

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION
OF THE PACIFIC,

Complainant,

v.

WASHINGTON STATE FERRIES,

Respondent.

INTERNATIONAL ORGANIZATION
OF MASTERS, MATES & PILOTS,

Complainant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC CASE NO. 40-04
MEC CASE NO. 7-05

MEC CASE NO. 62-04

DECISION NO. 468 - MEC

DECISION AND ORDER

APPEARANCES

Schwerin, Campbell and Barnard, by *Dmitri Iglitzin*, Attorney, appearing for the Inlandboatmen's Union of the Pacific (IBU).

Captain Steve Demeroutis, Local 6 President, appearing for the International Organization of Masters, Mates and Pilots (MM&P).

Rob McKenna, Attorney General, by *David Slown*, Assistant Attorney General, appearing for the Washington State Ferries (WSF).

NATURE OF PROCEEDING

The MEC held a single hearing to take evidence regarding three consolidated cases that alleged unilateral changes in working conditions without bargaining as the result of WSF's

implementation of a new payroll manual. Designated Hearing Examiner, John P. Sullivan, conducted the hearing on July 19 and September 6, 2005. Briefs were timely filed by the parties.

With this Decision, WSF's Motion to Dismiss made during the hearing is hereby denied.

COMPLAINTS CONSOLIDATED FOR HEARING

1. MEC 40-04, *IBU v. WSF*

IBU filed the first of two complaints on February 23, 2004, charging WSF with committing an unfair labor practice within the meaning of RCW 47.64.130 by interfering with, restraining, or coercing employees in the exercise of rights; and refusing to bargain collectively with representatives of employees. The IBU alleges that WSF unilaterally implemented new payroll procedures without bargaining, which changed past practice for submission of travel time and mileage. Further, IBU asserts that WSF unilaterally altered working conditions by implementing a new timesheet requiring employee's name and address, and requiring the employee to sign a statement on the timesheet certifying the information to be true and correct.

On June 9, 2004, the IBU filed an amendment to Case 40-04, which identified the following alleged changes in past practice resulting from of implementation of the new payroll manual:

- a. Requiring employees to "certify that the information on this time sheet is true and accurate and am aware that submitting false information on a time sheet is a violation." Sec. 1, page 1.
- b. Requiring employees to individually ensure they have obtained any revised timekeeping policies and procedures issued by WSF by checking the Table of Contents in the vessel copy of the procedures for the latest revision numbers and dates for each section on a regular basis. In the event an employee discovers that a revision has been issued, the employee is required to make a copy of the new policy or request an updated version from the WSF payroll department. Sec. 1, page 2.
- c. Allowing Port Captains to initiate disciplinary action to ensure compliance with the newly implemented Timekeeping procedures, and making falsification of a timesheet a terminable offense. Sec. 2, page 3.

- d. Requiring time submittals or corrections for prior pay periods, time submittals that lack clear substantiation, and time submittals that require special review and approval to be submitted on a separate timesheet contract to past practice, which allowed employees to submit time worked in prior pay periods. Sec. 3, page 1.
- e. Implementing entirely new procedures requiring disputed or questionable pay claims, leave submitted for On-call or Relief employees, prior period corrections, previously denied pay claims, and bypass pay claims to be submitted on separate timesheets. Sec. 3, pages 1 and 2.
- f. Requiring that in a short crew situation, the name of the crewmember who is being replaced to be written on the time sheet. Sec. 5, page 1.
- g. Requiring that where an employee receives an upgrade or “bump up”, the name of the individual for whom the upgrade is taking place and when to be written on the timesheet. Sec. 5, page 1.
- h. Requiring a crew member to clean unsanitary conditions eligible for penalty pay without advance approval from a vessel officer contrary to past practice. Sec. 5, page 2.
- i. Requiring that travel origination, destination, purpose of travel, home location, and home terminal is written on the timesheet for each travel time or mileage claim before paying a valid claim, and the use of schedule A in all circumstances. Sec. 5, page 2; Sec. 6, page 5.
- j. Requiring that time is entered in 5-minute intervals and split into two separate entries to reflect “worked time” and “guaranteed time”. Sec. 6, page 3.
- k. Requiring that guaranteed time or overtime entries are entered on the last day of the work cycle contrary to past practice, where overtime is calculated and entered on a daily basis or by scheduled watch. Sec. 6, page 3 and 4; Sec. 7, page 1.
- l. Requiring an employee to enter his or her residential address on the timesheet to receive travel time or mileage. Sec. 6, page 5.
- m. Implementing new pay codes including pay code 21, 91, 15, and 31 without negotiation. Sec. 9, App. A, page 1.
- n. Implementing new vessel assignment numbers. Sec. 9, App. C, page 1.

