

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES' COMMISSION

|                             |   |                     |
|-----------------------------|---|---------------------|
| INLANDBOATMEN'S UNION       | ) | MEC Case No. 4-92   |
| OF THE PACIFIC on behalf of | ) |                     |
| Phil Olwell,                | ) |                     |
|                             | ) |                     |
| Complainant,                | ) | DECISION NO. 83-MEC |
|                             | ) |                     |
| v.                          | ) | ORDER OF DISMISSAL  |
|                             | ) |                     |
| WASHINGTON STATE FERRIES,   | ) |                     |
|                             | ) |                     |
| Respondent.                 | ) |                     |
|                             | ) |                     |

THIS MATTER came before the Marine Employees' Commission for consideration of the Inlandboatmen's Union of the Pacific's Motion to Dismiss MEC Case No. 4-92.

On March 25, 1992, the Inlandboatmen's Union of the Pacific (IBU) filed an unfair labor practice complaint against the Washington State Ferries (WSF) with refusing to abide by bidding procedures set forth in the Collective Bargaining Agreement.

After initial processing of IBU's complaint pursuant to WAC 316-45-110, a majority of the MEC determined that the facts, if true and provable, may constitute an unfair labor practice. Commissioner Donald E. Kokjer was appointed Hearing Examiner.

At MEC's meeting on May 22, 1992, IBU informed the Commission that this matter has been settled. By letter dated May 28, 1992, IBU withdrew the unfair labor practice complaint filed against WSF.

Pursuant to the withdrawal of the unfair labor practice complaint by the Inlandboatmen's Union of the Pacific (WAC 316-45-090), it is hereby ordered that MEC Case No. 4-92 is dismissed.

DONE this 16<sup>th</sup> day of June, 1992

MARINE EMPLOYEES' COMMISSION

/s/ DAN E. BOYD, Chairman

/s/ DONALD E. KOKJER, Commissioner

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| Phil Olwell,                | ) |                     |
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| Complainant,                | ) | DECISION NO. 83-MEC |
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| v.                          | ) | CONCURRING OPINION, |
|                             | ) | ORDER OF DISMISSAL  |
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|                             | ) |                     |
| Respondent.                 | ) |                     |
|                             | ) |                     |

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The unfair labor practice complaint filed by the Inlandboatmen's Union of the Pacific (IBU) on behalf of Phil Olwell alleged that Washington State Ferries (WSF) has or is "interfering with, restraining or coercing employees in [their] exercise of rights... (and) refusing to bargain collectively with representatives of employees." These acts, found in the formal complaint, if found to be true and provable most likely would constitute unfair labor practices. However, IBU's statement of particulars attached to the complaint specifically alleged that WSF had "refused to abide by the bidding procedures in the Collective Bargaining Agreement" by denying Mr. Phil Olwell use of the proper bidding procedures as set forth in said IBU/WSF Agreement. IBU charged that WSF's refusal to comply with the contractual language is capricious, that WSF cannot unilaterally interpret the Agreement in force," and that WSF's "neglectful statements and practices ... regarding a matter as important to the employees as their seniority in the bidding process, destabilizes the Agreement—and demoralizes the employees."

Despite the latter truism that a violation of a collective bargaining agreement destabilizes a labor agreement, the actual

issues at hand are plainly, "Did or did not WSF correctly interpret Rule 21.07, Filling of Vacancies, in the IBU/WSF Agreement?" And, if the answer to the first issue is "yes," then the corollary question is, "Did WSF's incorrect interpretation of Rule 21.07 constitute a violation of Mr. Olwell's protected rights pursuant to RCW 47.64.130 and WAC 316-45-003?" Or "was it more simply a question of contract interpretation subject to a grievance procedure pursuant to RCW 47.64.150 and chapter 316-65 WAC?" And, third, does the Marine Employees' Commission (MEC) have jurisdiction over the subject matter and the parties in this matter?"

Neither in the IBU statement of particulars filed with the complaint, nor during the scheduled discussion of said complaint at the MEC meeting on April 24, 1992, did IBU make any specific charge that Mr. Olwell and IBU were appealing this matter to MEC because it was representative of mistreatment of other employees, or that WSF's alleged misinterpretation of the IBU/WSF Agreement was an attempt to deprive Mr. Olwell of his right to collective representation. On the contrary, the statement of particulars refers to unilateral interpretation of the Agreement in force. Likewise, during the April 24 discussion IBU only alleged a wrong interpretation of the IBU/WSF Agreement.

RCW 47.64.150 enables WSF and the employee organizations to include grievance procedures in their collective bargaining agreements, and then specifies in meaningful parts:

. . .An arbitrator's decision on a grievance shall not change or amend the terms, conditions or applications of the collective bargaining agreement... .

Ferry system employees shall follow either the grievance procedures provided in a collective bargaining agreement, or if no such procedures are so provided, shall submit the

grievances to the marine employees' commission as provided in RCW 47.64.280. (Emphasis supplied.)

IBU/WSF Rule 16.02 of the Collective Bargaining Agreement signed by IBU on April 1, 1992 and by WSF on May 16, 1991, believed herein to be the "agreement in force" covering the matter, defines a grievance, as follows:

RULE 16 - DISPUTES

16.02 A grievance is defined as any dispute which may arise between the parties involving the interpretation, application or alleged violation of any provision of this Agreement.

Rule 16.04 specifies at least two limitations on grievance procedures. First,

...The grievance procedures of this Agreement shall be the exclusive remedy with respect to any dispute arising between the Union and Employer, and no other remedies may be utilized by any person with respect to any dispute involving this Agreement until the grievance procedures herein have been exhausted. If a grievance is being processed pursuant to this rule and an employee or the Union pursues the same grievance through any other channel or method, then the Union and the employee agree that the grievance shall be considered to have been abandoned... (Emphasis supplied.)

Second, the third step of the process limits arbitration to an arbitrator selected from a Federal Mediation and Conciliation Service list, as follows:

STEP III - ARBITRATION

2. In the event the Union decides to submit the matter to arbitration it will notify the Employer of this action and will request the FMCS to submit a list of N.W. arbitrators from the State of Washington of which one (1) will be chosen. The arbitrator shall be selected by each party to the Arbitration

alternately striking one name at a time from the list until only one name remains.

When the majority of MEC in executive session made the decision that the WSF actions described in the IBU complaint may constitute an unfair labor practice (ULP), I dissented, arguing that (1) the complaint only described a contract interpretation issue, therefore a grievance, and did not indicate a violation of a protected right, and (2) the dispute language in the IBU/WSF Agreement precluded any jurisdiction over grievances by MEC. In fact, I argued that IBU had been questioned about renewal of the dispute language in the 1991 agreement, and that apparently IBU and WSF were satisfied with writing MEC out of their grievance procedures. Therefore, I served notice that, if the majority found the IBU ULP complaint to be well-taken, I would dissent.

Now, complaint IBU wishes to withdraw said complaint. I agree with the dismissal, but wish to make the record clear that I believe that, while MEC has jurisdiction over the parties in this matter, MEC has no jurisdiction over the matter itself.

(NOTE: The foregoing concurring opinion is not, nor is intended to be, a clear delineation of a violation of a right protected by law as opposed to deprivation of a privilege, procedure, wage or benefit as a result of the alleged misinterpretation of the collective bargaining agreement. MEC is currently studying the adequacy or appropriateness of the definitions and procedures in chapter 316-45 WAC. The matter herein is an excellent example of the reasons why the MEC Rules of Procedure should be amended.)

DONE this 16<sup>th</sup> day of June, 1992.

/s/ LOUIS O. STEWART, Commissioner