STATE OF WASHINGTON

BEFORE THE MARINE EMPLOYEES' COMMISSION

GEORGE B. GREENWOOD, MATT GALLE and CHARLES J. WEYTHMAN, Complainants, and BEN BROXON and CARL ALLEN Intervenors, v. DISTRICT NO. 1 PACIFIC COAST DISTRICT, MARINE ENGINEERS BENEFICIAL ASSOCIATION, Respondent.	)	MEC CASE NO. 7-93 DECISION NO. 114 - MEC DECISION AND ORDER

George B. Greenwood, Matt Galle, and Charles J. Weythman, pro se, appearing for and on behalf of themselves.

Ben Broxon and Carl Allen, pro se, appearing for and on behalf of themselves.

Davies, Roberts and Reid, attorneys, by Ken Pedersen, appearing for and on behalf of District No. 1 Pacific Coast District, Marine Engineers Beneficial Association.

THIS MATTER came on before the Marine Employees' Commission (MEC) on August 5, 1993, when George B. Greenwood, Matt Galle and Charles J. Weythman (hereinafter Greenwood et al) filed an unfair labor practice complaint (ULP) against District No. 1 Pacific Coast District, Marine Engineers Beneficial Association (MEBA).

Greenwood et al complained that MEBA had engaged in unfair labor practices within the meaning of RCW 47.64.130 and WAC 316-45-003 by refusing to bargain collectively with Washington State Ferries (WSF) on behalf of the unlicensed engineroom employees when it is their representative subject to RCW 47.64.170. Specifically they alleged that MEBA Branch Agent Mark Austin had ignored a request from the elected unlicensed engineroom employees (Oilers) collective bargaining committee to set a bargaining date with WSF, and "instead followed his own agenda."

On August 30, 1993 Greenwood et al filed an amended complaint. The amended complaint charged an additional ULP, restraining or coercing employees in the exercise of rights guaranteed by chapter 47.64 RCW. They alleged that MEBA Executive Vice President William B. Langley had "arbitrarily disbanded the elected unlicensed engineroom employees negotiating committee," and had appointed a committee of his own choosing, "allegedly due to the elected . . . committee filing [the instant complaint] against MEBA business agent Mark Austin and for contacting [WSF] management to establish a date for contract negotiation."

Greenwood et al asked MEC (1) to intervene immediately and re-establish the elected unlicensed engineroom employees negotiating committee; (2) to hold an expedited hearing and to enter a decision on the following issues: (a) Are engineers/supervisors allowed to vote on contract issues that affect the people they supervise? and (b) Are persons who are not WSF engineroom employees allowed to vote on contract issues or contracts that directly affect WSF engineroom employees?; (3) Allow WSF unlicensed engineroom employees' elected negotiating committee members to submit contract proposals to WSF management for consideration; and (4) Ask the Washington State Attorney General to monitor this instant matter and investigate the possibility of racketeering by MEBA representatives.

The complainants charged that Messrs. Langley and Austin "have acted in a manner of ill-will, prejudice and deliberate bad faith in dealing with this matter" and characterized their actions as "discrimination and suppression of contract proposals. . . . Furthermore, the obvious motive for these acts of discrimination is to prevent unlicensed engineer employees from promoting to the level of assistant engineer in a manner consistent with all other departments at Washington State Ferries."

On August 30, 1993 MEC determined that the allegations set forth in the complaint and first amendment thereto may constitute an unfair labor practice if found to be true and provable. MEC designated Commissioner Louis O. Stewart as hearing examiner in the matter pursuant to WAC 316-45-130.

Examiner Stewart scheduled and conducted a prehearing conference on October 12, 1993. He scheduled a hearing to be held on October 26 and 27, 1993.

On September 10, 1993, MEBA filed an answer both to the original complaint and to the amendments. The answer included two affirmative defenses, viz: (1) because "the actions of MEBA relate solely to the internal functionings of the Union . . . the Complaint and Amended Complaint fail to state a claim upon which relief may be granted"; and (2) MEBA has the right to select its representatives for collective bargaining (RCW 47.64.130(2)(a)(i) and (ii) . . . and removal of the complainants from MEBA's negotiating committee was wholly permissible to insure that the committee did not circumvent the Union by excluding MEBA representatives.

On October 18, 1993 Complainants Greenwood et al filed a Motion for Temporary Relief, pursuant to WAC 316-45-430, asking MEC to seek a Superior Court "injunction to prevent MEBA from negotiating any aspect of the 1993-1995 licensed and unlicensed WSF engineroom

employees contract and to keep said injunction in place until such time that MEC Case No. 7-93 has been resolved in full." On October 21, 1993 Stewart canceled the October 26 and 27 hearing, but scheduled a telephone conference with the parties on the matter of the Motion for Temporary Relief. On November 9, 1993 MEC entered a denial of said Motion, a discussion of which is included in Decision No. 102-MEC.