2. MEC 62-04, *MM&P v. WSF*

MM&P filed a complaint similar to Case 40-04 on May 19, 2004, charging WSF with committing an unfair labor practice within the meaning of RCW 47.64.130 by interfering with, restraining, or coercing employees in the exercise of rights; and refusing to bargain collectively with representatives of employees. The MM&P alleges that WSF’s implementation of the new payroll manual altered terms and conditions of employment for WSF deck officers and was done without bargaining with the union. MM&P asserts that the new manual changed compensation

for MM&P members, including, but not limited to changing calculation of travel time and a change to calculating time worked using a decimal system.

3. MEC 7-05, *IBU v. WSF*

On July 22, 2004 the IBU filed a second complaint charging WSF with the essentially the same violations as those contained in Case 40-04. The complaint charges WSF with unilaterally changing the payroll manual and the process for employees to submit pay orders, and implementing the new process while refusing to negotiate the changes in employees' working conditions with the union.

RECORD BEFORE THE MARINE EMPLOYEES' COMMISSION

The Hearing Examiner considered the following records in deciding the issues.

1. IBU's complaint charging unfair labor practices, filed February 23, 2004 (MEC Case #40-04) and amended on June 9, 2004.
2. MM&P's complaint charging unfair labor practices, filed May 19, 2004 (MEC Case #62-04).
3. IBU's complaint charging unfair labor practices, filed July 22, 2004 (MEC Case #7-05).
4. WSF's Answer to the Complaint, filed on July 2, 2005.
5. The official hearing transcript and twenty-one (21) exhibits accepted into evidence.
6. Post-hearing brief of Complainant MM&P.
7. Post-hearing brief of Complainant IBU.
8. Post-hearing brief of Respondent WSF.

9. Administrative and/or judicial notice is taken of the IBU/WSF and MM&P/WSF collective bargaining agreements for June 1, 1999 through June 30, 2001, which remain in force to the present, pursuant to RCW 47.64.170.

FINDINGS OF FACT

1. In April 2004, the WSF issued a new “Deck Timekeeping Procedures” manual, hereafter referred to as the “new payroll manual.”

2. It is undisputed that WSF failed to bargain with the IBU and the MM&P over the manual changes.

3. It is undisputed that bargaining never occurred over the contents or the adoption of any update to the payroll manual since the first manual was created in 1991.

4. On July 9, 2004, Cathy Tarricone, the WSF payroll manager issued “Fleet Advisory” to “All Vessel and Terminal Employees”. The document made further changes to the payroll manual and was admitted into evidence at WSF Ex. 2. There were no further changes implemented through the date of this hearing.

Certification

5. The new payroll manual required employees to certify as follows: “I certify that the information contained on this time sheet is true and accurate and am aware that submitting false information on a timesheet is a violation of WSF policy.” Ms. Tarricone’s Fleet Advisory further changed the language to read: “To the best of my knowledge the information contained on this timesheet is correct, and I am aware that knowingly submitting false information on a timesheet is a violation of WSF Policy.” Formerly, employees were not required to complete such a certification.

Home Address

6. The WSF changed the manner in which employees entered their home address on the time sheet as follows. The new payroll manual regarding home address and home terminal/port in Section 6, page 5 reads as follows:

(R) ADDRESS

In order to provide validation for the employee's homeport and travel distance, all travel time and mileage claims must include the employee's complete home address. Enter the address of the employee's residence.

Note: A P.O. Box or a notation of "On File" does not satisfy this requirement and cannot be accepted as a valid entry. The purpose of this section is to validate the distance traveled.

The address is required only on the original timesheet copy that is sent to Payroll. The Mate may employ a method to prevent the address from transferring through to the timesheet copies.

(S) HOME TERMINAL/PORT

All travel time and mileage claims must include employee's assigned "duty station" or designated homeport.

The 1998 payroll manual requires:

(R) ADDRESS: To comply with the OFM regulations, all travel time and mileage claims must include employee's address. Enter home address.

