

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

DISTRICT NO. 1 MARINE
ENGINEERS' BENEFICIAL
ASSOCIATION,

Complainant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC CASE NO. 32-02

DECISION NO. 358 - MEC

DECISION AND ORDER

Davis Roberts and Reid, LLP, by *Michael McCarthy* appearing for District No. 1, Marine Engineers' Beneficial Association.

Christine Gregoire, Attorney General, by *David Slown*, Assistant Attorney General, appearing for the Washington State Ferries.

THIS MATTER came on regularly before the Marine Employees' Commission when the Union, District No. 1, Marine Engineers' Beneficial Association (MEBA), on February 21, 2002, filed an unfair labor practice complaint charging that Washington State Ferries (WSF) had refused to bargain by unilaterally implementing a new policy regarding mileage and travel time claims made under the MEBA/WSF contract. More specifically the Complainant Union argues that by issuing a memo to Kaleetan engineering employees in December 2001, WSF unilaterally implemented a new requirement. Courtney Lamm, an engineering employee assigned to the Kaleetan when that vessel was permanently transferred to Seattle, was receiving Travel Time and Mileage (TTM), pursuant to the collective bargaining agreement. He had filed an econogram seeking to return to an Anacortes based vessel. When Lamm sought to withdraw his econogram

and stay with the Kaleetan, he was told that he would not be permitted to do so unless first refunding any TTM previously received in connection with the vessel's transfer.

Following the filing of the instant case, MEC scheduled the matter for settlement in the presence of a MEC mediator. Settlement efforts were unsuccessful and the matter was set for hearing before Hearing Examiner John D. Nelson. The hearing took place on December 20, 2002. Both parties were represented by counsel. At the conclusion of the hearing the parties agreed to oral argument in lieu of briefs.

NATURE OF THE PROCEEDING

MEBA brought this charge before the MEC after engineering employee Courtney Lamm attempted to withdraw an econogram, which he had put in following his vessel's permanent transfer from the Anacortes route to Seattle. His attempt to withdraw the econogram, which sought his return to an Anacortes opening was met with a new written policy statement issued by Port Engineer Tim Browning, a management employee of WSF. The alleged new policy required that employee Lamm would only be permitted to withdraw his Econogram if he refunded all TTM funds collected since the movement of the Vessel, the Kaleetan, from Anacortes to Seattle. Lamm declined to refund the payments and the Union filed the charge.

WSF contends that the memo from Port Engineer Browning to Engineer Lamm represented Browning's understanding of what the controlling contract provisions meant. Thus, in the view of WSF, accepting the Union's view of the contract requirements would be an open invitation to any engineer officer to put in an econogram to return to his/her home route each and every time the vessel underwent a change in home terminal, only to later withdrawing the econogram after collecting TTM funds. Further WSF maintains that it has followed a long practice of interpreting the MEBA contract in a manner consistent with Port Engineer

Browning's description in his December, 2001 memo to Courtney Lamm. Both parties to this dispute view the contract provisions found in Sections 12 (c) and 20 (j) to be critical to the resolution of the underlying issue. The Union further relies on the provisions of Section 12 (g).

In evidence is the 1999-2001 collective bargaining agreement between MEBA and WSF. By operation of law, the parties agree that the 1999-2001 agreement continues in effect throughout the events here in issue. The provisions are as follows:

SECTION 12 – MILEAGE AND TRAVEL TIME

(c) In the event vessels and/or employees are assigned to other than regular routes on a temporary basis and the regularly assigned Engineer Officers are retained with the vessel or individually assigned to another vessel, they shall be paid mileage and travel time pay only for travel actually performed both ways from their regular relieving terminal to the temporary relieving terminal according to the schedule shown on Schedule A attached hereto.

....

(g) Engineer Officers on assignments of more than thirty (30) days scheduled duration for other than routine annual maintenance at Eagle Harbor or other shipyards shall be entitled to travel pay and mileage in accordance with subsection (E) above.

....