In addition to the October 18 Motion for Temporary Relief, on that date complainants filed amendments to the remedies sought in the original complaint as amended on August 30, 1993. They asked that MEC "Allow unlicensed engineroom employees elected negotiating committee members, to submit contract proposals that have been approved by a majority vote of all WSF unlicensed engineroom employees to WSF management for consideration." They also asked that MEC award "Reimbursement by MEBA for attorneys fees and all costs associated with the case.

On October 22, 1993 Benjamin W. Broxon and Carl W. Allen filed a motion to intervene in this matter. They have asserted that their status differs from that of the unlicensed engineer complainants in that they work in WSF licensed engineer positions. But any decision to allow non-WSF engineroom employees to vote on their collective bargaining agreements affect them as WSF marine engineers also.

A hearing was rescheduled and held on December 13 and 14, 1993. After the first order of business of the Broxon/Allen motion to intervene, pursuant to WAC 316-02-560(2), Messrs. Broxon and Allen were admitted as intervenors in this matter. Then the hearing on the principal issues ensued, and was continued on February 16, 17 and 18, 1994.

Post-hearing briefs were timely filed by all parties.

THE ISSUES

I. Did MEBA commit an unfair labor practice(s) in violation of RCW 47.64.130 as charged?

II. If such violation is proven by a preponderance of evidence, what is/are the appropriate remedy/remedies?

III. Shall MEC re-establish the elected employees negotiating committee?

IV. Shall MEC allow WSF unlicensed engineroom employees' elected negotiating committee members to submit contract proposals that have been approved by a majority of all WSF unlicensed engineroom employees to WSF management for consideration?

V. Are the licensed marine engineers properly allowed to vote on contract issues or contracts that directly affect the WSF unlicensed personnel they supervise?

VI. Shall MEC award reimbursement to Complainants by MEBA for attorneys' fees and all costs associated with this case?

POSITIONS OF THE PARTIES

Position of Complainants

Greenwood et al contend that when MEBA sent out an announcement of an election for licensed and unlicensed negotiating committees, solicited nominations, solicited ballots, counted the ballots, published the tally committee report, and met with the named winners for the purpose of formulating contract proposals, "these actions constituted an election [in accordance with] MEBA By-Laws (Art. 11, Sect. 2)." The formation of these committees from the "wishes of the majority of the membership" was sanctioned by the

West Coast Vice President and DEC member Joel Bem (now District No. 1 MEBA President). Although there were no union officials' signatures on the Economic Adjustment Agreement listing all the changes recommended by the committee, that document was submitted to WSF. "Even though the MEBA now argues that it was never their intent to relinquish this authority, it was definitely the intent of the members at WSF to remove the present branch agent from negotiations and to only establish a union official as spokesperson." The "bargaining unit" in this case refers only to the unlicensed engineroom employees(Oilers).

Complainants state that only unlicensed engineroom employees at WSF had ever been allowed to vote on ratification of the unlicensed employees contract. They argue that MEBA Port Agent Mark Austin attempted to broaden the definition of "employee" in Rule 1.02, Unlicensed Engineroom Agreement, to include MEBA members in the main hall and licensed engineers employed by WSF, which would effectively take away protection of the Oilers.

The complainants contend that MEBA Vice President Langley violated the right of the Oilers to be represented by a representative of their own choosing when he disbanded the "Elected Unlicensed Engineroom Negotiating Committee and that MEBA's Constitution (Art. 8 and 9 and bylaws (Art. 12) "were not followed in the removal of this committee." They argue that the DEC's right to appoint a new committee is in violation of the wishes of the majority of members and the election process. The appeals process (By-Laws Art. 12 - Sect. 6) was not followed in the removal of the elected committee. Complainants rely on NLRA, Section 8(b)(1)(A), in arguing that MEBA improperly imposed reprisals on them for filing charges with MEC, by expelling, fining or otherwise disciplining them.

Complainants contend that "the election of the MEBA local branch agent and the appointment of the local representative does (sic) not constitute the Oilers' right to representation as stated in WAC

316-45-003(3)(b)," because non-WSF employees throughout the entire country and WSF supervisory engineers were allowed to vote in that election.