(S) HOME TERMINAL/PORT: To comply with the OFM regulations, all travel time and mileage claims must include employee's assigned station.

Decimal System

7. The new payroll manual requires that employees enter time worked using the decimal equivalent for each 5-minute interval of time. WSF provided a chart for converting minutes to the correct decimal entry. The new payroll manual states:

Duration of Time

Actual duration time of scheduled watch must be entered. *Note:* Employees may not "roundup or down" or "average" their hours for multiple scheduled days.

Partial hours can be captured in 5-minute intervals by converting minutes to a decimal entry. Appendix E, Minutes to Decimal Entry Conversion Chart, is provided to assist employees in determining the correct entry for partial hours.

Joint Ex. 1, Section 6, page 3.

Straight time, guaranteed time, overtime, etc. are broken down with the appropriate pay code designation on the timesheet. Overtime is still paid using the round-up method according to applicable contract language.

Chief Mate/Timesheets

8. The seventh bulleted item in this section reads as follows:

Accurate time reporting. The Chief mate is “obligated” and authorized to question any crewmember under their supervision regarding the circumstances leading to their claim for hours and mileage on the time sheet.

Captain Lee Andersen, who testified at both hearings, has been employed by WSF for 20 years. He started as an ordinary seaman, advanced to able-bodied seaman, then to mate, and finally to Captain. Captain Anderson testified that the word “obligated” in the duties and responsibilities creates a new obligation in that if he fails to fill out the timesheet accurately he could be subject to discipline that could lead to his termination (Tr. 122).

Prior to the April 2004 “Deck Timekeeping Procedures,” starting with May 2000 the Licensed Deck Officer (LDO) “verified” the time sheets per the Deck Department Payroll Procedures.

ANALYSIS

At the outset, the Commission recognizes the legal standard as correctly summarized by the parties. First, RCW 47.64.120 requires “ferry system management and ferry system employee organizations through collective bargaining representatives to negotiate in good faith in respect to **wages, hours, working conditions . . .**” This mandate of good faith bargaining prohibits an employer from making changes in such mandatory subjects of bargaining without

first bargaining with the union representing the affected employees. In determining whether the implemented change was a mandatory subject of bargaining, the Commission employs a balancing test:

The test balances the effect that an action has upon wages, hours and working conditions against the extent to which the subject lies at the core of entrepreneurial control.

IBU v. WSF, 321-MEC (2000). Using this test the Commission has concluded that such issues as sick leave, vacation and parking fall within the realm of mandatory subjects of bargaining. *IBU & MM&P v. WSF*, 223-MEC (2000)(sick leave); *IBU v. WSF*, 207-MEC (1998)(vacation); *IBU v. WSF*, 193-MEC (1997)(parking). On the other hand, for example, where the WSF implemented an improved ticket vending machine which had the effect of reducing the work of the ticket taker, the Commission concluded that no bargaining was required. *IBU v. WSF*, 321-MEC (2000) Additionally and perhaps more to the point, in *IBU v. WSF*, 200-MEC (1998, Sullivan) the Commission was faced with the question of whether the Ferry System was obligated to bargain over a revised timesheet which allowed management to determine whether employees were working less than a quarter hour of overtime on a holiday.¹ The Commission found that this change was not a mandatory subject of bargaining:

WSF's revision of timesheets to correct an audit finding required employees to state a beginning and ending time on their timesheet to allow the employer to pay the correct amount of overtime. The revision did not affect when or how much an employee was paid and therefore did not "affect wages."

Id.

In this circumstance, the majority of changes implemented through the payroll manual were simply for the purpose of allowing accurate accounting of employees' time. Any

¹ The contract required that where an employee works 15 minutes or fewer on a holiday, that employee is entitled to 15 minutes of overtime pay. If however, the employee works more than 15 minutes, the employee is entitled to one hour of pay.

incremental inconvenience or burden on employees is outweighed by the employer's right and obligation to accurately compensate its employees. The Commission will therefore only address those areas in which the balance tips in the other direction or which are close enough to require discussion.

a. Certification Requirement

Requiring employees to certify that the information on their time sheet is true is certainly within the Ferry System's obligation to accurately compensate its employees. Any burden placed on an employee by virtue of having to confirm that he or she is not knowingly submitting false timesheet must be said to be slight or non-existent. Slightly more difficult is the obligation to certify the accuracy of the information under penalty of discipline. Employees had not heretofore been subject to discipline for the unintentionally inaccurate reporting of time. If this is the import of the change, the Commission finds that the scales tip in the other direction and bargaining would be required.

