

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

DISTRICT NO. 1, MARINE ENGINEER'S
BENEFICIAL ASSOCIATION et al.,

Complainants/Grievant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC CONSOLIDATED CASES

25-04 (MEBA ULP)

35-04 (MEBA ULP)

39-04 (IBU ULP)

59-04 (IBU GRV)

63-04 (MM&P ULP)

DECISION NO. 471 - MEC

DECISION AND ORDER

APPEARANCES

Reid, Pedersen, McCarthy & Ballew, LLP by *Michael R. McCarthy*, Attorney, appearing for District No. 1, Marine Engineers' Beneficial Association (MEBA).

Schwerin, Campbell & Barnard, LLP by *Robert H. Lavitt*, Attorney, appearing for the Inlandboatmen's Union of the Pacific (IBU).

Wolfstone, Panchot & Block, P.S., Inc. by *Steven N. Ross*, Attorney, appearing for the International Organization of Masters, Mates & Pilots (IOMM&P).

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

ISSUE

Has Washington State Ferries (WSF) committed an unfair labor practice by refusing to bargain with the MEBA, IBU and IOMM&P regarding the effects of the galley closures?

If so, what is the appropriate remedy?

NATURE OF THE PROCEEDINGS

These cases come before the commission as a result of galley closures on certain vessels of Washington State Ferries (WSF). Prior to the closure and shortly thereafter, MEBA, IBU and

IOMM&P separately contacted WSF and requested that WSF meet with the unions and negotiate the effects of the closure on their members. WSF notified the unions individually that they were unwilling to bargain with the unions regarding the galley closures. After repeated requests and WSF's failure to agree to bargain, the unions filed unfair labor practice cases against WSF with the Marine Employee Commission. The charges have been consolidated for hearing and identified as:

- MEBA ULP filings – MEC Case Nos. 25-04 and 35-04,
- IBU ULP filing – MEC Case No. 39-04,
- IOMM&P ULP filing – MEC Case No. 63-04.

A contract grievance filed by the IBU, MEC Case No. 59-04, was also included and agreed by the parties would be heard along with the ULPs.

The hearing was delayed at the request of the parties because a new concessionaire was being secured and there was some feeling that a solution to the charges might be available. This not being the case and because of WSF's reluctance to negotiate the consequences and effects of the galley closures, charges were scheduled and presented to the Hearing Examiner for determination.

CONTRACT PROVISIONS

IBU CONTRACT AGREEMENT WITH WSF

PREAMBLE

The rules contained herein constitute an Agreement between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, an agency of the State of Washington, operating Washington State Ferries, hereinafter referred to as the "Employer", and the INLANDBOATMEN'S UNION OF THE PACIFIC, MARINE DIVISION OF THE INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, hereinafter referred to as the "Union", governing wages, hours and other conditions of employment of employees as classified.

All of the following Rules shall apply to the entire Agreement uniformly. Should any Rules in the subsequent Appendices, which by this reference are incorporated herein, modify these rules, such subsequent Appendices shall take precedent and apply only to those employees and/or conditions covered by the Appendix.

RULE 1-DEFINITIONS

SPECIFIC DEFINITION: Unless the context of a particular section of this Agreement clearly dictates otherwise, the following terms shall have the following meanings:

1.01 **AGREEMENT.** The term “agreement” shall refer to the present contract, of which this section is a part, as it presently exists between the Employer and the Union.

1.02 **EMPLOYEE.** The term “Employee” includes all persons in the service of the Employer classified in this Agreement.

1.03 **EMPLOYER.** The term “Employer” means the Washington State Department of Transportation, an agency of the State of Washington operating the Washington State Ferry System.

1.04 **UNION.** The term “Union” means the Inlandboatmen’s Union of the Pacific, Marine Division of the International Longshoremen’s and Warehousemen’s Union.

RULE 2 – RECOGNITION

2.01 The Employer recognizes the Union as the representative of all employees as classified herein and the sole collective bargaining agency for the purpose of acting for the employees in negotiating and interpreting the Agreement and adjusting disputes.

RULE 6 – SCOPE

6.01 This Agreement shall apply to all vessels and facilities of the Employer engaged in the transportation of passengers, automobiles, and freight on Puget Sound and adjacent inland waters, the Straits of Juan de Fuca, and the waters adjacent to the San Juan Islands and ports in British Columbia. This Agreement shall apply to all unlicensed employees assigned to the Deck, Terminals, Information Departments and Shore Side maintenance.