In the amended complaint, complainants alleged that the elected Oilers' committee was disbanded for challenging MEBA's authority (a) to allow engineers/supervisors to vote on contract issues that affect the personnel they supervise; (b) to allow non-WSF employees to vote on WSF issues; (c) to refuse and/or fail to negotiate in the best interests of the Oilers. They assert that Messrs. Austin and Langley violated RCW 47.64.170 by failing to represent the complainants fairly. They allowed non-bargaining unit members to vote on the WSF Oilers' issues, said these "votes were only polls" when challenged, then later referred to them as binding votes. They argue that Austin and Langley attempted to overrule the majority of bargaining unit members by allowing the irregular votes to be taken, and by allowing those votes to be binding on the entire unlicensed membership, and by refusing to acknowledge the desires of the Oilers to be allowed to promote to assistant engineer positions if properly licensed, in the same manner as licensed engineers are allowed to promote to higher levels, "even though the question was never asked" in a survey. Throughout the hearing, complainants contended that the licensed engineers are supervisors of oilers and should not be allowed to participate, let alone vote, on matters pertaining to the Oilers agreement.

Complainants ascribe to MEBA the motive of attempting to roll back a gain the Oilers made in the 1991-1993 agreement, viz., that oilers would have preferential promotion rights to fill vacancies at the assistant engineer level, at the rate of two out of three appointments. For this reason, they allege, the MEBA officials allowed non-WSF employees and WSF engineers to participate and vote on the Oiler "bumping-up" proposal. They allege improper keeping of minutes and vote tallies and improperly denying the Oilers access to said records. The complainants rely on St. Joseph's Hospital,

NLRB Case 32-CA-1966, in arguing that allowing even one supervisor to participate in negotiations and several supervisors to participate in ratification votes was a violation. They assert that they were never allowed to vote on upgrade issues without the presence of their supervisors.

Complainants further contend that MEBA engaged in an ULP "by encouraging WSF to discriminate against Oilers who hold engineer licenses by discouraging their promotion, and by refusing to consider their rights to promotion" as stated in MEBA shipping rules [Rule 21(e)(1) and (2)]," and by refusing to acknowledge that an oiler with an engineer's license is in fact an engineer working as an oiler.

Complainants rely on Teamsters Local 680 v. The Emporium, cited in the Developing Labor Law at 291 (Ed. not noted), in charging that the MEBA persistence in advancing contract demands that could jeopardize Oilers rights to "bump-up" without advising the Oilers of that jeopardy violates the duty of fair representation. Again, citing Red Ball Motor Freight, cited in the Developing Labor Law, ibid at 1340, Austin's conduct in formulating Oiler's proposals, motivated by hostility breached his duty of fair representation. They assert that Austin's "ability to represent the best interests of both the licensed and unlicensed engineroom employees has been called into question as far back as Sept.-Oct., 1991."

Complainants further charge Austin with restraining or coercing employees in the exercising of their collective bargaining rights when he implied to Oilers that MEBA was considering disassociating from them if they did not agree to his proposed alteration hiring practices for both temporary and permanent engineer vacancies; and when he threatened to allow non-WSF unlicensed employees to vote on WSF unlicensed employee contracts, in order to overrule the wishes of the WSF employees and "threatened a WSF employee and member of

the licensed negotiating committee with non-representation over a difference of opinion."

In their post-hearing brief, Complainants appear to have reduced their requested remedies to asking MEC to reinstate the elected negotiating committee, or conduct a fair and impartial election for a new unlicensed negotiating committee.

Position of Respondent

Respondent MEBA denies that the complainants have been "restrained or coerced" by the union. MEBA relies on the same statute MEBA is accused of violating (i.e., RCW 47.64.130(2)(a)(i)) to argue that this statute "does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein. . . . " MEBA also relies on court decisions based on the similarity of chapter 47.64 RCW with the NLRA (29 U.S.C. §158(b)(1)(A). Nucleonics Alliance v. WPPSS, 101 Wn.2d, 32-34 (1984). MEBA relies on NLRB v. Allis-Chalmers Manufacturing Co., 388 U.S. 175, 180, 181, 190-191, 194, 195 in arguing that the public policy in the NLRA (therefore applicable under the Washington State Marine Employees' Act) "extinguishes the individual employee's power to order his own relations with his employer and create a power vested in the chosen representative to act in the interests of all employees," and further that "Integral to this . . . labor policy has been the power of the chosen union to protect against erosion [of] its status under that policy through reasonable discipline of members who violate the rules and regulations governing membership." No limitations on the internal affairs of a union were intended, "aside from barring enforcement of a union's internal regulation to effect a member's employment status." Even where the relationship of a member to his own union is addressed in the Landrum-Griffin Act of 1959, members can be fined, suspended, expelled, or otherwise disciplined for violating union rules.

MEBA contends that removal of Weythman, Galle and Greenwood from the Oilers' Negotiating Committee had no effect upon their employment relationship with the WSF and may not be considered "restraint or coercion." Rather MEBA V.P. Langley disbanded the Oilers' Negotiating Committee because of their persistence in efforts to obtain 100% of upgrading to assistant engineer for Oilers "notwithstanding the clear rejection of that proposal" by the members at two meetings, and because of their "seeking to establish negotiations directly with WSF. . . . [T]he authority to establish negotiations, formulate proposals and ratify contracts rests with the DEC under the MEBA Bylaws."

