

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION
OF THE PACIFIC,

Complainant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC CASE NO. 47-04
(Larry Dunlap)

DECISION NO. 513 - MEC

ORDER CLOSING
SETTLED COMPLAINT

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

Rob McKenna, 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 February 26, 2004, when the 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. 47-04.

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 unlawfully interfered with Marc Larkin's (IBU Shop Steward's) right to engage in protected, concerted activity by threatening him with discharge over his witness statement related to Larry Dunlap and events of December 29, 2003. IBU further alleged that WSF unlawfully interfered with Mr. Dunlap's right to engage in protected activity and his right to due process when it threatened him with arrest during his Loudermill hearing.

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

Commissioner John Sullivan was assigned to act as Mediator at a settlement conference scheduled for April 2, 2004. Commissioner John Byrne was designated to act as Hearing Examiner for the hearing scheduled on April 29.

The parties did not resolve this matter during the conference on April 2. On April 15, 2004, AAG David Slown, WSF counsel, filed a Motion which sought to sever the Marc Larkin matter from the Larry Dunlap matter. On April 21, Judith Krebs, IBU counsel, filed in opposition to the Motion to Sever.

On April 23, 2004, Examiner Byrne granted WSF's Motion to Sever. The parties were orally notified. The Marc Larkin matter was to be heard first. Separate hearing dates were rescheduled for both portions of the complaint—Larkin for May 20 and Dunlap for June 21.

The parties resolved the Larkin portion of MEC 47-04 during a second settlement conference with Commissioner Sullivan on April 29, 2004. On May 3, the MEC received the parties' signed settlement agreement, which included IBU's withdrawal of the Marc Larkin portion of the complaint. On May 14, 2004, MEC entered Order Closing Settled Complaint, Decision No. 408-MEC, which disposed of the Larkin related matter.

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On June 17, 2004, WSF Counsel David Slown requested the June 21 hearing for the Dunlap portion of the case be continued indefinitely, to allow for continued settlement discussions; the IBU did not object. Examiner John Byrne granted the request.

On July 28, 2004, the MEC received a copy of a provisional settlement agreement/release, signed by the parties. The MEC understood that it might take a few months

for provisions of the agreement to be accomplished. During MEC's August 26, 2005 public meeting, AAG Slown reported that the conditions specified in the parties' agreement had not been met and requested a hearing be scheduled; MEC rescheduled for February 7, 2006.

The parties gathered for the February 7, 2006 hearing, but requested time to discuss settlement further; they reached a tentative agreement. However, due to their contract bargaining schedule, final resolution of this matter was further delayed. At last, during MEC's March 27, 2007 public meeting, the IBU reported that this matter was resolved and counsel were finalizing the language. On April 27, the parties provided the MEC with a signed copy of their settlement agreement, which includes IBU's withdrawal of the Dunlap complaint. That agreement is appended to and becomes a part of this Order by reference.

ORDER

It is hereby ordered that the **Larry Dunlap portion of the unfair labor practice complaint**, filed by IBU against WSF and docketed as MEC Case 47-04, is closed in acknowledgment of the parties' agreement.

DATED this 18th day of May 2007.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN SWANSON, Chairman

/s/ JOHN SULLIVAN, Commissioner

/s/ ELIZABETH FORD, Commissioner

SETTLEMENT AGREEMENT
MEC Case No. 47-04 (Dunlap Portion)

IN FULL AND COMPLETE SETTLEMENT of MEC Case No. 47-04, the parties, The Inlandboatmen's Union of the Pacific (IBU), and Washington State Ferries (WSF) do agree as follows:

WASHINGTON STATE FERRIES AGREES:

1. In all disciplinary investigations involving IBU-represented employees, when WSF has reported the underlying conduct to any law-enforcement agency for criminal investigation, WSF shall so inform the employee and the IBU in the letter setting the fact-finding meeting, or if no fact-finding meeting is held, in the letter scheduling the pre-disciplinary (Loudermill) conference. The purpose of this notification is to advise the employee and the union representative of the possibility of arrest or questioning in the matter by law-enforcement authorities prior to any WSF investigatory or pre-disciplinary meetings.
2. WSF recognizes that, in such cases, the IBU-represented employee may wish to consult with an attorney prior to the Loudermill conference, and prior to discussing the matter with the union representative. Accordingly, WSF understands and acknowledges that the IBU may wish to postpone the Loudermill conference to allow such consultations to occur, and agrees to grant any reasonable request by the IBU to postpone the Loudermill conference in any case involving law enforcement authorities, unless the request would result in unreasonable or excessive delay, or would compromise vital WSF interests.
3. Nothing in this agreement shall be construed to limit in any way the right and duty of WSF to cooperate with law enforcement agencies in ongoing investigations conducted by those agencies, nor to modify or alter the decision of the Marine Employees' Commission in Decision No. 437-MEC.

THE INLANDBOATMEN'S UNION OF THE PACIFIC AGREES:

1. To the withdrawal of Case 47-04. A copy of this Agreement shall constitute a request for withdrawal, and may be presented by either party.

Dated this 27th day of April 2007.

For the IBU:

/s/ Dennis Conklin 4/27/07
Regional Director

For WSF:

Steve Rogers 4/25/07