

STATE OF WASHINGTON

BEFORE THE MARINE EMPLOYEES' COMMISSION

DISTRICT NO. 1,	)	
PACIFIC COAST DISTRICT	)	MEC CASE NO. 3-87
NATIONAL MARINE ENGINEERS	)	
BENEFICIAL ASSOCIATION,	)	INVESTIGATION OF A QUESTION
	)	CONCERNING REPRESENTATION
Petitioner,	)	
	)	
v.	)	DECISION NO. 38-MEC
	)	
INLANDBOATMEN'S UNION OF	)	DECISION AND ORDER
THE PACIFIC,	)	
	)	
Intervenor.	)	
_____)	)	

Webster, Mrak & Blumberg, Attorneys at Law, by James Webster and Mark Brennan, appeared on behalf of the Petitioner.

Hafer, Price, Rinehart & Schwerin, Attorneys at Law, by John Burns, appeared on behalf of the Intervenor.

BACKGROUND

On August 31, 1987, District 1, Pacific Coast District, National Marine Engineers Beneficial Association (hereinafter referred to as "MEBA") filed a petition for investigation of a Question Concerning Representation. The Petition described a proposed bargaining unit involved as approximately 150 employees of the Washington State Ferries – Department of Transportation (WSF) in the classifications of Oiler and Wiper. The petition alleged dissatisfaction of the majority of Oilers and Wipers with continued inclusion in the current bargaining unit represented by the Inlandboatmen's Union (IBU), and with continued representation by the IBU.

On September 4, 1987, IBU filed a protest and request that MEC dismiss or disregard said MEBA petition. On October 12, 1987, Chairman Haworth advised IBU that MEC would not act on IBU's request, but advised IBU that a motion to dismiss could be filed in accordance with chapter 316-25 WAC. On October 20, 1987, Chairman Haworth advised both MEBA and IBU that a check of signature cards had indicated sufficient showing of interest for MEC to proceed with a hearing pursuant to WAC 316-25-350. On October 26, 1987 IBU filed a formal motion to intervene and to dismiss, with an accompanying brief arguing that MEC has no statutory authority to conduct the representation investigation requested by MEC. The

Commission also received a brief from MEBA, and a reply brief from IBU. On November 23, 1987, the Commission held a hearing on the IBU motion to dismiss. On December 9, 1987, the Commission entered Decision No. 35-MEC, denying said IBU motion and concluding that MEC has jurisdiction to conduct the investigation requested by MEBA's petition.

A hearing on the merits of MEBA's petition was held on December 21, 1987 before the Commission en banc. Post-hearing briefs were delayed, because of delays in delivery of transcripts, and were filed on or about February 1, 1988.

Having read and considered the entire record, the Marine Employees' Commission now reaches the following statement of issue, positions of parties, findings of fact, conclusions of law, and decision and order.

#### STATEMENT OF THE ISSUES

Does a question concerning representation exist with respect to WSF Wipers and Oilers?

If so, what collective bargaining unit(s) is (are) appropriate for said Wipers and Oilers?

#### POSITIONS OF THE PARTIES

##### Position of Petitioner

MEBA asserts that the persons who are employed as Wipers and Oilers by WSF desire to change their designated representation from IBU to MEBA. MEBA argues that there is a closer "community of interest" between and among licensed marine engineers and the documented but unlicensed wipers and oilers than there is between and among the same unlicensed engine room personnel and the other ferry employees sharing their past and current collective bargaining unit (viz., deck, terminal and shoreside maintenance employees of WSF). The licensed and unlicensed engine room personnel spend 90% of their work time below decks. They work closely together on maintenance of engines, pumps, electrical motors and circuitry, steering apparatus, hydraulics, and all other mechanical, electrical and/or hydraulic appurtenances on their vessels. They eat together and they share quarters. They are assigned to their respective vessels wherever and whenever those vessels go, or whether in or out of service (unlike the deck personnel who are assigned to geographic runs and time tables, regardless of which vessel is operating on a given run).

The work shifts of licensed and unlicensed engine room personnel are the same (viz., seven 12-hour shifts on, followed by seven days off, then alternating with seven 12-hour nights on, followed by seven nights off); whereas the deck personnel, both licensed and unlicensed, work eight hours per day, ten days per two-week period with four days off.

MEBA asserts that the actual contact between and among Wipers and Oilers and the personnel from other WSF departments represented in the IBU bargaining unit is relatively infrequent. For example, they contact terminal personnel only while coming or going to work or to pick up mail or other messages. Their contact with the deck personnel (Ordinary Seamen or Able Bodied Seamen) consists of receiving assistant from deck hands once each 24 hours while pumping sewage, or in handling hoses while refueling once every two to four weeks, or in standing over an open man-hole or hatch while the Oiler is inspecting steering machinery.

