

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION)	MEC Case No. 12-93
OF THE PACIFIC,)	and
)	MEC Case No. 14-93
Complainant,)	
)	DECISION NO. 130 - MEC
v.)	
)	
WASHINGTON STATE FERRIES,)	DECISION AND ORDER
)	
Respondent.)	
)	

Schwerin, Burns, Campbell and French, attorneys, by Cheryl A. French, appearing for and on behalf of the Inlandboatmen's Union of the Pacific.

Christine Gregoire, Attorney General, by Robert McIntosh, Assistant Attorney General, for and on behalf of Washington State Ferries.

THIS MATTER came before the Marine Employees' Commission (MEC) on November 3, 1993 when the Inlandboatmen's Union of the Pacific (IBU) filed an unfair labor practice complaint, MEC Case No. 12-93, against the Washington State Ferries (WSF). On November 5, 1993, the IBU filed supporting documents.

IBU's complaint charged WSF with engaging in unfair labor practices by refusing to bargain collectively with representatives of employees in violation of RCW 47.64.130 and WAC 316-45-003. Specifically IBU alleged that WSF unilaterally altered the terms and conditions of employment by: (1) terminating the cleaning allowance required by the contract and (2) altering all watches on the Vashon/Faunterloy/Southworth run without prior notice and bargaining with the union in violation of the contractual requirements.

The MEC discussed the above-captioned complaint charging unfair labor practices at its monthly meeting on November 18, 1993. The Commission determined that the facts alleged by the amended complaint may constitute an unfair labor practice if later found to be true and provable. Chairman Henry L. Chiles Jr. was assigned as Hearing Examiner. On December 16, 1993 the IBU amended its charge in relation to the non-payment of dry-cleaning costs.

A prehearing settlement conference in Case 12-93 was scheduled for January 19, 1994. Both complaints were discussed on that day and a settlement between the parties was reached on the cleaning allowance issue. A hand written agreement was signed by the parties and was later typed for distribution.

On December 20, 1993, the IBU filed a second unfair labor practice charge, MEC Case No. 14-93, against the WSF alleging that WSF had not responded to six grievances: 93-138, 140, 141, 142, 143 and 146C as required by Rule 16.04 Disputes, Step II - Formal(2). They concluded that the grievance were deemed granted.

The charge in Case 14-93 was discussed by the Commission at its regularly monthly meeting on January 28, 1994. In accordance with WAC 316-45-110 it was determined that the facts as alleged, if found to be true and provable, may constitute unfair labor practices.

On February 9, 1994 the IBU requested that Cases 12-93 and 14-03 be consolidated for hearing. On February 16, 1994 Assistant Attorney General Robert McIntosh, representing the Washington State Ferries, informed MEC Staff that the State does not oppose the consolidation.

On February 16, 1994 MEC issued an Order of Consolidation of Cases 12-93 and 14-93 and a Notice of Hearing for March 11, 1994 pursuant to RCW 47.64.130 and 47.64.280 and chapters 316-02 and 316-45 WAC.

Hearing was held on March 11, 1994 and the parties agreed to return for a second day of hearing on April 27, 1994.

Hearing Examiner Chiles had urged the parties several times to try and settle the matter. The parties met for several hours on April 27, 1994 to discuss the case. They did not reach agreement on the issues, but they reached a postponement agreement. The agreement from the transcript states:

It is agreed that this hearing will be postponed until the Masters Mates and Pilots union either settles with the Employer, Washington State Ferries, in connection with the Fauntleroy Dock closure that is at issue in this case, or fails to reach a settlement with Washington State Ferries in connection with that issue. There is also a deadline. If the MM&P doesn't either settle or fail to settle by June 24th, the parties will then reconvene this hearing. The idea being that if the MM&P settles, that may give some guidance to the parties here today in trying to settle this issue.

Now, if the MM&P settles the issue, the parties agree to convene a committee to consist of three members of WSF management and three WSF employees. This committee will meet for the purpose of attempting to resolve this matter for a maximum period of one day. If the committee reaches a settlement of this matter, the Union will then determine whether or not to refer this matter back to the Commission for a continued hearing in this case.

