatcher that they are ill. The dispatcher will enter this information as a sick day for this employee in the dispatch log.

NEW RULE 10.07:

10.07 AB/OS Relief employees will be assigned two consecutive free days in every two week work period that will be repeated on a biweekly basis.

NEW RULE 10.08:

10.08 WSF Dispatch will contact AB/OS Relief employees for assignments. If the assignment includes all or part of the employees free days(s) the employee may either reject the assignment or may waive his/her free day(s) and accept the assignment. If the employee rejects the assignment WSF will not penalize the employee except in the case of an emergency.

1. If an AB/OS Relief employee rejects any single shift or touring watch due to a conflict with a free day, then WSF will be entitled to offer that assignment to another employee.
2. The right of an AB/OS Relief employee to reject an assignment does not apply to an assignment of 5 days or more. When an AB/OS Relief employee is given an assignment of five days or more in duration that AB/OS Relief employee will assume the days off of the relieved employee in lieu of the relieving employee's free day(s) for the duration of the assignment.
3. If an AB/OS Relief employee accepts any single day, touring watch, or multiple day assignment (including any scheduled time off occurring within a multiple day assignment of the relieved employee), that begins on, ends on, or includes all or a part of a free day, then that employee will have waived his/her affected free day(s).
4. If an AB/OS Relief employee is asked to take an assignment within the range of two days (excluding touring watches) up through four days in duration (including any scheduled time off occurring within a multiple day assignment of the relieved employee) that begins on, ends on, or includes all or a part of a free day of the relieving AB/OS Relief employee, then the AB/OS Relief employee will have the right to reject that assignment. If the AB/OS Relief employee rejects the assignment WSF will have the following options:
 - a. dispatch that AB/OS Relief employee to the entire assignment, subject to relief on that AB/OS Relief employee's free day(s);
 - b. dispatch that AB/OS Relief to an increment of the rejected assignment that does not conflict with that employee's free day(s);
 - c. dispatch all or a part of that entire assignment to another employee.

RULE 12 – PART-TIME AND ON-CALL EMPLOYEES

12.01 Part-time employees may be assigned and required to work any shifts described in the Agreement and its Appendices as well as shifts of lesser duration. An employee reporting to a shift shall be paid not less than four (4) hours straight-time pay for each shift worked.

12.02 Part-time and On-Call employees may be employed subject to the following conditions:

1. No employees employed by the Employer on March 31, 1980 shall be laid off as a consequence of the adoption of part-time shifts or the employment of part-time employees, nor shall they be required to work part-time shifts.
2. The maximum number of Part-Time positions throughout the system to be included on the supplemental lists under Rule 21.06 shall be forty-eight (48); ten (10) for Vessel Department, thirty-five (35) for Terminal Department, and three (3) for Information Department unless additional positions are agreed upon in a conference between the Employer and the Union. Part-time employees will not be used to reduce the number of full-time employees in the Information Department below six (6).

3. All hours worked in excess of eight (8) hours in any day or eighty (80) hours in any two week work schedule shall be paid at the overtime rate, provided that employees who are working in positions which are affected by other overtime provisions in the Agreement or its Appendices shall be paid overtime as provided for in such provisions.

DELETE 12.02, 4, AND REPLACE WITH THE FOLLOWING:

4. WSF and the IBU will meet to evaluate staffing needs, in establishing the number of free days to allocate to each work day. If agreement is not reached in one day, WSF has the right to assign free days. A free day is a pre-scheduled single calendar day assigned on a seniority basis. Free days will be assigned for each seasonal bidding period. It is the parties' intention to maintain the current practice in this regard.
5. The employment of part-time employees shall be allowed only in the Terminal, Deck, and the Information Departments. The Employment of On-Call employees shall be allowed in the Terminal, Deck and Information Departments.
6. Sick Leave. Part-time and On-Call employees shall accumulate sick leave on a pro rata basis.
7. Annual leave. Part-time and On-Call employees shall accumulate annual leave on a pro- rata basis, and may request a vacation of not less than five (5) consecutive days, when mutually agreed to by both the employee and the Employer. Leave may not be taken until the employee has worked one thousand forty (1040) hours.
8. Part-time and On-Call Terminal Department employees job assignment procedures shall be as follows:
 - a. Prior to each major schedule change (currently Spring, Summer, Early Fall, Late Fall, and Winter) the Employer will post the new system-wide Terminal work schedules at each Terminal. The schedules will reflect system-wide part-time shifts and On-Call assignments. Not more than five such postings will be required annually.
 - b. Within three calendar days after each schedule change is posted, part-time and On-Call employees shall enter their shift and assignment choices on preference sheets and give the completed preference sheets to their respective Terminal Agents.
 - c. Part-time shifts and On-Call assignments will be assigned from the preference sheets, giving priority to senior employees.