MEBA claims that, although all personnel aboard a vessel are ultimately responsible to the Master during operations, only the Chief Engineer in the engine room crew normally receives orders from the Master. The other engine room personnel receive orders from and are supervised by the Chief Engineer. Wipers and Oilers receive all of their on-the-job training from the engineers.

MEBA asserts that a direct line of promotion exists from Oiler to Engineer, that approximately 80 of the 150 WSF Engineers commenced their WSF employment as Wiper or Oiler and through experience on board WSF vessels and the U.S. Coast Guard (USCG) examination process progressed to their present ranks as Engineers.

MEBA claims a long history of representing WSF engine-room personnel, since before WSF acquired its ferry system in 1949. In addition, they claim a history of representing both oilers and engineers in a single bargaining unit, citing NLRB certification of MEBA in Global Marine Development, Inc., 214 NLRB 192 (1974).

MEBA argues that MEC should reject the IBU reliance on the Mallinckrodt criteria often used by NLRB and other labor relation boards, on the grounds that the main principle of the Mallinckrodt precedent is missing in this case. In Mallinckrodt Chemical Works, a small number of technicians were denied a separate craft unit apart from the other 280 employees in an industrial union “wall-to-wall” type bargaining unit; because, first, NLRB has a statutory responsibility to protect the workers’ right to strike, and second, a separate strike by the small group of technicians could damage the much larger work force who had no voice in the decision to

strike. MEBA points out that RCW 47.64.140 prohibits any WSF employees from participating in a strike. Also, the Wipers and Oilers are part and parcel of the same integrated work force as are the engineers and all other employees covered by chapter 47.64 RCW.

With regard to having Oilers and Wipers in the same bargaining unit as their supervisors (licensed engineers), MEBA cites several firefighter cases, and several craft union cases.

Finally, MEBA argues that Wipers and Oilers should not be held captive in a bargaining unit against their will, that one of the purposes of the Marine Employees' Act is to "protect the rights of ferry system employees with respect to employee organizations." (RCW 47.64.006(6))

#### Position of the Intervenor

IBU argues that MEBA's petition to break up a long standing bargaining unit of unlicensed ferry employees should be denied. IBU argues that MEBA has not shown cause for breaking up this long standing unit, and fragmenting the unit would be harmful to the affected employees and to the bargaining process.

IBU also argues that NLRB has established the controlling standards by which such a petition is to be judged in the Mallinckrodt case, and that Mallinckrodt has been accepted under Washington law by the Public Employment Relations Commission (PERC).

IBU asserts that the Mallinckrodt standards require dismissal of the MEBA petition, because Wipers and Oilers are unlicensed personnel, and unlicensed personnel have traditionally been represented as part of an overall unlicensed group. That representation has been effective. IBU claims that MEBA's interests conflict with those of the Wipers and Oilers and, therefore, MEBA is not qualified to represent them.

IBU claims that even under the "community of interest" standards for which MEBA argues, both established precedent and the specific facts of this case bar a mixed licensed/unlicensed unit and make an overall unlicensed unit the only appropriate unit. For example, although MEBA claims a direct promotional route from oiler to engineer, IBU asserts that for several years MEBA has refused to allow WSF to promote Oilers who hold Marine Engineer Licenses to a position of Engineer. Instead, MEBA insists that WSF hire out-of-work marine engineers from the MEBA hiring hall. IBU notes that fewer than 30% of the WSF Oilers have assistant engineer licenses.

IBU stresses the long-standing NLRB bar against supervisors belonging to the same bargaining unit as the employees they supervise. IBU asserts that the majority of grievances filed by workers are grievances against treatment by their direct supervisors. IBU cites several instances in Washington where the PERC has ordered that supervisors and non-supervisory employees be in separate units.

IBU further argues that allowing the Wipers and Oilers to leave the IBU unit and be represented in a MEBA unit would impose hardships on the State of Washington and the affected employees by making bargaining more difficult and by undoing wage and benefit patterns established by the parties.

IBU points out that the engineers in the MEBA bargaining unit have elected to maintain a health and welfare benefit plan which is more comprehensive and more costly than that plan enjoyed by Wipers and Oilers in the IBU/WSF unit. As a result of that choice, all of the Engineers' share of the most recent increase in the appropriations for the wage/benefit package went into health care benefits. Based on that example IBU asserts that, if Wipers and Oilers elected to leave the IBU unit and join the MEBA unit, those Wipers and Oilers would suffer an immediate pay cut. IBU further asserts that the Wipers and Oilers would also forfeit the benefits they have accrued under their present plan.

IBU concludes that MEBA's petition is inappropriate, runs counter to established practice, and should be rejected. "The MEC should not break up the long standing IBU bargaining unit."