Now, the circumstances of the continued hearing in this case are as follows: The one-day testimony that has already occurred will not be repeated. That part of the record will stand. The parties agree that if the Commission finds that this matter is not appropriate brought before the Commission as an unfair labor practice, that the parties agree that the Commission is to resolve it on its merits as a grievance arbitration and that the Commission is hereby selected as the arbitrator to perform that function.

The importance of this agreement is this—the MEC does not normally arbitrate grievances for these parties, but they have requested that we do so in this case. The MEC accepted the responsibility to

arbitrate both cases if they were not settled. Grievance No. 93-147 was also accepted for arbitration.

(NOTE: While not important to this case, the parties reached agreement on an everyday grievance handling process. It is on pages 6 and 7 of the April 27, 1994 transcript.)

Even with the postponement this matter did not settle and it came on again for hearing on September 21 and 23, 1994. At the start of hearing on September 21, 1994 the IBU moved to withdraw the unfair labor practice portions of cases 12-93 and 14-93. The parties agreed that the Hearing Examiner would continue as Arbitrator and that the issues previously raised would be resolved as contract grievances. The IBU asked that seven grievances be resolved on the merits of contractual claims and on the claim that under the collective bargaining agreement these grievances were deemed to be granted because of procedure irregularities in the grievance procedure.

REQUEST FOR ARBITRATION

The Inlandboatmen's Union of the Pacific and Washington State Ferries jointly asked that the Marine Employees' Commission serve on a one-time basis as the arbitrator in the matter. The MEC approved the request and Henry L. Chiles Jr. was appointed as arbitrator.

Hearings were held on September 21 and 23, 1994. The transcripts were received on October 20, 1994 and the briefs were timely filed on November 22, 1994.

THE PRECIPITATING EVENT AND BACKGROUND

One of the WSF vessels crashed into the right wing wall of the Fauntleroy ferry terminal. This accident on September 22, 1993

demolished the right wing wall and pushed it up against the apron. The accident also pushed the transfer span into the tower on the south side of the landing slip, leaving the transfer span inoperative, and pushed the landing slip towers so they leaned to the south.

Ferry service was interrupted until the wing wall was removed and the transfer span was pulled away from the towers so that it could be operated. Once this done, vessels could land, but only by using a springline. Testimony indicating that landing on a springline was undesirable. It is slower and a schedule cannot be kept.

The Washington State Ferry Terminal Engineering Manager determined that the dock was unstable and need repairs. Plans for repairs were drawn and bids solicited. By October 1, a construction schedule was established. A ferry schedule was prepared for alternate routes while the dock was closed.

The schedules were discussed with the IBU on October 5. The schedule, involving five instead of the usual three ferry vessels, started October 9 and lasted 23 days. When the dock was repaired normal schedules resumed.

ISSUES

There are three issues to be resolved:

1. Did WSF have an obligation under the contract to meet and bargain with IBU about the route changes that were to be for a period of less than 30 days?
2. Did WSF violate the IBU/WSF Agreement, Rule 16 and should the grievances be "deemed granted"? Was a timely response

required of WSF after the unfair labor practice charge was filed by IBU?

3. If the answers to either of the foregoing questions is/are "yes," what is the remedy?

Position of IBU

The IBU took the position that the Ferry System violated the contract when it changed the employees schedules without allowing employees to bid on the jobs. Hours worked outside of regular hours must be paid at double time rate. The IBU took the position that the schedule changes were governed by Rule 21.14.

The IBU further contended that if the employer does not provide a written response to the grievance within 15 days of its meeting with IBU the grievance will be "deemed to be granted."

Position of WSF

The WSF contends that unless the language in the CBA clearly provides for rebidding the WSF does not have to rebid jobs, pay overtime or travel time and mileage except to the regular crews of the M.V. KLAHOWYA. WSF contends that Rule 7.05 does not apply and Rules 21.07 and 21.14 do not require a job rebid for openings lasting less than 30 days.

WSF contends that the "grievance deemed granted" issue is premature. The parties never held the grievance meeting that triggers the 15 calendar day "deemed granted" provision.

Having read and carefully considered the entire record, including transcript, exhibits and briefs the Marine Employees' Commission hereby enters the following findings of fact.