MEBA rejects the complaint that Langley disbanded the committee because the Oilers had engaged in "questioning and challenging" the Union's authority in allowing engineers to vote upon contract proposals or issues affecting unlicensed employees." MEBA admits that engineers and oilers did vote together on proper procedures for filling vacant engineer jobs, but only on that issue. MEBA points out that nothing in chapter 47.64 RCW excludes supervisors from its coverage, and that "MEC had ruled in 1988 that there was nothing improper in including engineers and oilers in the same bargaining unit." MEBA further points out that there is no evidence that the Oilers ever objected to that procedure at the time. One complainant (Galle) testified that he had never asked for a separate vote.

MEBA also points out that there is no evidence that any non-WSF (i.e., "offshore") engineers ever voted on an Oilers' issue.

With regard to a complaint that the complainants were disciplined because they had filed a complaint with MEC, on August 5, 1993, MEBA asserts that on August 12, 1993 Langley instructed Greenwood et al "that they were not to file any actions with State or Federal agencies or courts concerning "contract negotiations with the WSF without specific instruction from the DEC" as a representative of

the union. The ULP filed with MEC "played no role in [Langley's] decision to disband the ONC since Greenwood did not file the complaint in a representative capacity."

MEBA argues that no evidence was presented to show that MEBA had refused to bargain with WSF. MEBA did refuse to present the Oilers' 100% upgrading proposal, because that provision had been rejected by the members at both proposal formulation meetings.

Even if MEC should construe the ULP as presented to include a breach of the duty of fair representation, such a charge should be dismissed. Quoting Vaca v. Sipes, 386 U.S. 171, 190, 17 L. Ed. 2d 842 (1967):

> A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith.

"Recognition of the duty by the Supreme Court was never intended to interfere with a union's traditional wide discretion to act in what is perceived to be its members' best interests." Ford Motor Co. v. Huffman, 345 U.S. 330 at 377-78 (1952).

Unions are often challenged by the necessity to resolve conflicting goals of the groups they represent. Ford Motor Co. v. Huffman, ibid at 338. "[C]omplainants Galle and Greenwood possess engineer licenses and both would benefit individually if their 100% upgrades' proposal were adopted by the Union." But the members at two meetings, as a group (engineers and oilers), "voted to maintain the status quo in both contracts." In short, MEBA argues, MEBA did what it was supposed to do in resolving the conflicting goals of its members, which cannot fairly be said to constitute arbitrary, discriminatory, or bad faith conduct.

The MEBA has conducted nation-wide ratification votes on nation-wide operations, e.g. the Chevron contract; but MEBA has not and "has no present intention of involving non-WSF MEBA members in the ratification of WSF contracts . . . It may well be that at some point in the future such a ratification procedure might be followed."

Unless MEC finds that MEBA has violated chapter 47.64 RCW, the complainants' request for an order by MEC dictating the manner in which MEBA may ratify its contracts should be denied.

Position of Intervenors

As WSF employees occupying licensed engineer positions, Intervenors Broxon and Allen throughout the hearing maintained a stance on the ULP almost identical to that of the complainants. Especially with regard to allowing non-WSF members to express an opinion voting on proposals or ratification of collective bargaining agreements with WSF. Both parties were adamantly opposed to the "threat" of "off-shore" members being allowed to participate in WSF matters. The only substantive difference between complainants and intervenors appeared to be the recognition that whatever language regarding "bumping up" of WSF Oilers to fill vacancies in the unlicensed agreement would require complimentary language in the licensed agreement.

The intervenors licensed engineers stress their differences with "off-shore" licensed MEBA members, and their community of interest with the WSF unlicensed MEBA members. They are especially concerned over submitting a MEBA/WSF agreement to an overwhelming national MEBA ratification vote. They rely on Emporium Capwell Co. v. Western Addition Community Organization, 420 U.S. 50, 64 (1975) for protection against a "tyranny" of the majority over a minority with sufficient commonality of interests to form a separate bargaining unit. The intervenors also cite Chemical Workers v.

Pittsburg Glass Co., 404 U.S. 157 at 171 (1971) wherein the Supreme Court recognized that the NLRB "regards as its primary concern in resolving unit issues 'to group together only employees who have substantial mutual interests in wages, hours and other conditions of employment.'"

