

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES' COMMISSION

KARL R. SKOGEN	)	
	)	
and	)	MEC CASE NO. 6-83
	)	
INLANDBOATMEN'S UNION OF THE	)	DECISION NO. 6 - MEC
PACIFIC,	)	
	)	
Grievants,	)	DECISION NO. 51-MEC
	)	
vs.	)	
	)	
WASHINGTON STATE FERRIES	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
Respondent.	)	AND ORDER
	)	
_____	)	

Karl R. Skogen appeared pro se.

Burrill Hatch, appeared on behalf of the Inlandboatmen's Union of the Pacific.

Kenneth Eikenberry, Attorney General, by Robert M. McIntosh, Assistant Attorney General, appeared on behalf of Washington State Ferries.

INTRODUCTION AND BACKGROUND

Mr. Karl R. Skogen was employed by Washington State Ferries (WSF) as an Oiler in the Engine Department on July 20, 1982. Mr. Skogen is a member of the collective bargaining unit represented by the Inlandboatmen's Union of the Pacific (IBU).

On October 3, 1983, Mr. Skogen filed a grievance with IBU, alleging that WSF had violated the WSF/IBU collective bargaining agreement (hereinafter "contract"), specifically Rules 19.02, 19.04 and 19.05, all pertaining to seniority. Grievant Skogen further alleged that (1)

a meeting had taken place between WSF and IBU on this matter, (2) at which time he was not present, and (3) all of which results were indeterminate.

Grievant asked that WSF: (1) comply with the contract; (2) pay grievant the difference between his earnings, sick leave, vacation pay, health contributions and all other benefits, and those which had been paid to one James Hattrick from July 21, 1983 until WSF complies with the contract.

In forwarding the grievance to the Marine Employees' Commission (MEC), Mr. Burrill Hatch of IBU cited certain provisions of the WSF/IBU contract, which specify referral to the Public Employment Relations Commission (PERC) upon failure of the parties to agree, and further cited PERC's past practice of accepting cases from individual grievants even where "the Union and the Employer concurred that the individual's grievance was without merit." Mr. Hatch asked for clarification by the Attorney General. Accordingly, MEC Chairman David P. Haworth referred the matter to Assistant Attorney General Kathy Nolan for an opinion.

On July 10, 1984, Mr. Hatch again referred Skogen's grievance to MEC; and, in addition, he complained that he had asked WSF repeatedly for seniority lists as provided in Rules 19.04 and 19.05 and he broadened the grievance by claiming that 750 employees were involved.

On August 24, 1984, Chairman Haworth assigned this case to Commissioner Louis O. Stewart for hearing. After due notice to all parties, hearing was held on October 19, 1984. Transcripts were received on November 19, 1984. Post-hearing briefs were filed by Skogen and WSF on November 30 and December 1, 1984. IBU did not file a brief.

Chairman David P. Haworth and Commissioner Donald E. Kokjer did not participate in the hearing; but they did review the entire record.

The Marine Employees' Commission, having reviewed the entire record, now enters the following summary of issues, findings of fact and conclusions of law.

### ISSUES

1. Did WSF violate Rule 19 – SENIORITY AND ASSIGNMENTS – of the WSF/IBU contract?
2. If Rule 19 was violated, did Karl R. Skogen suffer loss of appointment(s), wages and/or fringe benefits because of that violation?
3. If Rule 19 was violated, did other members of the WSF/IBU bargaining unit suffer loss?
4. If the answer to question(s) 2 or 3 above is yes, what remedies are available?
5. What is the proper format for the seniority rosters and supplemental lists required by Rules 19.04 and 19.05?

### POSITIONS OF GRIEVANTS

Grievant Skogen claimed one day more seniority than a certain James Hattrick in the classification of Oiler. As of July 20, 1982, both Skogen and Hattrick were Oilers in an on-call status. Skogen claimed he was entitled to preferential appointments to intermittent or on-call assignments, under Rule 19.05 and 19.06, and to regular year-round appointment on July 21, 1982 as Oiler with accompanying placement on the seniority list, which would have resulted in higher total wages received and higher accumulation of fringe benefits. He protested awarding Hattrick seniority instead of or ahead of himself.