FINDINGS OF FACT

1. One of the WSF vessels crashed into the right wing wall of the Fauntleroy ferry terminal. This accident on September 22, 1993 demolished the right wing wall and pushed it up against the apron. This accident also caused other major damage and the terminal was not stable. Ferry service was interrupted until the wing wall was removed and the transfer span was pulled away from the towers so that it could be operated. Once this was done, vessels could land, but only by using a springline. Testimony indicated that landing on a springline was undesirable. It takes skill on the crews part and takes more time. It is slower and a schedule cannot be kept.
2. WSF's Terminal Engineering Manager Charles Cook decided that the dock needed to be repaired as soon as possible. He concluded that the dock was subject to movement that could force a shutdown. Mr. Cook's staff prepared repair plans in two days and advertised the contract. Bids were opened on September 27. The \$800,000 contract called for the work to be completed in 14 or 15 days. The dock would be closed. A construction schedule was established by October 1.
3. Dave Remagen, WSF's Service Planning Manager, worked over the weekend to complete a vessel service schedule. Mr. Remagen created three new temporary ferry routes: one from Vashon to Seattle; one from Southworth to Seattle; and one a one-boat shuttle from Vashon to Southworth. These three routes could not be serviced by the three boats on the route because the new routes to Seattle were twice as long. Five vessels were assigned to the runs. Once the vessels were assigned Assistant Port Captain Dave Black worked with Mr. Remagen to prepare work schedules. Their goal was to try and have the least impact on employees.

4. Once the schedule was developed both the IBU and the MM&P was called to discussed the proposed schedules. The meeting was held on October 5, 1993. Scott Braymer and Dennis Conklin of the IBU attended the meeting. WSF explained the emergency situation and gave the IBU the proposed schedules.
5. The parties differ as to what was said or agreed to at the meeting. The IBU says they asked to rebid the route, but was told that "It was impossible to rebid the schedule given the time frame." there was some testimony that a rebid would have taken at least 15 days. The IBU says WSF agreed to pay travel time and mileage to everyone.
6. WSF says the IBU did not ask to rebid the routes. WSF says it promised to pay travel time and mileage for regular crew members on the KLAHOWYA since its relieving terminal was changed, but made no promise to do so on other vessels.
7. After the meeting, the WSF implemented its service and work schedules. The effect was to increase from three boats to five boats and the total number of jobs from 74 to 138. The list of the five boats including route, work hours, days off and relieving terminal are set forth below. (WSF Brief, pp. 6-8.)

M.V. ISSAQUAH (. . . Vessel #1)

<u>ROUTE:</u>	Vashon/Seattle
<u>WORK HOURS:</u>	Changed to be 55 minutes later.
<u>DAYS OFF:</u>	Did not change. . . .
<u>RELIEVING TERMINAL:</u>	Did not change. . . .

M.V. KALEETAN

ROUTE: Vashon/Seattle

WORK HOURS: Did not change, because all crews on the M.V. Kaleetan were make-up crews . . ., made up of on-call employees . . ., who have no regular work hours, days off, or relieving terminal to be changed. . . .

. . .

M.V. KLAHOWYA (. . . Vessel #2)

ROUTE: Southworth/Seattle

WORK HOURS: Changed to be 1 hour and 5 minutes to 1 hour and 15 minutes earlier on week days, and 3 hours and 55 minutes earlier on weekends. . . .

DAYS OFF: Did not change. . . .

RELIEVING TERMINAL: Changed from Vashon to Seattle. . . .

M.V. QUINALT (. . . Vessel #3)

ROUTE: Southworth/Seattle

WORK HOURS: Did not change for the reasons discussed above for the M.V. KALEETAN, since the QUINALT's crews were all make-up crews. . . .

. . .

M.V. RHODODENDRON

ROUTE: Vashon/Southworth

WORK HOURS: The crews from the M.V. QUINALT, previously the number 3 vessel on the Fauntleroy/Vashon/Southworth route, moved to the RHODODENDRON. . . . These crews changed from non-touring

watches to touring watches.
. .

DAYS OFF: Changed from every
Saturday/Sunday to every other
Thursday, Friday, Saturday, and
Sunday. . . .