SECTION 20 - SENIORITY

(j) Normal practice for Engineer Officers assignments will be to keep trained Engineer Officers on the same vessels as much as possible. When vessel route assignments are changed on a permanent basis, an Engineer Officer shall have the right after thirty (30) days to be reassigned to another vessel operating the route of his/her previous relieving terminal without regard to strict seniority provisions. He/she will be assigned to the first open position in his/her past relieving terminal after written application to the Employer. Applications may be submitted immediately upon notification that a vessel route assignment has been changed on a permanent basis. Transfer prior to thirty (30) days is contingent upon a qualified Vacation Engineer Officer being available.

Once submitted applications may not be withdrawn except by mutual agreement between the Employer and the employee. After one (1) month an Engineer Officer assigned to a permanently transferred vessel will be considered to be in a

permanent assignment, unless application was made. If such application is on file and no openings are available, then the Engineer Officer shall be considered to be on temporary assignment. This temporary assignment will not preclude application to other open positions.

THE ISSUES

The issue before the MEC is whether the policy proclaimed in the December memo from Port Engineer Browning to employee Lamm violates the governing statutes which require that the WSF engage in good faith bargaining prior to making changes in wages, hours, or working conditions of its represented employees?

If this question is answered affirmatively, what remedy is reasonably appropriate?

DISCUSSION

Courtney Lamm was the alternate staff chief aboard the vessel Kaleetan with a home terminal designated as Anacortes. His home was outside of Kingston, Washington on the West side of the Puget Sound.

By memorandum of September, 2001 the Director of Ferry Maintenance for WSF, Mark Nitchman transferred the Kaleetan from Anacortes to Seattle as home terminal. This change was to occur October 16, 2001. Thereafter, Courtney Lamm filed an application econogram within the contractual 30-day period, that he wanted to return to Anacortes, his home terminal. By contract and practice, Lamm was entitled to obtain the first open engineering position on a ferry operating out of Anacortes. Under the circumstances Lamm would have a super-seniority status. Pending action on his econogram, Lamm remained on the Kaleetan, which was assigned to the Seattle to Bremerton route. He commuted from his home in Kingston and was paid travel time and mileage in accordance with the contract.

There came a time when a personal family situation required Lamm to rethink his request to transfer to Anacortes. With a teenage daughter to help guide, Lamm's wife requested that he reconsider transferring, and instead, continue to come home after his work shift. Coming home from the Seattle to Bremerton route could be accomplished in an hour's time as compared with returning home from Anacortes, which could require the better part of a day. Concurrent with the personal situation, Lamm also observed that the crew aboard the Kaleetan had gradually changed to the point of becoming in Lamm's view, the best crew he had ever sailed with. These changes in his point of view caused Lamm to inquire about withdrawing his econogram, and continuing aboard the Kaleetan. In a discussion with Port Engineer Browning, Lamm was told that it would be for the best interest of WSF to have him remain on the Kaleetan. Lamm was also told that he would have to repay any TTM amounts in order to enable his continuity aboard the Kaleetan. Lamm, after consideration, rejected the requirement of repaying his TTM, stating that he did not think the collective bargaining agreement required it. He therefore withdrew his request to stay aboard the Kaleetan. Lamm had not been offered a position aboard any vessel with a home terminal of Anacortes either before his econogram or before the conversation with Port Engineer Browning. About two months after this exchange, Lamm was offered an Engineer position aboard the Evergreen State, a vessel with an Anacortes home terminal designation, but was actually on the Fauntleroy, Vashon, Southworth route for the winter months. Lamm continued receiving travel time and mileage aboard the Evergreen State. A couple of months later, around June 1, 2002 Lamm bid back to the Kaleetan where his seniority entitled him to bid into a Chief Engineer position. He ceased receiving TTM at this point.

Lamm is estimated to have received approximately \$700 per week in travel time, in that his normal workweek was an 80-hour period, followed by a week off. His approximate TTM up

until the time he told Port Engineer Browning that he wanted to withdraw his econogram would have been in excess of \$6000.

WSF argues that the Browning memo, which impacted Lamm's decision, was not the first time that Browning put forth his understanding of the contract terms. Thus, there appear to be instruction from October 2000, to engineering employees of other vessels in which Browning submitted similar interpretations. It was also proffered that there were examples of employees who had repaid TTM in situations similar to Lamm's present case. The evidence of such a practice was not compelling, and is not persuasive of any consistent practice of requiring refunds of TTM when seeking to cancel an econogram to return to a home terminal.