However, WSF gave Hattrick more assignments than WSF gave Skogen, and on July 21, 1982 appointed Hattrick to a regular Oiler position and placement on the seniority roster specified in Rules 19.03 and 19.04 and uses as bases for work assignment under Rule 19.01

While Hattrick has enjoyed status on the regular year-round seniority list, Skogen has continued getting intermittent, part-time work from the supplemental list specified in Rule 19.05.

Although Mr. Burrill Hatch, IBU, supported Skogen's right to have his grievance heard and settlement ordered by MEC, Hatch did not represent Skogen on his specific grievance, except that part claiming WSF violation of Rule 19.04, wherein WSF is obligated to provide seniority rosters by department and classification on the first Monday in March of each year. Hatch further asked MEC to interpret the contract language referring to seniority by department and classification and to rule on the correctness of format of said rosters.

#### POSITION OF WASHINGTON STATE FERRIES

WSF claimed they had complied with Rule 19.02 by respecting seniority within the Engine Department rather than seniority in the classification of Oiler for the purpose of "reducing or increasing personnel." WSF argued that they did comply with Rule 19.04 by listing names by seniority within the Engine Department and within the classification of Oiler. WSF agreed that Skogen had one day more seniority than Hattrick had within the classification of Oiler, but argued that the ruling factor in giving Hattrick preferential assignments and placement on the regular year-round seniority roster for Oiler was Hattrick's longer service within the Engine Department, starting with his prior appointment to a Wiper position.

WSF argued that the contract language is clear and unambiguous; but, even if it were not, past practice had well established such a precedent.

WSF stated that the seniority rosters required under Rule 19.04 had been delivered to IBU just the day before the hearing.

FINDINGS OF FACT

1. All members of the IBU bargaining unit who are employed in the WSF Engine Department are in either the classification of Oiler or Wiper.
2. Grievant Skogen was employed as an Oiler on July 20, 1982 on an on-call basis.
3. James Hattrick was first employed as a Wiper on June 16, 1981, and was promoted to a regular year-round Oiler position on July 21, 1982.
4. Skogen has one-day more service in the classification of Oiler than has Hattrick.
5. Hattrick has approximately 399 days more service within the Engine Department than has Skogen.
6. A collective bargaining agreement between IBU and WSF took effect on April 1, 1980 and is still in force.
7. Rule 19 of that agreement covers seniority and assignments. Most of the Language of Rule 19 – SENIORITY AND ASSIGNMENTS – is clear and unambiguous:

A. Rule 19.01 sets forth the principle of seniority in general terms, followed by a specific example of its operations;

19.01 Statement of Adherence to Seniority

The Employer recognizes the principle of seniority in the administration of promotions, transfers, layoffs, and recalls. In the application of seniority under this Rule, if an employee has the necessary qualifications and the ability to perform in accordance with the job requirements, seniority shall prevail.

In reducing or increasing personnel in the respective departments, seniority shall govern. When layoffs or demotions become necessary, the last employee hired in a classification shall be the first laid off or demoted. When

employees are called back to service, the last laid off or demoted in a classification shall be the first restored to work in that classification.

- B. Rule 19.02 defines when seniority is established in each department:

19.02 Establishing Seniority

Seniority in each department will be established on the date the employee is assigned to regular year round employment in that department.

- C. Rule 19.03 requires that seniority shall be kept separately for different departments:

19.03 Seniority Departments

19.03 – Departments shall be: deck department, engine department, terminal department, and information department.

19.03 B ...

19.03 C ...

- D. Rule 19.04 establishes procedures for issuance, posting, contesting and correction of seniority rosters:

19.04 Seniority Rosters

On the first Monday in March of each year, the Employer shall furnish the Union with seniority rosters for each department showing the names of employees assigned to year round jobs by department and classification. The employer shall also post these rosters in places accessible to employees of that department. These rosters will be open only for a period of sixty (60) days from the date of initial posting on presentation of proof of error, in writing, by any employee or employee's representative. Seniority dates not contested within sixty (60) days of initial posting shall not be changed thereafter, except for correction of typographical errors.

- E. Rule 19.05 requires separate lists for those employees not yet qualified for placement on seniority rosters:

#### 19.05 Temporary, and Part Time Employee Lists

The Employer shall prepare and maintain supplemental lists in order of dates of hire by department and classifications of Temporary Employees who are those employees who work less than year-round or full-time assignments. These lists shall be regularly furnished to the Union.