The new schedule started on October 9 and lasted 23 days. The WSF contends that this period of closure was less than the 30 days required to trigger job bidding requirements under section 21.07A of the collective bargaining agreement.

8. When pay orders came in for the period of temporary dock closure, many persons asked for additional compensation. The employer's payroll persons thought the pay requests "confusing." The employer set aside \$6,000 that they agreed was owed to the crew of the KLAHOWYA.

The IBU filed seven grievances that were received by the WSF between November 24 and December 7, 1993. The WSF concluded from a reading of the grievances that IBU members were claiming overtime for all hours worked during the 23 day closure. The WSF and the IBU agreed that time and mileage should be paid to crew members of the M.V. KLAHOYWA.

9. Sometime in early December 1993 Dave Rice of WSF and Dennis Conklin of the IBU attempted to discuss the grievances. Mr. Rice says that he told Mr. Conklin that he needed more information and that someone else would be handling the grievances. They are in agreement that the meeting contemplated by Step II, paragraph 2 of Rule 16 of the collective bargaining agreement was never held.

Before the meeting was held, the IBU filed ULP charges with MEC alleging that the grievances should be granted because the time periods set forth in paragraph 2 had run.

10. When the parties met on October 5, 1993 to discuss the temporary routes and schedules there was some discussion of whether or not the collision with the dock was a maritime emergency. Mr. Black thought the parties' intent was to include a dock collision within the meaning of Rule 18.01. The IBU contended that the collision was not a maritime emergency. Rule 18.01 states:

RULE 18 - EMERGENCY SERVICE

18.01 Maritime Emergency Service such as collision, breakdown, stranding, rendering aid to another vessel, shall not be considered overtime. The additional hours shall be paid for only at the straight time rate of pay. This provision shall relate only to the crew on watch at the time of the emergency.

In the instant situation, a ferry collided with a dock. If it was the intent of the parties to include this type of action it should have clearly been stated in the CBA. It was not. Rule 18.01 applies to a ferry vessel itself or rendering aid to another vessel. It is the conclusion of the MEC, after a careful reading of the rule, that it does not apply in this case. There was no maritime emergency within the meaning of Rule 18.01.

11. At one point during the hearing, the IBU contended that Rule 7.05 applied in the instant matter. Rule 7.05 states:

RULE 7 - CREW REQUIREMENTS

. . .

7.05 In the event vessels or facilities are added or if present units are re-engined the parties shall immediately meet to negotiate the appropriate wages, hours, terms and conditions of employment for any employee(s) assigned to the vessel or facility. In the event the parties fail to agree within (3) working days, or any mutually agreed upon extension either party may

invoke the provision of RCW 46.64 for final resolution of the matter.

This clause applies in the event vessels or facilities are added or re-engined. Neither happened in this case. Temporary routes were added but they were operated by the vessels in normal service with WSF. Temporary routes were not mentioned and it is the conclusion of the MEC that temporary routes formed for the Fauntleroy dock repair are not included within the meaning of Rule 7.05 and it does not apply in the instant case.

12. As to whether or not WSF had an obligation to meet and bargain with IBU for temporary route changes. We need to examine Rules 21.07 - Filling of Vacancies and Exhibit 28.

RULE 21 - SENIORITY AND ASSIGNMENTS

. . .

21.07 Filling of Vacancies

- A. Employees interested in year-round positions, temporary assignments or temporary promotions, minimum of 30 working days, to a higher classification or pay rate must notify the Employer and the Union in writing of the positions they wish to fill. The Employer shall maintain a file of all such requests and, upon receipt of such requests, shall notify in writing the employee submitting such request of its receipt. These requests will be kept active and on file for a period of one (1) year after receipt then placed in the employee's personnel file. The Employees must indicate in writing their desire to extend the request each subsequent year. If an employee rejects a position offered in response to a bid, such bid will be deemed withdrawn and may not be resubmitted for ninety (90) days.

* * * *

WSF JOB POSTING PROCEDURE/IBU DECK POSITIONS

...

JOB POSTINGS Re: TEMPORARY ASSIGNMENTS (Contract Rules 21.07, 2109).

