

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

In re the Petition of OFFICE AND
PROFESSIONAL EMPLOYEES
UNION, LOCAL 8 for Clarification of the
WASHINGTON STATE FERRIES' Bid
Administrator Position.

MEC CASE NO. 5-08

DECISION NO. 540-A-MEC

ORDER DENYING PETITION
FOR RECONSIDERATION

Shannon Halme, Union Representative, appearing for the Office and Professional Employees International Union, Local 8.

Robert McKenna, Attorney General, by *David Slown*, Assistant Attorney General, appearing for the Washington State Ferries.

NATURE OF THE PROCEEDING

This petition comes before the Marine Employees' Commission (MEC) on April 7, 2008 when Washington State Ferries (WSF) filed a Petition for Reconsideration of Decision 540-MEC. WSF's petition requested that, pursuant to RCW 34.05.470, the full Commission reconsider the Hearing Officer's decision regarding the issue of Clarification of the Existing Bargaining Unit brought by Office and Professional Employees International Union (OPEIU). That decision brought the Bid Administrator position within the OPEIU/WSF bargaining unit.

This issue resulted when the title Bid Administrator was instituted in 2006. WSF contends that MEC's decision was based wholly upon the erroneous assumption that a ten-year-old settlement agreement between the parties was unlawful. WSF argues that the Hearing Officer based his entire decision on this supposedly unlawful settlement without any examination of the duties and responsibilities of the present position to determine whether it was proper for inclusion in the unit. WSF respectfully requests the Commission overturn the decision of the

Hearing Officer and rule consistent with the evidence of the duties at the present time, that the Bid Administrator is not proper for inclusion in the OPEIU bargaining unit. If the Commission should somehow conclude the validity of the ten-year-old settlement agreement between the parties is a legitimate issue, WSF requests a new hearing to be granted to present evidence which WSF believes would show by overwhelming evidence that the 1998 agreement was completely and legally correct.

ANALYSIS

WSF management previously employed by WSF delayed and denied requests by the involved employee and OPEIU to re-evaluate and/or reclassify the work now called Bid Administrator (WSF Exhibit 37). This prior management conduct is a troubling, inexcusable disregard for CBA provisions, OPEIU and its own employees. This exhibit and testimony support that OPEIU represented employees of WSF were performing many of, if not all, of the duties which are now being performed by the Bid Administrator. Transferring the work by assigning the job to the Personnel Department should not by itself remove the job from the unit. On the other hand, it may support the opposite conclusion that many personnel jobs may be statutory as well.

The Commission has reviewed WSF's Petition for Reconsideration and carefully reviewed the record and exhibits. The Bid Administrator's job is a very responsible and complex office and clerical position in that it requires a periodic placement of Inlandboatmen's Union (IBU) members to assignments consistent with their bid requests and seniority on various schedules and vessels as required by the agreement of WSF and IBU. While this job is tedious and complex, there is no independent discretion allowed in the assignment of the employees

during the seasonal WSF schedule changes. Such assignments are specifically covered by the agreement of the parties.

The record and testimony is unrefuted as to the OPEIU unit employees who perform much the same function periodically for the Masters, Mates and Pilots (MM&P) and the Marine Engineers Beneficial Association (MEBA). While both MM&P and MEBA units contain fewer employees and the job for that reason is less complex, nevertheless the OPEIU unit includes similar work of those positions clearly identified in the record.

WSF's testimony and reliance on the fact that the Bid Administrator has discretion to grant employees requests for days off which are not contemplated or scheduled, does not by itself exclude this job under Article 1 as contended by WSF. The Bid Administrator's discretion in this instance is specifically limited to the extent other employees are available to allow the granting of such requests. There is no evidence or testimony in the record that the Bid Administrator ever denied an employee's request if relief was available or that any supervisory or management discretion is required in the granting of such requests, except by unsupported nuance. It also appears unrefuted in the record that such requests by either the MEBA or MM&P are granted by OPEIU unit members (fleet coordinators).

WSF's contention that the Bid Administrator responsibility to notify the Fleet Coordinator of expiring coast Guard documentations or qualifications so Fleet Coordinators can contact and notify employees of their need to renew their qualifications is not compelling. This data entry requirement of the Bid Administration, a clerical function, does not exclude the job under Article 1 of the CBA. WSF's testimony, beginning with TR 99, identifies the functions of the Bid Administrator in great detail and supports one obvious conclusion—the Bid Administrator's job is directly related to the provisions and requirements of the Coast Guard and

the labor agreement. While the job requires a capable and knowledgeable employee, there is nothing in the job that excludes either the work or the responsibilities from Article 1 of the CBA.

A comprehensive review of NLRB cases, PERC rules and job descriptions of statutory and non-statutory employees, as well as the duties of administration, professional, management and supervisory employees who would not be appropriate for inclusion in the OPEIU unit provides no evidence to support WSF's argument that the Bid Administrator is inappropriate for inclusion in the OPEIU unit. Changing job titles either by assigning an employee to personnel or identifying an employee as administrative does not preclude their inclusion in an appropriate bargaining unit if the work to be performed is covered by the agreement. While it is true that the Labor Relations Office (LRO), during bargaining, attempted to modify the language in the Recognition Clause of the OPEIU unit, which arguably may have limited certain jobs for inclusion in the unit, that effort by WSF was not successful and the Bid Administrator's duties are duties included in the OPEIU/WSF Collective Bargaining Agreement.

DECISION

WSF's Petition for Reconsideration of Decision 540-MEC by the full Commission is denied.

DATED this 8th day of May 2008.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN SWANSON, Hearing Officer

/s/ JOHN SULLIVAN, Commissioner

/s/ PATRICIA WARREN, Commissioner