#### Position of Employer

Although WSF is not a party in this case, Assistant Attorney General Robert McIntosh appeared and made a statement at the December 21, 1987 hearing. WSF takes no position on the instant MEBA petition. However, McIntosh asked that the proliferation of bargaining units be avoided. He cited the practice of the Metal Trades Council representing craftsmen from some six craft unions in the Eagle Harbor Shipyard as an ideal arrangement.

Having read the entire record and considered the positions of the parties, the Commission now reaches the following findings of fact.

## FINDINGS OF FACT

1. IBU is the sole collective bargaining representative of WSF Wipers and Oilers in a bargaining unit composed of personnel in four Departments (Engine Room, Deck, Terminal and Information) plus shoreside maintenance.
2. WSF employs approximately 135 Oilers and Wipers (134 listed in Ext 8; 138 listed by WSF as indicated in FF 12 infra).
3. MEBA is the sole collective bargaining representative of all persons employed by WSF as marine engineers, except those who are exempted by RCW 47.64.011(5) and RCW 41.06.079.
4. WSF employs approximately 150 persons as marine engineers in four classification titles.
5. All WSF marine engineers, regardless of classification titles, are licensed as such by USCG. All Oilers and Wipers hold USCG Merchant Marine documents.
6. All Wipers and Oilers receive direct instruction and supervision from marine engineers. Therefore, if said Wipers and Oilers were to elect to be added to the present MEBA bargaining unit, they would be in the same bargaining unit as their supervisors.
7. Some WSF supervisors and the personnel they supervise are now in the IBU bargaining unit, e.g., (1) Terminal Agents, Ticket Sellers and Ticket Takers, (2) AB-Bos'ns and deck hands, (3) Information Supervisors and Clerks; and (4) Shore Gang Foremen, Shore Gang Leadmen and Shore Gang.
8. Both IBU and MEBA have continuously represented their respective bargaining units since long before the State of Washington acquired the vessels, ferry terminals and Puget Sound routes from Black Ball Ferry Lines in 1949. No substantial change has occurred in the composition of either bargaining unit during those years.
9. Both the IBU/WSF and the MEBA/WSF bargaining units are still operating under 1983-85 Agreements, which have been extended in accordance with RCW 47.64.170. The 1985-87

Agreements have been ratified by the respective memberships, but are subject to approval by the Transportation Commission. When approved, the expiration date will be June 30, 1987, but extended pending settlement of the 1987-89 Agreements.

10. The time of filing representation petitions is governed by WAC 316-25-030, as follows:
  - WAC 316-25-030. PETITION—TIME FOR FILING. In order to be timely filed:
    - (1) Where there is a valid written and signed collective bargaining agreement in effect covering an appropriate bargaining unit which includes any or all of the employees to be affected by the petition, a petition must be filed during the period not more than ninety nor less than sixty days prior to the expiration date of the collective bargaining agreement, or after the expiration thereof.
    - (2) Where certification has been issued by the commission covering an appropriate bargaining unit which includes any or all of the employees to be affected by the petition, a petition must be filed not less than twelve months following the date of the certification.
    - (3) Where neither subsections (1) nor (2) of this section are applicable, a petition may be filed at any time.
11. WAC 316-25-110 requires that the “petition be accompanied by a showing of interest indicating that the petitioner has the support of not less than thirty per cent of the employees of the bargaining unit which the petition claims to be appropriate. ...”
12. On August 31, September 10 and October 6, 1987, MEBA filed 112 expression of interest signature cards. WSF provided MEC with a list of 138 Oilers on September 24, 1987 in compliance with WAC 316-25-130. (The record is silent as to whether WSF provided copies to the Petitioner and Intervenor.) MEC staff found 110 signature cards to be valid.
13. IBU filed its motion to intervene and for MEC dismissal of the petition on September 4, 1987, as the incumbent representative, in accordance with WAC 316-25-170.
14. Wipers and Oilers have an obvious “community of interest” with the other members of the incumbent WSF/IBU collective bargaining unit, as demonstrated by a history of continuous representation of Wipers and Oilers for more than fifty years.

15. Wipers and Oilers also have a “community of interest” with the Engineers in the WSF Engine Department. Wipers, Oilers and Engineers are in relative isolation together below decks ninety per cent of their work time. They only infrequently contact other personnel (such as terminal personnel when picking up mail/messages; or deckhands during refueling or pumping sewage tanks). They work closely together. They eat together. Wipers and Oilers receive all of their on-the-job training from Engineers.

Based upon the foregoing findings of fact, the Commission now reaches the following conclusions of law.