On-Call assignments shall be limited to one of the single terminals or one of the terminal groups listed herein:

1. Faunt/Vashon/Pt. Defiance
2. Bremerton/Southworth
3. Colman Dock
4. Bainbridge/Kingston
5. Kingston/Pt. Townsend
6. Mukilteo/Edmonds
7. Clinton/Keystone
8. Anacortes

Terminal groups shall be subject to change after notice to and consultation with the Union. Part-time shifts shall be assigned at no more than two terminals. Part-time Employees may work additional scheduled or unscheduled hours arising at the assigned single terminal or within an assigned terminal group as set forth herein above.

- d. Job openings of over thirty (30) days duration which occur in between major schedule changes will be filled on a bid basis within the employee group at the terminal at which the opening occurs.
- e. Job openings of thirty (30) days or less duration shall be filled, at the discretion of the Terminal Agent, either by an On-Call employee or by temporary reassignment of an employee or employees at the terminal or terminal groups at which such opening occurs.
- f. Any reassignment of employees necessitated by an interim schedule change in between major schedule changes shall be limited to employees at the terminal at which the change occurs.
- g. For Seller assignments the employee must have POS training and a working fund at the terminal assigned.

ADD NEW RULE:

12.03 - ON-CALL DECK EMPLOYEES

1. IBU Deck On-Call employees will be assigned two (2) consecutive free days per week that will be repeated every week on the same days. An employee, who chooses to observe all free days for the season, shall notify WSF on a form provided by WSF at the beginning of the season. By exercising this option, Dispatch will not be required to call the employee to work on their free days.

2. Seniority. WSF will dispatch On-Call employees by seniority, except in cases of emergency, where year around positions must be filled in order for WSF to maintain COI or contract manning requirements.

3. Job Assignments. All AB jobs will be offered first then all OS jobs will be offered to the On-Call employee. If an On-Call employee accepts an OS job, but subsequently becomes eligible (by seniority) for an available AB job, WSF will call the employee back and offer the employee the AB job if the start times for both the OS and AB jobs are more than four (4) hours away.

4. Dispatcher's Inquiry. Before offering any job assignment the dispatcher's first statement to an employee for job assignments will be, "Are you available for work today"? If the employee says "no" due to illness they must immediately inform the dispatcher that they are ill. The dispatcher will enter this information as a sick day for this employee in the dispatch log.

5. Acceptance/Refusal Of Work. WSF Dispatch must give On-Call Deck employees a minimum of fifteen (15) minutes to respond to a page or message left on a message or answering machine before marking that employee as failing to respond, which shall constitute a refusal of offered work, unless that employee accepts a shift later that day. If the employee is working onboard a vessel, the Employer will contact the vessel via radio and the captain will direct the employee to contact dispatch within fifteen (15) minutes. If the employee does not return the phone call within fifteen (15) minutes the employee shall be considered unavailable that and constitutes a refusal of offered work. Employees may not refuse more than three (3) times within a workcycle. WSF Dispatch has the right to move down the seniority list to find available employees if the Dispatcher determines that a reasonable risk exists that a position could go unfilled.

6. An employee who refuses work outside a thirty-five (35) mile radius as described in Schedule A of the contract from the employee's designated home terminal shall not be considered unavailable.

7. Work offered consists of a documented call from WSF Dispatch. If the assignment includes all or part of the employees' free day(s) the employee may either reject the assignment or may waive his/her free day(s) and accept the assignment. If the employee rejects the assignment WSF will not penalize the employee except in the case of an emergency. If the employee accepts all or part of the assignment Rule 11.07 will have no application on free day(s); simply waiving free day(s) does not entitle an On-Call Deck employee to overtime.

a. If an On-Call Deck employee rejects any assignment, or accepts only a fragment of a multiple day assignment, due to a conflict with a free day, then WSF will be entitled to offer the rejected assignment, or the unassigned fragment to another employee;

b. If an On-Call Deck employee accepts an assignment of five days or more in duration, then that employee will assume the day(s) off of the relieved employee in lieu of the relieving employee's free day(s);

c. If an On-Call Deck employee accepts any single day, touring watch, or multiple day assignment (including any scheduled time off occurring with a multiple day assignment of the relieved employee), that begins on, ends on, or includes all or a part of a free day, then that employee will have waived his/her affected free day(s);

d. If an On-Call Deck employee is asked to take an assignment within the range of two days (excluding touring watches) up through four days in duration (including any scheduled time off occurring with a multiple day assignment of the relieved employee) that begins on, ends on, or includes all or a part of a free day of the relieving On-Call employee then the relieving On-Call employee will have the following options.

1. accept the entire assignment;
2. reject the entire assignment;
3. accept a fragment of that assignment that precedes the relieved employee's scheduled time off or the relieving employee's free days, whichever event occurs first.