- Temporary job openings that are expected to last in excess of thirty (30) days will be posted. (Temporary openings less than thirty (30) days will not be posted.)
- The posting period for such temporary openings shall be ten (10) calendar days.
- Following the deadline date of the job posting, management will compile the job bids and the position will be awarded to the senior qualified bidder. A notice will be sent to the successful bidder indicating the effective date of the new assignment, which will generally be coordinated with the next work period. The results of each job posting will be posted as a notification to other bidders. The successful bidder will remain in the temporary assignment until such assignment is completed (per Contract Rule 21.09).
- Withdrawal of a job bid on a temporary posting must be done, in writing, prior to the end of the ten (10) day posting.

...

The IBU took the position at the October 5, 1993 meeting that the routes all had to be posted for bidding. WSF declined saying that the routes were temporary, only 14 or 15 days, and normal service would be restored.

WSF took the position that schedules were carefully figured and persons could not obtain better schedule times through the bidding process. An examination of the job posting procedure indicates that postings will be for 20 days. Temporary

postings for more than 30 days must be posted for 10 days. In each case, bids must be reviewed, put in order, awarded and transfers made. All of this takes time.

WSF took the position that they did not have much time available. Once they had the repair job bid and a schedule made out they only had 4 days to put it into effect. They could not have used the normal bidding process on this repair job. There was testimony that in an earlier situation of two days duration vessel captains checked with their crews to see if they wanted to bid the temporary change. The crews did not want to bid.

It might have been nice to have asked the crews if they wanted to bid and if they did not, the burden of the grievance would not have occurred. If they had wanted to bid, time for the bidding process would have been too short. It could not have been done in four days. Testimony indicated the dock was fragile and needed to be stabilized and repaired without delay.

13. There is no requirement in the CBA to bid jobs for less than 30 days. It clearly states in the Job Posting Procedure that temporary openings less than 30 days will not be posted. If they do not need to be posted, it is assumed that the Employer has the right to assign work for this period of time to meet its needs.

14. IBU contended that Rule 21.14 applies in this case. Rule 21.14 states:

RULE 21 - SENIORITY AND ASSIGNMENTS

. . .

21.14 Vessel Shift changes. When any vessel watch schedule is changed by three (3) hours or more and/or the employees' days off assigned to said vessel are changed by at least one (1) day or the vessel's home terminal is changed all assignments will be subject to bid by seniority on that run. Only the most senior year around employees assigned to that run may bid on the assignments.

The rule must be reading context with other sections of Rule 21, the whole tenor of which gives the impression it protects the rights of full time employees working on assignment at least a minimum of 30 working days. It does not say a temporary change of less than 30 days must be bid. The MEC concludes that Rule 21.14 is not controlling in this matter.

15. After very carefully considering the testimony, exhibits and the briefs the MEC concludes that the Employer WSF did not have to post the temporary route assignments or changes for the Fauntleroy dock repair as they were for less than 30 days.
16. Both parties agreed that the crew of the KLAHOWYA was due time and mileage and the MEC accepts the agreement. The IBU did not provide that any other claim for other crews has merit. The WSF had the right to assign its hours of work for this temporary period. Employees are entitled to their regular rates of pay that they would have normally received for this period.
17. The grievance "deemed granted" issue is a complex one in this case. Rule 16, Step II - Formal(2) states the "deemed granted" requirements.

RULE 16 - DISPUTES

STEP II - FORMAL

. . .

2. Within 15 work days of receipt of the grievance the Employer will meet with the Union for the purpose of resolving such grievance. Unless the grievance is resolved at the meeting, the Employer shall give the Union written notice of its decision concerning the grievance by hand delivery of such notice or by placing the notice in the mail within 15 calendar days after the date of the meeting. If such written notice is not directed to the Union in a timely manner the grievance will be deemed to be granted by the Employer.

Crew members working the temporary routes filed their pay vouchers. Many claimed additional amounts of money. WSF paid for 40 hours a week. The IBU filed a class action grievance on November 23, 1993. All of the other grievances were filed between November 24 and December 17, 1993.