6.02 The parties agree that the provisions of this Agreement constitute the complete agreement between the parties, provided that, any prior understanding executed by the parties and contained in a letter or memorandum of understanding will be continued during the duration of the Agreement unless the subject matter

contained in the letter or memorandum of understanding has been subsequently amended, modified, changed or altered in any way by a term or provision of the Agreement. Also, it is expressly understood and agreed upon that no term or provision of this Agreement may be amended, modified, changed, or altered except by a written agreement executed by the parties. This clause does not constitute a waiver by either party of its duty to bargain pursuant to RCW 47.64.

RULE 9 – MEAL DISCOUNT

9.01 The charge for meals purchased on board the ferries, while on duty or while going to and from duty, by all employees covered under this Agreement, shall be at one-half the normal retail price of such meal, rounded upward to the nearest cent. This provision shall apply only to the first ten dollars in retail price meal purchases per employee per day.

9.02 Employees purchasing meals at a discount shall be required to sign sales slips when served.

9.03 Shoreside employees working on vessels on the run shall be allowed the same food discount afforded crew members.

RULE 34 – SAVINGS

34.01 If any rule of this Agreement or any addendum thereto should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any rule should be restrained by such tribunal, the remainder of this Agreement and addenda shall not be effected thereby, and the parties shall enter in immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement of such rule or addendum.

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MEBA CONTRACT AGREEMENT WITH WSF – Licensed Engineer Officers

PREAMBLE

This Agreement, made by and between the NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION, DISTRICT NO. 1 – MEBA (AFL-CIO) (hereinafter referred to as the “Union”) and the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, an agency of the State of Washington operating Washing State Ferries (hereinafter referred to as the “Employer”).

SECTION 1 – RECOGNITION

The Employer hereby recognizes the Union as the sole and exclusive representative of all Licensed Engineer Officer employees, (hereinafter referred to as “Engineer Officers”) for the purpose of collective bargaining regarding all matters pertaining to wages, hours and other conditions of employment, including the adjustment of all disputes or grievances involving the interpretation or the application of the provisions of this Agreement.

SECTION 2 – REPRESENTATION

(f) Any contemplated changes of hours, wages and/or working conditions shall be discussed with the Union prior to implementation; provided that this sentence shall not preclude the Union from grieving any such changes under Section 23. A copy of any correspondence concerning wages, hours and/or working conditions of employees in the bargaining unit shall be sent to the Union at the same time such notification is sent to the employee(s).

SECTION 4 – SCOPE

(a) The terms and provisions of this Agreement shall govern the Employer, the Union and all Engineer Officers in its employ and shall apply to all vessels of the Employer normally employed in the transportation of passengers, automobiles and/or freight on Puget Sound and adjacent inland waters, the Straits of Juan de Fuca, the San Juan Islands and the waters of Canada.

SECTION 17 – MEAL DISCOUNT

(a) The charge for meals purchased and eaten on board the vessels of the Employer while employees are on duty or going to and from duty shall be one-half (1/2) the normal retail price of such meals rounded upward to the nearest cent.

(b) Employees purchasing meals at a discount shall be required to sign sales slips at the completion of service.

SECTION 31 – SAVINGS AND SEPARABILITY

If any section of this Agreement or any addenda thereto should be rendered invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with, or enforcement of any section should be restrained by such tribunal, the remainder of this Agreement and any addenda shall not be effected thereby, and the parties shall enter into immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement of such Section.

SECTION 32 – TERMINATION

Except where otherwise provided, this Agreement is effective July 1, 1999 and shall continue in effect until June 30, 2001 and shall be considered as renewed from year to year thereafter between the parties unless either party shall give written notice to the other of its desire to amend or to terminate same, such notice to be given at least ninety (90) days prior to June 30, 2001 or ninety (90) days prior to June 30 of any subsequent calendar years.

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MEBA CONTRACT AGREEMENT WITH WSF – Unlicensed Engine Room Employees

PREAMBLE

The rules contained herein constitute an Agreement between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, an agency of the State of Washington, operating Washington State Ferries, hereinafter referred to as the “Employer”, and District No. 1 – Marine Engineers Beneficial Association, (MEBA) (AFL-CIO), hereinafter referred to as the “Union”, governing wages, hours and other conditions of employment of employees as classified.

