

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

In the Matter of the Petition of)	MEC Case No. 14-99
WASHINGTON STATE FERRIES)	
for Clarification of an Existing)	
Bargaining Unit.)	DECISION NO. 230 – MEC
)	
WASHINGTON STATE FERRIES,)	DECISION AND ORDER
)	AFFIRMING DECISION
Petitioner,)	NO. 220-MEC
)	
v.)	
)	
INLANDBOATMEN'S UNION OF)	
THE PACIFIC,)	
)	
Labor Organization.)	
)	
)	

Christine Gregoire, Attorney General, by David Slown, Assistant Attorney General, appearing for and on behalf of the Washington State Ferries (WSF).

Schwerin, Campbell and Barnard, attorneys, by Elizabeth Ford, appearing for and on behalf of the Inlandboatmen's Union of the Pacific (IBU).

This matter came before the Marine Employees' Commission on December 8, 1999 when WSF filed a Petition for Review of MEC Chairman's Order of Dismissal, Decision No. 220-MEC, entered on November 18, 1999. On December 22, 1999, MEC received WSF's brief. IBU was granted an extension of time for filing their response brief, which was received by the MEC on January 18, 2000.

Chairman Chiles' Dismissal had been issued in response to WSF's Petition for Clarification of Existing Bargaining Unit, filed on October 13, 1999. Essentially, WSF's Petition sought to clarify out of a certified ferry employee organization unit, employees who work as terminal agents. WSF proposed creating a separate bargaining unit, still within the IBU, of the 33 regular and relief Terminal agents. The Terminal agents are members of an employee bargaining unit,

represented by the Inlandboatmen's Union of the Pacific, along with all unlicensed employees of Washington State Ferries, assigned to the Deck, Terminal, Information Departments and Shoreside Maintenance. The total number of employees in this bargaining unit is 976.

During recent contract negotiations, IBU advised WSF they are unwilling to set up a separate unit for the terminal agents and bargain for them separately from their other members in the employee bargaining unit. Since IBU has declined to set up a separate unit for terminal agents within the IBU, WSF filed its Petition with the MEC.

WSF wants the MEC to create a separate bargaining unit of terminal agents with the IBU, asserting that the terminal agents are supervisors as defined by law.

Chairman Chiles' dismissal of WSF's Clarification Petition was based upon the long and historical significant bargaining history of the entire IBU unit which, to date, includes all 33 regular and relief terminal agents. Plus there was no basis to exclude terminal agents from the appropriate IBU unit under RCW 47.64.

DISCUSSION

To find the State of Washington's public policy regarding ferry employees and their employee organizations or unions, we must look at the applicable statute or law

47.64.006 Public policy. The legislature declares that it is the public policy of the state of Washington to: (1) Provide continuous operation of the Washington state ferry system at reasonable cost to users; (2) efficiently provide levels of ferry service consistent with trends and forecasts of ferry usage; (3) *promote harmonious and cooperative relationships between the ferry system and its employees by permitting ferry employees to organize and bargain collectively*; (4) protect the citizens of this state by assuring effective and orderly operation of the ferry system in providing for their health, safety, and welfare; (5) prohibit and prevent all strikes or work stoppages by ferry employees; (6) *protect the rights of ferry employees with respect to employee organizations*; and (7) promote just and fair compensation, benefits, and working conditions for ferry system employees as compared with public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia in directly comparable but not necessarily identical positions.

(Emphasis added.)

Next, we must look at the statutes or law regarding the definitions of the terms as used in RCW 47.64.006 Public policy.

47.64.011 Definitions. As used in this chapter, unless the context otherwise requires, the definitions in this section shall apply.

...
(3) “Collective bargaining representative” means the persons designated by the secretary of transportation and employee organizations to be the exclusive representatives during collective bargaining negotiations.

...
(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.

(6) “Ferry employee organization” means any labor organization recognized to represent a collective bargaining unit of ferry employees.

(7) “Ferry system management” means those management personnel of the marine transportation division of the department of transportation who have been vested with the day-to-day management responsibilities of the Washington state ferry system by the transportation commission and who are not members of a collective bargaining unit represented by a ferry employee organization.

The “collective bargaining representatives” for the terminal agents would be the business agent for the IBU. The “ferry employee” covers anyone employed by WSF, no matter what their job, but not exempt employees. Terminal agents are not exempt. “Ferry employee organization” here would be the IBU. “Ferry system management” manages the operations of WSF and would not be members of a collective bargaining unit or a union.

Under RCW 47.64.011(5) Definitions, there is a broad definition of “ferry employee” that covers all workers except “managerial employee” as set out in 47.64.011(7). The managerial employees are not members of a collective bargaining unit or union. There is nothing in RCW 47.64 that makes any separate designation for “supervisor.” A supervisor is the same as a “ferry employee.” WSF’s Petition for Clarification states in the very first line as follows:

Reasons for proposed clarification: Terminal Agents are supervisory employees as defined by law.