The intervenors express a fear that, if non-WSF members are allowed to vote on WSF contracts, they could alter the WSF terms and conditions of employment without WSF employee consideration or approval. Such a majority could reach impasse, resulting in an arbitrated agreement which would not require ratification at all. The intervenors complain that certain practices became accepted procedures at the MEBA union hall concerning bargaining issues: (a) the meetings were so frequent and so controversial that a majority of WSF engineroom employees did not attend on a regular basis; (b) the members who did attend decided that only they could vote on issues, thereby expressing the wishes and opinions of those who didn't attend; but the majority did not attend; and (c) only the items selected by the branch agent are voted on and "have a chance of reaching the bargaining table, regardless of whether or not they are in the best interests of, or represent the desires and opinions of the majority of the WSF membership. . . . [T]he only means the employees have to counteract these actions of the branch agent is through the ratification process."

The Intervenors further contend that the MEBA By-Laws, Article 6, Section 7(f) require MEBA officials to present to the WSF members at least the contract items that have been agreed upon.

The Intervenors recognize the expressed reluctance of MEC to inquire into "internal union affairs." However, they point out to MEC that "a court [thereby by extension a quasi-judicial tribunal such as MEC] should be exceedingly reluctant to substitute its judgment for that of union officials in the interpretation of the unions constitution, and should interfere only where the official

interpretation is unfair or unreasonable." Vestal v. Hoffa, 451 F.2d 706 (6th Cir. 1971), cert. denied, 406 U.S. 934, 92 S. Ct. 1768, 32 L. Ed. 2d 135.

The Marine Employees' Commission, having read and carefully considered the entire record, now enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The complainants are each employed by WSF in unlicensed engineroom (oilers') positions and are members of MEBA. Two of the three complainants possess USCG licenses and are eligible to be appointed to licensed engineer positions.

2. Both licensed and unlicensed engineroom employees have been represented by unions for the entire time the State of Washington has operated ferries on Puget Sound. Licensed engineers have been represented by MEBA the entire time. Unlicensed engineroom employees (wipers and oilers) were represented by the Inlandboatmen's Union of the Pacific (IBU) until 1988, and MEBA thereafter.

3. RCW 47.64.011(5) defines a ferry employee as follows:

> **47.64.011 Definitions.**
> . . .
> (5) "Ferry employee" means any employee of the marine transportation division of the department of transportation who is a member of a collective bargaining unit represented by a ferry employee organization and does not include an exempt employee pursuant to RCW 41.06.079.

4. The National Labor Relations Act provides that the term "'employee' . . . shall not include . . . any individual

employed as a supervisor." 61 Stat. 137-138, codified at 29 U.S.C. §152(3).

5. On August 31, 1987, District 1, Pacific Coast District, National Marine Engineers Beneficial Association filed a petition to be recognized as the sole representative of wipers and oilers, submitting 110 authorization cards from the total of 138 wipers and oilers employed by WSF. In fulfilling the usual "community of interest" requirement, MEBA emphasized repeatedly in briefs and hearings an alleged "line of progression" from oiler to engineer. For example:

> MEBA will also show that there are clear lines of career progression from the Oilers' and Wipers' positions to the engineer positions represented by MEBA. The Wiper position is the entry-level engine room job. After six months' experience, a Wiper may obtain an Oiler's endorsement upon passing a written examination. After three years of suitable experience a candidate for an Engineer's license may take a comprehensive examination in marine engineering. Thereafter, through further experience and examinations a candidate may upgrade an Assistant Engineer's license to Chief Engineer.
>
> As a result of this established line of progression, the Oilers and Wipers share a significant common interest with MEBA engineers in collective bargaining issues affecting the engine room and engineer positions.

MEBA Brief In Opposition to IBU Motion to Dismiss, p. 19, filed Nov. 17, 1987. (Emphasis supplied.)

6. On February 19, 1988 MEC entered Decision No. 38 - MEC ordering the requested election. The reasoning of the Commissioners is partly illustrated in Conclusions of Law Nos. 7 through 12 in that Decision, as follows:

> 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 posses 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. . . . 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.

7. Thereupon, MEC ordered in Decision No. 38-MEC, Order No. 3:

> 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.

8. Of the 136 eligible members, 8 voted in favor of "(a) remaining in the IBU/WSF bargaining unit" and 110 voted in favor of "merging with the WSF/MEBA bargaining unit." Certification of Results of Election by Anna Peterson, to Thurston County Superior Court, dated April 25, 1988, Cause No. 88-2-00448-7.

9. Despite MEC's rejection of MEBA's petition suggesting a separate bargaining unit for WSF Wipers and Oilers (see Finding of Fact No. 4, Item 11, supra) and despite balloting for "merging with the WSF/MEBA bargaining unit," and despite a WSF presentation to MEC objecting to an increase in the number of bargaining units in the ferry system (See transcript, pp 12-16, MEBA v. IBU, MEC Case No. 3-87), MEBA and WSF reached an agreement recognizing a bargaining unit for unlicensed engineroom employees separate from the bargaining unit for licensed engineers. No protests were raised. MEC became aware of that development only after separate bargaining agreements were filed with MEC.