All of the following Rules shall apply to the entire Agreement uniformly. Should any Rules in the subsequent Appendices, which by this reference are incorporated herein, modify these rules, such subsequent Appendices shall take precedent and apply only to those employees and/or conditions covered by the Appendix.

RULE 1 – DEFINITIONS

SPECIFIC DEFINITION. Unless the context of a particular paragraph of this Agreement clearly dictates otherwise, the following terms shall have the following meanings:

1.01 **AGREEMENT.** The term “Agreement” shall refer to the present contract, of which this paragraph is a part, as it presently exists between the Washington State Department of Transportation and the Union.

1.02 **EMPLOYEE.** The term “Employee” includes all persons in the service of the Employer classified in this Agreement.

1.03 **EMPLOYER.** The term “Employer” means the Washington State Department of Transportation, an agency of the State of Washington operating the Washington State Ferry System.

1.04 UNION. The term “Union” means District No. 1 – Marine Engineers Beneficial Association (AFL-CIO).

RULE 2 – RECOGNITION

2.01 The Employer recognizes the Union as the representative of all employees as classified herein and the sole collective bargaining agency for the purpose of acting for the employee in negotiating and interpreting the Agreement and adjusting disputes.

RULE 6 – SCOPE

6.01 This Agreement shall apply to all vessels and facilities of the Employer engaged in the transportation of passengers, automobiles, and freight on Puget Sounds and adjacent inland waters, the Straits of Juan de Fuca and the waters adjacent to the San Juan Islands and ports in British Columbia. This Agreement shall apply to all unlicensed employees assigned to the Engine Department and shore side maintenance.

6.02 The parties agree that the provisions of this Agreement constitute the complete agreement between the parties, provided that any prior understanding executed by the parties and contained in a letter or memorandum of understanding will be continued during the duration of the Agreement unless the subject matter contained in the letter or memorandum of understanding has been subsequently amended modified, changed or altered in any way by a term or provision of the Agreement. Also, it is expressly understood and agreed upon that no term or provision of this Agreement may be amended, modified, changed or altered except by a written agreement executed by the parties. This clause does not constitute a waiver by either party of its duty to bargain pursuant to RCW 47.64.

RULE 9 – MEAL DISCOUNT

9.01 The charge for meals purchased on board the ferries, while on duty or while going to and from duty, by all employees covered under this Agreement, shall be at one-half the normal retail price of such meal, rounded upward to the nearest cent.

9.02 Employees purchasing meals at a discount shall be required to sign sales slips when served.

9.03 Shore side employees working on vessels on the run shall be allowed the same food discount afforded crew members.

RULE 34 – SAVING

34.01 If any Rule of this Agreement or any addendum thereto should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any Rule should be restrained by such tribunal, the remainder of this Agreement and addenda shall not be effected thereby and the parties shall enter in immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement of such Rule or addendum.

APPENDIX A

YARD PERSONNEL

The following Rules are in addition to Rule 1 through Rule 36 above and apply to Yard Oilers.

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IOMM&P CONTRACT AGREEMENT WITH WSF

PREAMBLE

The terms and provisions herein contained constitute an Agreement by and between the Washington State Department of Transportation, an agency of the State of Washington operating the Washington State Ferries, hereinafter referred to as the “Employer” and the International Organization of Masters, Mates and Pilots, Pacific Maritime Region, hereinafter referred to as the “Union”, which Agreement governs wages, hours and various other conditions of employment on the property and vessels of the Employer as hereinafter provided.

I. SCOPE AND INTERPRETATION

1.01 Scope of Agreement The terms and provisions of this Agreement shall govern the Union, the Employer and all Deck Officers in its employ and shall apply to all vessels of the Employer, whether now owned or hereafter acquired and which are engaged in Puget Sound and connecting inland waters, on the Straits of Juan de Fuca, to the San Juan Islands or to the ports of British Columbia.

1.02 Intent of the Parties The terms and provisions herein contained constitute an entire contract which is fully integrated with respect to each of its terms and provisions.

1.03 Good Faith Performance There shall be no attempt by the parties to this Agreement to ignore, disregard, circumvent or otherwise avoid any of the terms and provisions of this Agreement or any of the duties, obligations and responsibilities imposed thereby; and the utmost good faith shall be required of the parties in the performance of all of the terms and provisions herein contained.