There is nothing in RCW 47.64 that defines “terminal agents” or for that matter “supervisors.” WSF takes the position that terminal agents are supervisors who should be excluded from any bargaining unit under the Taft-Hartley Act of 1947.

What is a supervisor? Section. 2(11) of that Act defines the term “supervisor” as:

The term “supervisor” means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Within the Masters, Mates and Pilots (MM&P) unit, the Captain or Master of the ferry would supervise or oversee the Chief Mate and Second Mate.

Within the Marine Engineers Beneficial Association (MEBA) unit, the Staff Chief Engineer would be the supervisor of the engineers and the oilers and wipers; next in command would be the Chief Engineer, Assistant Engineer and finally the Oiler.

Within the IBU, the Terminal Agent would be over Ticket Seller, Ticket Taker, Information Supervisor and Clerks at the terminal; AB-Bos’n over the Deck Crew and the Shoregang Foreman over the Leadman and members of the Shoregang.

There is no problem at the present time in that with the three unions as noted there are “supervisors and supervised” in the same union or “ferry employee organization.”

In District No. 1, National Marine Engineers Beneficial Association v. Inlandboatmen’s Union of the Pacific (MEC Case No. 3-87), MEC issued the following decisions: 1) Decision No. 35-MEC on December 9, 1987, 2) Decision No. 38-MEC on February 14, 1988.

Initially, MEBA filed a petition to investigate the question of representation as they claimed the wipers and oilers in the IBU wanted to be represented by MEBA. IBU claimed the MEC had no

jurisdiction to conduct the investigation requested by MEBA's petition. The MEC decision was that the agency had jurisdiction to hear the petition.

A hearing was held on December 21, 1987 on MEBA's petition of the unlicensed wipers and oilers leaving the IBU and joining the USCG licensed engineers who were their supervisors in the MEBA. Decision No. 38-MEC, Conclusion of Law 4, found that "MEC must reject the 'supervisor v. supervised' factor as a bar against wipers and oilers being in a bargaining unit with engineers."

In Decision No. 38, MEC ordered that this agency would conduct an election with ballots giving the wipers and oilers the choice of remaining in the WSF/IBU or merging with the WSF/MEBA bargaining unit. The result was that the oilers and wipers joined the WSF/MEBA unit.

Terminal agents have at the present time a variety of duties that they perform at their terminal in addition to directing the activities of employees at their terminal depending on season/schedule. The use of new technology has increased the work of individual terminal agents.

In accordance with the union contract between the IBU and WSF, the senior terminal agents bid for their specific terminal based upon seniority.

The terminal agents are supervised by a terminal manager; there is one terminal manager for the South Sound Terminals and another for the North Sound Terminals.

When viewing the job description for WSF terminal agents and comparing it to Sec. 2(11) of the Act defining the term "supervisor" the assigned duties of the terminal agent have enlarged and expanded they do not appear to meet the stated qualifications of a supervisor. Under the Act, certain positions are excluded from the bargaining unit; those various positions are managerial, supervisory or confidential positions. See *Washington Post Co.*, 254 NLRB 168, 171 n.22 (1981).

In determining the supervisory, managerial, or confidential status of employees, the Board has long held that the important consideration in determining such status is the actual facts relating to job performance. For example, titles or job description do not confer status. Golden West Broadcasters-KTLA, 215 NLRB 760, 761 (1974); Sol Henkind, an individual d/b/a Greenpark Care Center, formerly known as Willoughby Health Related Facility, 231 NLRB 753 (1977).

Under RCW 47.64, there are no provisions for any specific position to be excluded from a bargaining unit. In fact, under definitions listed in RCW 47.64.011(5), the term “ferry employee” means any WSF employee who is represented by a ferry employee organization. Terminal agents are members of and represented by the IBU.

WSF has alleged no change of circumstances necessitating the sudden removal of the terminal agents from the present ferry employee organization, the IBU unit or the need or requirement to clarify the terminal agents into a separate unit either within or outside the unit represented by IBU.

The terminal agents have been members of the IBU unit for over 50 years, as they were employed on the “Black Ball Ferries,” operated by Puget Sound Navigation Co. before the State of Washington bought the entire operation in 1949. The terminal agent position, also known formerly as the Information Agent, has been essentially the same under both Puget Sound Navigation Co. and Washington State Ferries in managing a ferry terminal at various locations. There is no doubt the job has become more complicated over the years resulting in appropriate wage increases by not only the state of Washington through COLA’s, contract negotiations, and interest arbitration award on August 18, 1998 Opinion of Arbitrator Michael H. Beck.