b. Use of Decimals

Requiring the correct recording of time spent on duty, if it does not affect the payment policy or practice, falls within that area over which the Ferry System does not have an obligation to bargain. *IBU v. WSF*, 321-MEC (2001). If however, this change affects an "unequivocal, clearly enunciated and acted upon and readily ascertainable" payment practice, then such a unilateral change would constitute an unfair labor practice. *IBU v. WSF*, 429-MEC (2004). The record is simply not clear as to whether the change to a decimal affects payment: MM&P argues that it does; IBU seems to concede the point; and WSF asserts unequivocally "the payroll manual cannot and does not change pay entitlement in any way." It is the burden of the Complainant to establish the facts necessary to determine whether the challenged term is a mandatory subject.

Insufficient evidence to that end had been adduced and therefore no unfair labor practice will be found as to this count.

c. The “Obligation” Requirement

The change from “authorizing” the Licensed Deck Officer to “obligating” the Deck Officer strikes the Commission as the imposition of a new, supervisory duty on this officer. The imposition of the obligation to potentially discipline employees weighs heavily on the side of terms and conditions of employment. The counter-weight in this instance is not as substantial. Thus, the requirement to bargain over this change we believe to be required.

d. Residential Address

Requiring an employee to enter his or her address on a document which is potentially widely available is a significant burden on the employee. The necessity of the information to the Ferry System’s operation cannot be doubted but, on balance, the way in which that information is collected and maintained the Commission believes to be an appropriate subject for bargaining.

CONCLUSIONS OF LAW

1. The Marine Employees Commission has jurisdiction over this matter pursuant to 47.64.280 and 47.64.130.
2. RCW 47.64.120 imposes on the Ferry System the obligation to bargain over wages, hours, working conditions, insurance and healthcare benefits. The Ferry System may not make changes in such mandatory subjects without bargaining with the union representing its employees. Conversely if the subject falls outside the area of mandatory bargaining, no such duty arises.

3. The Commission finds that the following policies alleged by the union to have been mandatory subjects of bargaining do not fall within that realm and therefore pre-implementation bargaining is not required.

- a. The status of the Deck Timekeeping Procedures as a “controlled document;”
- b. Allowing Port Captains to initiate disciplinary actions to ensure compliance with the Timekeeping procedures;
- c. Requiring separate time sheets to be submitted in certain circumstances;
- d. In short crew or bump up situations, requiring the name of the crewmember who is being replaced to be included on the timesheet;
- e. Requiring advance approval in the case of penalty pay resulting from the clean up of unsanitary conditions;
- f. Requiring guaranteed time or overtime to be entered on a daily basis;
- g. Implementing new pay codes;
- h. Implementing new vessel assignment numbers.

4. The following changes constitute mandatory subjects of bargaining and, to the extent described above, bargaining is required:

- a. Subjecting an employee to discipline for the unintentionally inaccurate reporting of time;
- b. The change from “authorizing” the Licensed Deck Officer to “obligating” the Deck Officer to enforce the terms of the payroll manual;
- c. The collection and maintenance of employee residential address information.

5. As to the decimal requirement, the Commission finds insufficient evidence on which to conclude that this change affects the way in which employees are paid and therefore finds no bargaining obligation.

6. As to allegations not specifically enumerated above, the Commission finds no bargaining obligation.

On the basis of the above Findings of Fact, Analysis and Conclusions of Law, the Commission hereby ORDERS as follows.

ORDER

As to the changes enumerated in paragraph 4 of the Conclusions of Law, the Commission orders the Ferry System return to the status quo in effect prior to their implementation and bargain with the IBU and MM&P regarding those issues.

As to the remaining allegations, the unfair labor practice charges are dismissed.

RECONSIDERATION

Pursuant to the provisions of RCW 34.05.470, any party may file a petition for reconsideration 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 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. A petition for reconsideration is not a prerequisite for seeking judicial review.

DATED this 24th day of May 2006.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN SULLIVAN, Hearing Examiner

Approved by:

/s/ JOHN SWANSON, Chairman

/s/ ELIZABETH FORD, Commissioner