There is nothing in the current collective bargaining agreement which sets forth circumstances or requires the repayment of TTM for any reason. There is no established past practice which would serve to demonstrate a modification of the current contract. TTM repayment has not been the subject of any bargaining between MEBA and WSF in recent years. There was testimony that in the contract period of 1985 to 1987 there was a tentative agreement to include language which would be similar to the Browning interpretation of TTM. This language was never put in the final agreement, and evidence is not clear as to reasons, possible trade-offs or why exactly the tentative agreement was not accepted.

The repay feature is a new interpretation of the relevant contract sections. Prior to implementation, this matter must be submitted to the collective bargaining process required by statute.

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

FINDINGS OF FACT

1. The Complainant and the WSF are entities covered by chapter 47.64 RCW. MEBA is the exclusive collective bargaining agency for a unit of WSF employees in accord with the cited statutes.
2. Courtney Lamm is a WSF engineering employee with credentials to serve as chief engineer on any of the WSF vessels.
3. The current collective bargaining agreement (1999-2001) extended, covers the issue of travel time and mileage in situations where the vessel is permanently reassigned a route.
4. WSF vessel Kaleetan was permanently reassigned from Anacortes to Seattle-Bremerton effective October 2001.
5. Courtney Lamm was serving in the capacity of alternative staff chief engineer aboard the Kaleeten when the reassignment occurred.
6. Shortly after the reassignment, Lamm put in an econogram seeking to transfer to a vessel with an Anacortes home terminal.
7. Lamm collected travel time and mileage while serving aboard the Kaleeten after its permanent transfer.
8. In January 2002, Lamm sought to withdraw his econogram seeking to transfer to an Anacortes vessel.
9. Port Engineer Browning refused, under the contract requirement of mutual agreement, to allow Lamm to withdraw his econogram unless Lamm first repaid the travel time and mileage he had collected.

10. Lamm declined this condition placed on withdrawing his econogram, and reinstated his request to transfer to an Anacortes vessel.

11. There was no credible evidence of a past practice, which required repayment of TTM in circumstances similar to Lamm's situation.

12. The filing of MEBA's complaint and WSF's answer thereto were timely filed and served and otherwise in order.

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

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter herein.
2. Pursuant to chapter 47.64 RCW and the facts of record in this proceeding, respondent WSF is obliged, and may not refuse to bargain collectively with the complainant MEBA relative to any changes it may seek to make in the application of contract terms involving travel time and mileage.
3. There is no past practice of repaying TTM as a condition of meeting the "mutual agreement" for withdrawing an econogram application.
4. In the present factual and statutory context, WSF has imposed a condition of employment unilaterally without affording the opportunity to MEBA to bargain over an interpretation of the collective bargaining agreement, which has a significant impact on unit employees.
5. WSF will be required to return to the status quo ante, to rescind the policy put forth by Port Engineer Browning, pending bargaining over this issue.

ORDER

It is hereby ordered that the complaint by District No.1, Marine Employees' Beneficial Association, alleging unfair labor practice is granted and affirmed.

WSF is hereby directed to bargain collectively and in good faith with complainant union relative to the impact and implementation of the policy of requiring repayment of travel time and mileage in circumstances where an employee submits an econogram seeking to transfer to a different home terminal vessel after the assigned vessel is permanently transferred.

WSF must withdraw any demand for TTM repayment pending resolution of this issue through the statutory bargaining process.

RECONSIDERATION

Pursuant to the provisions of RCW 34.05.470, any party may file a petition for reconsideration of MEC's unfair labor practice ruling with the Commission within ten days from the date this final order is mailed. Any petition for reconsideration must state the specific grounds for the relief requested. Petitions that merely restate the party's previous arguments are discouraged. A petition for reconsideration does not stay the effectiveness of the Commission's

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order. If no action is taken by the Commission on the petition for reconsideration, within twenty days from the date the petition is filed, the petition is deemed to be denied, without further notice by the Commission.

DATED this _____ day of February 2003.

MARINE EMPLOYEES' COMMISSION

JOHN NELSON, Hearing Examiner

Approved by:

JOHN BYRNE, Commissioner

JOHN SULLIVAN, Commissioner