- F. However, after clearly stating in Rule 19.04 and 19.05 that the seniority rosters of regular year-round employees and the supplemental lists of temporary and on-call employees each must be established and maintained by department and classification, and after clearly specifying in Rule 19.01 that both decreasing and increasing personnel are to be in order of seniority by classification, Rule 19.06 provides that initial appointment to permanent positions must be in order of length of service by department, without reference to classifications:

#### 19.06 Filling of Vacancies

... When a permanent opening occurs in any classification of the department involved, the Employer shall notify the Union in writing, and the Union shall post the notice at the Union hall for thirty (30) days. The Employer may fill the job with a new employee during this thirty (30) days period. If the Employer does not fill the job with a new employee and if the person previously holding that job fails to return during this thirty (30) days period, the most senior year-round employee in the department involved who has a request on file for that job and is available shall be assigned. If there are no available year-round employees having requests on file, the most senior available employee who does not have a year-round assignment shall be assigned to the job. . . .

It is tempting for the arbitrator in analyzing the contract language to conclude that the intention of maintaining the supplemental list by classification must be the same as the intention of maintaining seniority rosters by classification for the purpose of reducing or increasing personnel, as expressed in Rule 19.01. The arbitrator could conclude that the omission of the word classification in Rule 19.06 was an oversight.

However, that conclusion is precluded by the fact that Rule 19.06 actually establishes a different set of priorities in filling regular year-round positions. The use of the supplemental list follows failure to fill such a vacancy by a new employee. This leads to the conclusion that the omission of the word classification must have been intended by the parties.

But that conclusion is inconsistent with the “Statement of Adherence to Seniority” expressed in Rule 19.01.

From the foregoing discussion, the arbitrator finds that the language of Rule 19.06 is not clear and unambiguous, and that the arbitrator must turn to past practice of the parties.

7. Witnesses for WSF testified that past practice has been to make appointments to regular year-round positions on the basis of length of service within the department regardless of length of service in classification. That testimony was uncontradicted by IBU. The arbitrator finds that was the past practice.
8. The appointment of James Hattrick to a regular year-round position of Oiler, on the basis of a greater length of service in the Engine Department than Grievant Skogen had, is in compliance with Rule 19.06 as interpreted on the basis of past practice.
9. The seniority rosters of 1980 (Ex 3), 1981 (Ex 5), 1982 (Ex 6), 1983 (Ex 2) and 1984 (Ex 4) were admitted in evidence. Only the formats of Exhibits 2 and 6 are identical. None of them precisely comply with the requirements of Rules 19.04 and 19.05:
  - A. The 1980 supplemental list (on-call) (Ex 3) indicates “seniority dates”, although the employees have no seniority in a classification until achieving appointment to a regular year-round vacancy therein (Rule 19.02).



- B. The 1981 seniority roster lists hire-dates for certain Oilers, which presumably are departmental seniority dates as opposed to Oiler classification seniority. That does not appear to be a violation, per se. However, once the Oiler achieves status on the Oilers' seniority roster, there appears to be no further use of length of service in the Engine Department specified in the contract.
- C. The 1982 and 1983 seniority rosters had the supplemental list of temporary, on-call Oilers commingled with the Oilers already enjoying actual seniority. On the face of these two rosters, WSF appeared to have been awarding seniority status to those temporary Oilers. This could have contributed to misunderstanding. For example, Karl Skogen appeared as No. 138 on the Oilers' seniority roster of 1983, and James Hattrick appeared as No. 140, when neither of them actually had seniority as Oiler under Rule 19.02. Hattrick also appeared with an "established seniority date" of 6/6/81, the date of his appointment as Wiper, which appeared to be correct for that classification only.
- D. The 1984 roster is a combined "Date of Hire and Seniority List." The names are in "Rank Order Based on DOH." Taken literally, it is impossible to tell whether this is a list ranked by classification, because the second column has dates of hire of Wipers and Oilers commingled. The reader is left to figure out that this must mean a Departmental Seniority List. But Rule 19.04 requires the roster to be listed by department and classification. The third column lists dates of Oilers' Documents. That may be the required seniority list, but only if the date of the Oiler's Document and the date of the Oiler's appointment to a regular year round position of Oiler are synonymous. The "Dates of Hire" for "Wipers or Oilers" commingled as they are in Column 2 for "Job Retention" would appear to be in conflict with Rules 19.01 and 19.04. Under Rule 19.01 job retention is governed by seniority by classification, which is said in Rule 19.02 to be the date of assignment to regular year-round employment. Further, as stated above with regard to the 1981 roster, once seniority is established for an Oiler, there appears to be no further use of original employment dates prior to the seniority

status under any specific provision of the contract.