18. The contract calls for a meeting within 15 days of the filing of a grievance. WSF is responsible for calling the meeting. Such a meeting was never held. The seven grievances were not discussed at later grievance meetings. These grievances were listed as under review. Mr. Rice said they had not discussed the grievances and someone else would be handling them. Mr. Rice indicated that WSF needed more information.
19. The IBU filed unfair labor practice charges with the MEC on November 3, 1993. WSF contended that filing the charge with MEC relieved WSF of an obligation to respond in the grievances. Everyone should have the free to file a charge with a public agency if they have the right to do so.

The part of Rule 16, Union Stewards at paragraph 3 does present a problem to the MEC. It states as follows:

RULE 16 - DISPUTES

. . .

Union Stewards

. . .

. . .If a grievance is being processed pursuant to this Rule and an employee or the Union pursues the same grievance through any other channel or method, then the Union and the employee agree that the grievance shall be considered to have been abandoned.

This indicates to the MEC that the Union may have waived its rights to process a grievance by filing a charge with the MEC. If that were true then WSF would not have to answer to any of the grievances in the timely fashion set out later in Rule 16. It adds confusion to the issue.

This issue has arisen before between the parties, but it has always settled. The Washington State Ferries indicated that they needed more information before the required meeting was held. They did not ask the IBU for information. The IBU did not offer information, nor did they pursue the holding of the required meeting. They had a duty to do so.

The lack of the employer holding the first required meeting, and the lack of the union following up on the meeting, combined with the issue of waiver as set forth in the third paragraph of "Union Stewards" convinces the MEC that the issue is not clean-cut. The MEC's finding in regard to the issue of the WSF bargaining about temporary routes really makes this a far less important matter.

20. The MEC concludes that the proper steps were not taken by the parties to hold the initial necessary meeting, therefore the issue of "deemed granted" must fail. The WSF has not defaulted on the grievances. The grievances should not be

granted except as the MEC found merit in the M.V. KLAHOWYA issue.

CONCLUSIONS OF LAW

1. MEC has jurisdiction over the labor-management relations between and among the employee, employer, labor union and matters involved in this case. Chapter 47.64 RCW; specifically RCW 47.64.150 and 47.64.280.
2. MEC may not change or amend the terms, conditions, or applications of the 1991-1993 collective bargaining agreement by and between WSF and Inlandboatmen's. RCW 47.64.150
3. The MEC concludes that WSF did not have an obligation to meet and bargain with IBU about the temporary job assignments. All of the documents speak of bidding either for temporary or permanent positions lasting 30 days or more. The DBA does not speak of positions lasting for less than 30 days. The MEC concludes that in the instant dock repair situation the WSF may assign temporary work for less than 30 days to meet the needs of its operation.
4. The grievance deemed granted issue should be denied. The seven grievances (93-138, 140, 141, 142, 143, 146C and 147) filed by IBU against WSF concerning the Fauntleroy accident should be denied with the exception of the portion that deals with the M.V. KLAHOWYA.
5. The MEC is without authority to award interest on wages owed to ferry crew members in this case. "It is not customary in arbitration for the arbitrator to grant interest on claims which he finds owing." Elkouri and Elkouri, How Arbitration Works 406 (4th Ed. 1985).

6. The MEC has consistently declined to award attorney's fees in less than a willful violation. The request for an award of attorney's fees should be denied. "It is not customary practice to award attorney's fees against the offending party in arbitration." Elkouri & Elkouri, supra at 407.

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

DECISION AND ORDER

1. It is hereby ordered that the cleaning allowance portion of MEC Case No. 12-93 is dismissed as adjusted.
2. It is hereby ordered that the ULP charges filed by IBU in Case No. 12-93 and 14-93 are hereby dismissed.
3. The seven grievances (93-138, 140, 141, 142, 143, 146C and 147) filed by IBU against WSF concerning the Fauntleroy accident are denied with the exception of the portion that deals with the M.V. KLAHOWYA.
4. The WSF is ordered to pay all money due to crew members of the M.V. KLAHOWYA within 30 days of this order.

5. The IBU request for interest on wages due is denied.
6. The IBU request for attorney's fees is denied.

DONE this 24th day of January 1995.

MARINE EMPLOYEES' COMMISSION

/s? HENRY L. CHILES, JR., Chairman

/s/ JOHN P. SULLIVAN, Commissioner