#### CONCLUSIONS OF LAW

1. The Marine Employees’ Commission (MEC) has jurisdiction over these parties and over these issues. (Chapter 47.64 RCW; chapter 316-25 WAC; and Decision No. 35-MEC0)
2. The MEBA Petition and supporting evidence were timely filed under WAC 316-25-030, -050, -070 and -110.
3. The finding of interest by 81.48% of the proposed bargaining unit members satisfies the 30% requirement of WAC 316-25-010.
4. MEC concludes that the question of supervisors and personnel supervised being represented in the same bargaining unit is more significant herein than the question of whether or not personnel who are USCG licensed and those who hold USCG Merchant Marine documents are in the same unit. Observing both present practices in the WSF/IBU bargaining unit and the skilled craft, hiring-hall practices of MEBA (See Ex 18, 1985-87 WSF/MEBA Agreement, Section 11.), MEC must reject the “supervisor v. supervised” factor as a bar against Wipers and Oilers being in a bargaining unit with engineers. (Also see Global Marine Development, supra.)
5. MEC must conclude that the principles expressed by NLRB in Mallinckrodt by which NLRB denied certain technicians the right to form a bargaining unit separate from all other employees of a plant and thereby to afford those technicians an undue influence over the entire work force are not present in the instant case. (See Mallinckrodt Chemical Works, 126 NLRB 387, 64 LRRM 1011 (1966).) If the Wipers and Oilers were to elect to leave the IBU unit and join the MEBA unit, the labor relations structure of the WSF work force would remain much as it is now.



6. MEC does not recognize any substantive difference between IBU and MEBA in the histories of recognition as bargaining representatives in collective negotiations with employer WSF.
7. It is not within the jurisdiction of MEC to determine whether a group of employees is better served by greater health and welfare benefits at the sacrifice of wage increases or vice versa. It is even farther from MEC's jurisdiction to predict whether or not the collective decision of 150 engineers in a bargaining unit would remain the same after a hypothetical addition of 135 Wipers and Oilers. Likewise, MEC must not speculate as to whether the Wipers and Oilers prefer the health and welfare philosophy of the engineers or if they prefer the collective IBU unit philosophy. MEC simply must not impose speculation on WSF employees. The foregoing questions would be certain to be debated if there were a representation election campaign.
8. Likewise, it is not within the jurisdiction of MEC to speculate as to a practice of MEBA's hiring-hall referrals of Oilers if they became members of MEBA and if they possess USCG engineer licenses. MEC also concludes that whether or not MEBA has barred IBU members from filling engineer vacancies is a matter which would be debated during an election campaign.
9. When MEC finds that Wipers and Oilers enjoy a "community of interest" with two discrete groups of WSF employees, and when MEC further finds that both unions (IBU and MEBA) have demonstrated histories and competencies of representation of WSF employees, MEC must then conclude that the only remaining question that exists concerning the representation of Wipers and Oilers is the freedom of choice of collective bargaining representation by said Wipers and Oilers, as expressed by the majority. MEC must, therefore, order a representation election under chapter 316-25 WAC.
10. The present status of both WSF/IBU and WSF/MEBA Agreement termination dates and extensions, and the current renewal negotiations, provide a timely opportunity in accordance with WAC 316-25-030 to conduct an election without serious disruption of any mid-term agreement.
11. MEC rejects that portion of the MEBA petition which suggests a bargaining unit for WSF Wipers and Oilers, separate from that of the WSF Engineers, as needless proliferation which would lead to excessive time and effort spent on bargaining and excessive agreements.

12. Whether Wipers and Oilers were to elect to remain in the existing WSF/IBU unit or to merge into the existing WSF/MEBA unit, no proliferation of bargaining units would result from an election with those two options. (See PERC discussion of proliferation in Renton School District, Decision 1386 (PECB 1982) and Centralia School District, Decision 2599 (PECB 1987).) Therefore MEC concludes that the choice of collective bargaining units should be limited to whether Wipers and Oilers desire to (a) remain in the existing WSF/IBU unit or (b) merge into the existing WSF/MEBA unit.

Based upon the foregoing findings of fact and conclusions of law, the Commission now enters the following order.

ORDER

1. The Conclusions of Law and the Order in Decision No. 35-MEC are made part of this Decision and Order by reference.
2. MEC will conduct a representation election for those persons employed by WSF in the classification of Wiper and/or Oiler, said election to be held in accordance with WAC 316-25-430 through -550, as soon as practicable but in no instance later than April 19, 1988.
3. The ballots offered to Wipers and Oilers in said election shall contain the choice of (a) remaining in the present WSF/IBU bargaining unit or (b) merging with the present WSF/MEBA bargaining unit.

Dated at Olympia, Washington, this 19<sup>th</sup> day of February, 1988.

MARINE EMPLOYEES' COMMISSION

/s/ DAVID P. HAWORTH, Chairman

/s/ DONALD E. KOKJER, Commissioner

/s/ LOUIS O. STEWART, Commissioner