10. While the Oilers were under the WSF/IBU Agreement, there was no contractual procedure for an oiler who possessed a marine engineer's license to progress to an engineer position. Only by referral to WSF from the MEBA union hall could such a move

take place; i.e., the transaction was identical to the referral of any other marine engineer, either local or off-shore. After MEBA became their representative, although in a separate bargaining unit, MEBA reached agreement with WSF allowing current WSF Oilers with engineer licenses to take up to fifty per cent of the permanent vacancies in engineer office positions in the order in which they had obtained their USCG licenses, the other fifty per cent being reserved for unemployed MEBA members to be referred by the MEBA hiring hall.

11. MEBA and WSF reached agreement, in negotiating the 1991-1993 contract renewal, providing that a temporary Assistant Engineer vacancy may be filed by an Oiler regularly assigned to the same vessel, and providing that two out every three permanent Assistant Engineer vacancies may be filled by WSF Oilers (specifying proper licensure in each case). These provisions appeared identically in both the Licensed and the Unlicensed Agreements.

12. MEBA By-Laws, Article 3, Section 5(a), establishes the District Executive Committee (DEC) (viz., District President, the District Executive Vice President-Branch Agent, San Francisco, the District Secretary-Treasurer, the Atlantic Coast Vice President and the Gulf Coast Vice President) as the governing body of the Union.

13. There is neither any provision in said By-Laws for local negotiating committees nor are there any local negotiating committee rules of procedures locally. Preparatory to the 1991-1993 negotiation an ad hoc negotiating committee for oilers was elected locally. The record is silent as to whether that first committee was formally sanctioned by DEC. Preparing for the 1993-1995 contract renewal, the DEC did authorize an ad hoc local negotiating committee (ONC) which

was elected. The three complainants in the instant matter were among the four committee members so elected. A separate bargaining committee for the licensed engineers was also authorized and elected.

14. There was uncontroverted testimony that the 1991-1993 ONC had successfully bargained that agreement with WSF.

15. In addition to the monthly meetings open to all MEBA members in Seattle, the two WSF negotiating committees held monthly planning and/or strategy meetings. Because of the 7-day-on, 7-day-off work schedule of WSF engineroom crews, each meeting was held in two sections ("A" and "B" watches) one week apart.

16. MEBA Branch Agent Mark Austin arranged the negotiating committee meetings which were opened to members of both committees and some "off-shore" engineers. This arrangement was described by MEBA as an effort to reach consensus on MEBA's obligation to its unemployed members as well as meshing the desires and contract language of both oilers and licensed engineers.

17. The most prominent issue discussed by the Oilers' Committee was the manner in which permanent WSF Assistant Engineer vacancies would be filled. Three proposals were discussed at length: paraphrased herein as (a) no change--i.e., 2/3 by WSF Oilers, 1/3 by MEBA referrals, (b) 100% by Oilers, and (c) 100% by MEBA referrals.

18. After several months' discussion by the committee members, on May 17, 1993 Austin announced two WSF membership meetings, June 3 and 10, 1993 for "A" and "B" crews respectively. Fifteen of the 28 attendees at the June 3rd meeting were WSF Oilers. A clear majority voted for continuing the 1991-1993 engineer vacancy language in the 1993-1995 agreement: 20 yes,

4 no, 2 abstentions. At the June 10th meeting again, the majority of votes for continuing the 2/3 Oilers language were 10 yes, 20 no, 3 abstentions. Thus, a total of 30 members voted in favor of continuing the filling of Assistant Engineer vacancies from the Oiler list, 24 voted against that proposal, and 5 abstained.

19. The instant case record does not indicate that any member, either at the time the second bargaining unit was recognized by WSF in 1988 or during the members' 1993 discussion of progression from oiler to assistant engineer, raised any objection to separate bargaining units for MEBA members employed in WSF engine rooms.

20. On or about July 12, 1993 the Oilers Negotiating Committee presented Branch Agent Mark Austin with a draft of proposed contract amendments to be presented to WSF. The proposals included amendments to Rule 35 (creating an "Unlicensed contract negotiating committee" and a schedule for electing it) and to Rule 21.11 B (changing the two (2) out of three (3) provision for oilers "bumping up" to fill Assistant Engineer vacancies.) The proposed amendment to Rule 35 had never been discussed or voted upon at membership meetings. A covering letter stated that the ONC was ready to start negotiating with WSF and requested a reply "on or before July 25, 1993. A failure or refusal to respond to this letter and/or a failure or refusal to establish a date with [WSF] management will result in the appropriate action by this committee." Austin forwarded the letter and the drafted proposals to Executive Vice President-Branch Agent (San Francisco) Bill Langley.