II. DEFINITIONS

2.01.01 Agreement The term “agreement” shall refer to the present contract, of which this Section is a part, as it presently exists between the Washington State Department of Transportation and the Union.

2.01.09 Employee The term “employee” includes all persons in the service of the Employer.

2.01.10 Employer The term “employer” means the Washington State Department of Transportation, an agency of the State of Washington operating the Washington State Ferry System.

III. UNION RECOGNITION AND SECURITY

3.01 Union Recognition The Employer recognizes the Union as the representative of all Deck Officers and as their sole collective bargaining agent for the purpose of acting on behalf of said Deck Officers in making and interpreting agreements and recognizes the right of the Union to intercede on behalf of its members or non-members employed as Deck Officers in adjusting disputes.

X. HEALTH AND SAFETY

10.04 Meals Aboard Vessel The charge for meals purchased and eaten on board the ferries while on duty or while going to and from duty by Deck Officers shall be at one-half (1/2) the normal retail price of such meals rounded upward to the nearest cent. Deck Officers purchasing meals at a discount shall be required to sign sales slips at the completion of service. The food discount shall be granted Deck Officers on the route to or from places of assignment regardless of route traveled. Food discount shall also be allowed officers riding for pilotage time.

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XXV. SAVINGS PROVISIONS

25.02 Replacement Provisions In the event that any Section of this Agreement or any Addenda thereto should be disposed of or rendered ineffective as discussed under Section 25.01, the Union and the Employer shall immediately enter into collective bargaining negotiation for the purpose of arriving at a mutually satisfactory replacement of such Section.

RECORD BEFORE THE COMMISSION

The MEC has the following record before it:

1. The Unfair Labor Practice charges filed by the Unions – MEC Case Nos. 25-04, 35-04, 39-04 and 63-04. In addition, a grievance filed by the IBU identified as MEC Case No. 59-04 is included.
2. Notice of Settlement Conferences and hearings.
3. The MEBA, IBU and IOMM&P Collective Bargaining Agreements with WSF for the period 1999-2001 that were in effect at the time of the galley closure.
4. Transcripts of the two-day hearing of the Unfair Labor Practice charges.
5. Exhibits accepted into evidence during the course of the hearing.
6. MEBA, IBU, IOMM&P and WSF post hearing briefs filed by the parties.
7. Numerous citations of the PERC, MEC and NLRB cases regarding ULPs specific to effects bargaining and unilateral imposition or elimination of contract terms; cases cited by the parties as well as extensive research engaged in by the Hearing Examiner.

FINDINGS OF FACT

On the basis of the evidence and record of proceedings, the Hearing Examiner makes the following findings of fact:

1. During the fall of 2003, WSF notified the Unions regarding the potential galley closures by the concessionaire.

2. WSF attempted to seek a continuance of the service with the concessionaire but was unsuccessful.

3. The Unions requested WSF to meet and bargain with them regarding the loss of the meal discount and other matters they contended affected their members.

4. There is no substantive dispute regarding WSF's refusal for whatever reason to bargain with the Union as to the effects of the galley closures on the Union's members.

5. The present Executive Director, during testimony and examination, confirms that no bargaining took place.

Q: You would agree that the closure of the galleys and the impact and effects of that on MEBA's membership was not bargained with the union prior to changing the status quo, correct?

*A: Yeah, I don't believe there was any bargaining related to that. (TR165)
Upon further examination, the present Executive Director continues:*

Q: Do you know who made the decision not to bargain the effects of the galley closures with the union?

A: I—I don't know directly. I mean, the ultimate responsibility lies with the executive director, or at the time the title was CEO, so I would have to say that would be Mike Thorne. (TR174)

6. The Unions continued to request and pursue efforts to bargain the galley closures with WSF before filing unfair labor practices.

7. WSF made no effort to discuss or negotiate any provision, replacement or accommodation with respect to the galley closures.

8. When additional vending machines were in place in an effort to provide some service to passengers, no effort was made by WSF to work out any arrangement with the unions regarding the use of vending machines.

9. The position of the Employer in response to the unions appears to be that the closure was a fait accompli. The Employer's only argument was there is "nothing to bargain about" or "nothing can be accomplished".

10. In its brief by the learned Assistant Attorney General, WSF now represents a willingness to bargain the effects of the galley closures with the unions. It appears this offer is made to bargain individually or in a multi-union arrangement.

11. WSF expressed a concern that the bargaining should not be inhibited by conditions imposed by MEC if MEC ordered bargaining take place.