10. IBU agreed that delivery of the seniority roster and supplemental list on the day preceding the hearing appeared to satisfy that part of the IBU grievance, but asked for a ruling on the validity of format of these lists.
11. No showing was made regarding losses suffered by any other members of the WSF/IBU collective bargaining unit.
12. Under Rule 19.04, any employee or employee's representative has sixty (60) days within which to contest the 1984 Seniority Roster. The 1984 Roster was delivered to IBU on October 18, 1984. Therefore, the contest period will be open until December 18, 1984.

Based on the foregoing findings of fact, the Marine Employees' Commission adopted the following conclusions of law.

#### CONCLUSIONS OF LAW

1. The Marine Employees' Commission has jurisdiction in this matter by authority of RCW 47.64.150 and 47.64.280.
2. This matter was properly filed and with the approval of IBU.
3. The contractual grievance steps specified in Rule 15.02 of the WSF/IBU contract were completed. The words "Public Employment Relations Commission" should be read "Marine Employees' Commission" (Ch. 47.64 RCW).
4. The delay in challenging the alleged incorrectness of the seniority listings of 1983 beyond the sixty (60) day window period in Rule 19.04 does not bar Grievant Skogen from challenging that seniority roster (Bethlehem Steel Co., 23 LA 538, (1954)).

5. The Marine Employees' Commission decision on this grievance shall not change or amend the terms, conditions, or applications of the WSF/IBU collective bargaining agreement (RCW 47.64.150).
6. Taken as a whole, Rule 19 of the WSF/IBU contract is not clear and unambiguous.
7. When the terms, conditions and applications of a collective bargaining agreement are unclear or ambiguous, the Marine Employees' Commission turn to "past practice" for interpretation. "...the labor arbitrator source of law is not confined to the express provision of the contract, as is the industrial common law – the past practices of the industry and the shop – is equally a part of the collective bargaining agreement although not expressed in it (United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574)." This Commission concludes that the past practice of filling regular year-round positions on the basis of length of service in the Engine Department without regard to length of service in the classification of Oiler justifies the preferential appointment of James Hattrick ahead of Grievant Skogen.
8. Grievant Skogen may not enjoy the benefits of placement on the seniority roster until such time as he is offered and accepts appointment to a regular year-round position (Rule 19.02). Therefore, his grievance must be denied.
9. The seniority rosters as promulgated by WSF are not in compliance with Rule 19.04. The 1984 supplemental list required by Rule 19.05 also is not in compliance therewith.

Based on the foregoing findings of fact and conclusions of law, the Marine Employees' Commission enters the following decision and order.

DECISION AND ORDER

1. The grievance, filed by Karl F. Skogen against Washington State Ferries challenging the application of Rule 19 in the seniority roster and supplemental list for 1983, is hereby denied.
2. Washington State Ferries shall immediately re-promulgate the 1984 Seniority Rosters for the Engine Department to comply with Rule 19.04 of the WSF/IBU collective bargaining agreement, showing the relative standings of Wipers and Oilers separately, using dates of appointments to regular year-round positions in the respective classifications as the "seniority dates."
3. Washington State Ferries shall immediately re-promulgate the 1984 supplemental Temporary and Part Time Employee Lists for the Engine Department to comply with Rule 19.05 of the WSF/IBU collective bargaining agreement, in order of dates of hire in the engine department, separately by classification of Wipers and Oilers.
4. Washington State Ferries shall furnish the 1985 Seniority Roster to IBU promptly on the first Monday of March, 1985, or on whatever other date may have been agreed upon during the current contract renewal sessions.

DATED at Olympia, Washington, this 16<sup>th</sup> day of January, 1985.

MARINE EMPLOYEES' COMMISSION

/s/ DAVID P. HAWORTH, Chairman

/s/ LOUIS O. STEWART, Commissioner

/s/ DONALD E. KOKJER, Commissioner