21. The evidence concerning the alleged threats by MEBA officials against the oilers is contradictory to say the least. The alleged threat of MEBA "disassociating" the oilers, if true, was later interpreted by Vice President Langley to mean that

the oilers had a right to disassociate from MEBA. The threat of allowing non-WSF MEBA members to vote on issues did appear to have some substance in that two non-WSF MEBA members did attend one meeting involving WSF proposals. No evidence was presented to show they voted. It is clear that one vote where WSF licensed engineer members voted on the Oilers' proposed demands involved the "bumping up" issue. On that issue both units had a vested interest. The threat of "disassociating" a single member (Tjiemsland) may have been disavowed by Tjiemsland.

22. On the other hand, the complainants' language in their July 25, 1993 letter to Austin that a failure or refusal to establish a date with WSF management "will result in the appropriate action by this committee may be construed as a "threat" to Austin.

23. On or about August 5, 1993, three of the ONC members (complainants in the instant case) wrote a letter to WSF Employee Relations Director, informing Jackson that Austin had ignored their instructions and requesting Jackson to set a date or dates on which bargaining on the 1993-1995 agreement.

24. On or about August 19, 1993 Jackson notified the ONC members by letter that "[w]e are unable to accommodate your request because Rule 2.01 of your collective bargaining agreement provides that: 2.01 The employer recognizes the Union as the . . . sole collective bargaining agency for the purpose of acting for the Employees in negotiating and interpreting the Agreement and adjusting disputes."

25. On or about August 12, 1993 Langley notified Greenwood that the elected ONC was disbanded, and that a new committee would be selected; because the ONC had, purporting to represent the Union, filed an action with a State government and

communicated directly with WSF management on contract negotiations, both without specific authorization of the DEC, " Further, several of the positions of your committee appear to have been specifically and overwhelmingly rejected the members of the WSF members (sic) at meetings . . ."

26. On August 30, 1993 Greenwood et al filed their amended complaint. See pp 2-3, supra.

27. Ill-will and antagonism, at times reaching the point of open hostility, existed as a patency in this matter, particularly between the complainants and Branch Agent Austin.

Having entered the foregoing findings of fact, the Marine Employees' Commission now hereby enters its conclusions of law.

CONCLUSIONS OF LAW

1. The Marine Employees' Commission (MEC) has jurisdiction over the parties and the subject matter involved in this matter. Chapter 47.64 RCW; particularly RCW 47.64.130 and 47.64.280.

2. Insofar as possible, the Marine Employees' Commission has avoided delving into the internal affairs of any labor union involved in any matter before the Commission. Besides that longstanding practice of labor relations tribunals, MEC is cognizant of the exemption of ferry employee representative unions from the Open Meetings Act, Chapter 42.30 RCW, giving Washington State employee unions specific privacy. Therefore, both in making its findings of fact and conclusions of law, MEC has attempted to take notice only of such internal union activity as directed by the Union's own Constitution, By-Laws, or duly adopted rules, and then only when actions are deemed to be unfair or unreasonable. Vestal v. Hoffa, ibid.

3. Although MEC had rejected "that portion of the MEBA petition which suggest[ed] a bargaining unit for WSF Wipers and Oilers, separate from that of the WSF Engineers" (Decision No. 38-MEC, Conclusion of Law No. 11), MEBA and WSF decided on and put into effect at the bargaining table the 1989-91 agreement creating a separate bargaining unit consisting of the unlicensed engineroom members/employees instead of merging into the existing bargaining unit. The members, the Union and WSF all appeared to be satisfied. MEC decided that its duty pursuant to chapter 47.64 RCW appeared to be concluded in that matter. With the advent of the new bargaining unit, it was thereafter included in all Status of Collective Bargaining Agreements lists in MEC minutes. See Chemical Workers v. Pittsburg Glass Co., 404 U.S. 157 (1971).

With regard to Complainants' argument that the NLRB prohibits supervisors from membership and participation in a bargaining unit comprised of the employees they supervise, MEC took into account Decision No. 38-MEC. In enacting chapter 47.64 RCW the legislature did not provide any guidelines at all regarding bargaining units. However, MEC has relied on the NLRB as much as possible. Skilled craft unions such as metal trades and building trades were deemed to be significant comparisons. WSF already had a bargaining unit containing apprentices, journeymen, leadmen, and foremen in six unions (Metal Trades council/WSF Collective Bargaining Agreements), and still does. The daily de facto supervision of the skilled marine engineer routinely telling the wiper and/or oiler what to do and when to do it, with authority to take corrective action if necessary, is standard practice among such crafts. However, the Marine Employees' Act (chapter 47.64 RCW) does not exempt supervisors from its coverage. MEC may conclude that that omission was not happenstancial. The exemptions from this Act are specific, viz., "an exempt employee pursuant to RCW 41.06.079 [Merit System Act]." See National

Labor Relations Board v. Health Care & Retirement Corporation of America, 62 LW 4371, 5/24/94. MEC hereby reaffirms its 1988 conclusion.