12. Based on the facts presented, the Hearing Examiner can find no direction in the record to restore status quo.

13. The record provides no basis for the Hearing Examiner to determine any reasonable or accurate determination as to who and how individuals were impacted or affected by the galley closures.

14. The record does not provide any reasonable explanation by WSF for their refusal to bargain with the unions. It is not the Hearing Examiner's province to predict all of the "effects" or "impacts" that might be considered or discussed by WSF and the unions. The record does not specifically provide the detailed extent to which all these potential issues are controlled by the contracts.

15. The record supports a conclusion that the effects and impacts of the galley closures and the resolution of the issue cannot be determined until such time as there is good faith bargaining on the galley closures. RCW 47.64.

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CONCLUSIONS OF LAW

On the basis of the record before him, the findings of fact and the contractual and legal analysis, the Hearing Examiner makes the following conclusions of law:

1. MEBA, IBU and IOMM&P 1999-2001 contracts remained in full force and effect past their stated expiration date at the time of the galley closures by operation of law. RCW 47.64.170.
2. The Hearing Examiner has jurisdiction over the parties and the Unfair Labor Practices. RCW 47.64.280.
3. It is an Unfair Labor Practice for the Employer (e) to refuse to bargain collectively with representatives of its employees. RCW 47.64.130.
4. The impact of the galley closures on the employees represented by the MEBA, IBU and IOMM&P is a mandatory subject of negotiations. WAC 316-45-550.
5. All three Unions – MEBA, IBU and IOMM&P – officially requested that WSF negotiate the impact and effects of the galley closures in a timely manner consistent with the closure. The extension and delay of the hearing on the ULPs was mutually agreed to by MEC, WSF and the unions.
6. At the direction of the former Executive Director, WSF chose not to negotiate the impact of the galley closures on the represented union members and WSF employees.
7. RCW 47.64.011 (3) – “Collective bargaining representative” means persons designated by the Secretary of Transportation and employee organizations to be exclusive representatives during the collective bargaining negotiations.
8. RCW 47.64.011 (6) – “Ferry employee organization” means any labor organization recognized to represent a collective bargaining unit of ferry employees.

9. RCW 47.64.130 – IOMM&P, MEBA and IBU are labor organizations that represent employees who have been affected by the galley closures. They are the labor organizations with whom WSF and its representatives have refused to collectively bargain.

10. Neither the management rights clause or the concessionaire cancellation of service constitute a waiver of bargaining rights regarding the subject of meal discounts and other aspects of the galley closures and their impact and effect on ferry employees.

11. A waiver of the statutory right to bargain could not be assumed by WSF. WSF would have had to show that the matter of the galley closures was fully discussed and consciously explored and that the unions unmistakably waived their interests in the matter.

ORDER

Upon the basis of the above findings of fact, the record before the Hearing Examiner and pursuant to RCW 47.64 and WAC 316-45, it is ordered Washington State Ferries, its officers and agents shall immediately

1. Cease and desist from refusing to collectively bargain in good faith concerning the elimination of the meal discount and other working condition changes, if any, resulting from the galley closures.

2. Negotiate the impact and effect of the galley closures with the labor organizations MEBA, IBU and IOMM&P.

3. Take the following affirmative action:

(a) Upon request, bargain in good faith, either individually or collectively with the MEBA, IBU and IOMM&P concerning all matters which impacted and affected employees as a result of the galley closures;

- (b) Make whole all bargaining unit employees for economic loss suffered as the result of the galley closures;
- (c) Preserve and upon request make available for examination all records regarding employee use of the galleys and records of transactions and income from the vending machines that replaced the galleys and any other records necessary to analyze the amount of economic loss suffered by employees by the galley closures; and
- (d) WSF will reimburse the MEBA, IBU and IOMM&P upon presentation of affidavits their attorney fees incurred in the hearing of this matter. This is based on their frivolous refusal to bargain and their overt violation of RCW 47.64.

4. MEC Case No. 59-04, a grievance filed by the IBU (Fein), will be a matter for discussion and consideration by the parties during the negotiations. It can also be an issue considered and resolved by the parties based on the results of the negotiations.

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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.

So ORDERED, this 9th day of March 2006.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN SWANSON, Hearing Examiner

Approved by:

JOHN SULLIVAN, Commissioner

ELIZABETH FORD, Commissioner