Arbitrator Beck’s Opinion and Award, affecting WSF and IBU, includes the following comments regarding terminal agents and their employer WSF.

The employer admits that the job of a terminal agent has “gotten harder over the years,” but argues that this is true of all jobs at Washington State Ferries (WSF) resulting from an “evolutionary change associated with increased traffic.”

Beck Opinion p.3.

It is true, as the employer points out, that the terminal agent is still performing the same overall job as was performed in 1984 in that he or she is managing a ferry terminal.

Beck Opinion p.4.

Based on all of the foregoing, I find that the job duties and responsibilities of terminal agents have increased over the years since 1984. However, this fact alone, in the circumstances here, does not necessarily require a wage increase.

Beck Opinion p.5.

In addition to the duties of the terminal agents at the time of the hearing in the summer of 1998, Arbitrator Beck took into consideration the economic comparison of the WSF terminal agents to people performing the same position for British Columbia Ferries and Alaska Ferries in making his award.

Arbitrator Beck's August 18, 1998 decision awarded the IBU terminal agents a wage increase of 15.37 per cent.

In the Matter of the Petition of City of Richland for Clarification of a Bargaining Unit Represented by International Association of Fire Fighters, Local 1052, the administrative agency, the Public Employment Relations Commission (PERC) applied Section 2(11) of the Act that defines the term supervisor to the battalion chiefs and their relationship to the fire fighters. The general policy of the Commission is to exclude supervisors from the bargaining unit of the rank and file employees, the firefighters. The court upheld the Commission's decision placing fire department battalion chiefs in a bargaining unit separate from nonsupervisory employees. However, in a later decision involving the same parties, the court ruled PERC improperly refused to certify Local 1052, whose leadership is dominated by the battalion chief, the supervisor, as the bargaining representative of the supervisors' unit when the same local was also the certified representative of the nonsupervisory employee, the fire fighters.

The court found that although RCW 41.56 allows the Commission to determine the “appropriate” bargaining unit, there is nothing in that chapter which allows it to determine the “appropriate” bargaining representative.

The Commission and the employer, the City of Richland, asked the court to deny certification to the union lead by supervisors, since this would lead to an unfair labor practice of employer dominance. The court; however, found that federal law and state laws significantly differ in their treatment of supervisors and that the federal approach was not binding.

The applicable law for the ferry employees, 47.64 RCW, does not contain any directions that the supervisors cannot be in the same unit as those supervised. The history of this Public Employment Relations Commission case can be found as follows: Decision No. 279, PECB (1977); 29 Wn. App. 599 (1981), review denied, 96 Wn.2d 1004 (1981), Decision No. 1519, PECB (1982), 45 Wn. App. 686 (1986), review denied, 107 Wn.2d 1030 (1987).

A synopsis of this case follows: From prior to 1970 to 1987, the battalion chiefs had been included, then excluded, then included, then excluded and finally included in Firefighters Local 1052. The supervisors and the supervised ended up in the same collective bargaining unit. The City of Richland was of the opinion that they could bargain best with both the battalion chiefs and the fire fighters in the same unit, Local 1052, and that is the way they operate today.

SUMMARY

The purpose of the Marine Employees’ Act is to “promote harmonious and cooperative relationships between the ferry system and its employees by permitting ferry employees to organize and bargain collectively; . . .” Another purpose is to “protect the rights of ferry employees with respect to employee organizations; . . .”

A unit clarification petition is a procedure for resolving ambiguities when there has been recent substantial changes in the duties and responsibilities of some members of the bargaining unit to create a doubt as to whether the individuals, here terminal agents, should be excluded or

included. Union Elec. Co. v. Local 1455 Int'l Bhd. of Electrical Workers, 217 NLRB 666, 667 (1975).

The terminal agents who continue to perform the same type of work under the same supervision, the North or South Terminal Manager, should remain in the same bargaining unit. As a general rule, the arbitrator will not clarify a bargaining unit to interfere with a long-term collective bargaining history unless the facts in the case constitute “compelling circumstances” and where they are “recent substantial changes.” The facts in this matter do not warrant a change.

ORDER

We have carefully considered and reviewed the material files and record including the original petition, the Chairman’s Order of Dismissal (Decision No. 220-MEC), the request for review and the briefs. The MEC finds the record before us sufficient to proceed without oral argument. Accordingly, the WSF request for oral argument is denied. We have determined that the Chairman’s Order of Dismissal should be and hereby is affirmed. WSF’s Petition for Clarification of Existing Bargaining Unit, docketed as MEC Case No. 14-99, is dismissed.

DATED this ____ day of February 2000.

MARINE EMPLOYEES' COMMISSION

JOHN P. SULLIVAN, Commissioner

DAVID E. WILLIAMS, Commissioner