4. MEBA as the "sole representative" of WSF unlicensed engineroom employees may designate any individual as its representative to engage in collective bargaining negotiations. RCW 47.64.170(2). MEC is prohibited from approving or disapproving the MEBA bargaining representatives and/or the method of its/their selection. MEBA District 1 DEC may authorize a bargaining committee to act. However, MEC may not authorize such a committee. MEC must conclude that chapter 47.64 RCW does not enable the complainants, even as an elected committee, to seek to bargain directly with WSF where they have attempted to circumvent their elected bargaining representative. Therefore Complainants' request that MEC order an election of a bargaining committee must be denied.

5. Likewise the MEBA District Executive Committee (DEC) is responsible for the formulation of bargaining demands. District No. 1 MEBA By-Laws, Article 6(f). MEC may not enter into the process of formulating contract demands. Therefore, MEBA's second affirmative defense is well-taken; and MEC must deny complainants' request to reinstate the elected committee or conduct an election for such a committee.

6. The MEBA DEC is responsible for presenting proposed collective bargaining agreements to the membership for ratification. District No. 1 MEBA By-Laws, Article 6(f). Therefore MEC must find that the MEBA officers' assertions that DEC has final ratification authority is erroneous, and MEBA's first affirmative defense must be rejected.

7. Whether or not MEBA conducted a nationwide ratification vote on the Chevron agreement, that is not an appropriate precedent

to be applied to the WSF/MEBA agreement(s) effective only in Puget Sound. MEC must conclude that the word "membership" in District No. 1 By-Laws, Article 6(f) as applied in this instance means those MEBA members covered by the WSF/MEBA unlicensed engineroom employee bargaining unit. RCW 47.64.011(5).

8. Unfortunately there were no local or national MEBA rules for guidance of a DEC sanctioned bargaining committee. The record is clear that a mutual animosity existed between Branch Agent Austin and the committee. MEC concludes from the record and the parties' stances that, absent promulgated rules of procedure, the committee was not inclined to accept guidance in the form of assertions from Branch Agent Austin. By the time Vice President Langley arrived on the scene, animus had hardened. The committee had not only patently excluded Austin but had also made that fact clear to the employer's representative. MEC must conclude that the letter of August 5, 1993 from Weythman, Greenwood and Galle to WSF Employee Relations Director without approval of the DEC did fly in the face of District No. 1 MEBA By-Laws, Article 6(f) which makes the DEC "responsible" for contract negotiations. MEC concludes that both parties erred, and in anger. Therefore complainants' request for attorneys' fees and other costs must be denied.

9. With regard to Complainants' assertion that, by abolishing the elected oilers' committee and replacing it with one of his own choosing, V.P. Langley thereby deprived the oilers of "a representative freely chosen" by themselves (RCW 47.64.130(3)(b); WAC 316-45-003(3)(b)) MEC must conclude that MEBA is the bargaining representative which the unlicensed engineroom employees did choose freely when they voted 110 to 8 (out of 136 eligible to vote) to select MEBA as their representative. MEC notes that RCW 47.64.130(2)(a) and WAC

316-45-003(2)(a) provide that the right of MEBA to prescribe its own rules for the acquisition or retention of membership therein is not impaired.

10. MEC concludes that, to the extent that MEBA officers led complainants to fear that ratification of a WSF/MEBA collective bargaining agreement is a power of the MEBA DEC, and their right to ratify said agreement is dismissed, said MEBA officers did violate WAC 316-45-003(2)(a). The complainants failed to prove by a preponderance of evidence any other violation of RCW 47.64.130 or WAC 316-45-003.

Having entered the foregoing findings of fact and conclusions of law, the Marine Employees' Commission now hereby enters the following order.

ORDER

I. The request of Complainants Greenwood, Galle and Weythman that the Marine Employees' Commission reinstate the elected unlicensed engineroom employees negotiating committee or conduct an election for a new committee should be and is hereby denied.

II. The request of Complainants that the Marine Employees' Commission "allow" or determine the manner of formulating and/or presenting contractual demands to WSF is hereby denied.

III. WSF/MEBA collective bargaining agreement(s) shall be submitted for ratification vote only to those MEBA members who are covered by said WSF/MEBA agreements on the date on which ratification votes are taken.

IV. The complainants' request for an award of attorneys' fees and other costs is hereby denied.

DONE this 10th day of May 1994.

MARINE EMPLOYEES' COMMISSION

HENRY L. CHILES, JR. Chairman

DONALD E. KOKJER, Commissioner

LOUIS O. STEWART, Commissioner