

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION
OF THE PACIFIC,

Complainant,

v.

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION, FERRIES
DIVISION,

Respondent.

MEC CASE NO. 19-09

DECISION NO. 578 - MEC

DECISION AND ORDER

APPEARANCES

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

Robert McKenna, Attorney General, by *David Slown*, Assistant Attorney General, appearing for the Washington State Department of Transportation, Ferries Division (WSF).

BACKGROUND

On June 26, 2009, the Inlandboatmen's Union of the Pacific filed a Complaint Charging Unfair Labor Practices with the Marine Employees' Commission. The IBU's complaint, MEC 19-09, charged Washington State Ferries with violating RCW 47.64.130 (1). In late 2008, WSF temporarily relocated employee parking at the Bainbridge Island Terminal to facilitate some construction. The IBU agreed to the temporary move. Following completion of the construction, WSF informed the IBU that it would not be moving the parking back to its original location. The IBU asserts that WSF's action resulted in a change in working conditions without negotiation.

WSF filed its answer to the complaint on December 17, 2009. Examiner John Cox conducted the hearing on January 5, 2010. The parties filed briefs on March 5, 2010.

RECORD BEFORE THE MARINE EMPLOYEES' COMMISSION

1. The IBU's complaint charging unfair labor practices, dated June 26, 2009.
2. WSF's answer to the complaint, dated December 17, 2009.
3. Transcript and Exhibits from January 5, 2010 hearing.
4. Complainant IBU's post-hearing brief, dated March 5, 2010.
5. Respondent WSF's post-hearing brief, dated March 4, 2010.

ISSUE

Did WSF commit an unfair labor practice by failing to bargain with the IBU over the Employer's decision to turn what was initially a temporary change in location of deck department employee parking at Bainbridge Island Terminal to accommodate construction, into a permanent change?

FINDINGS OF FACT

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

1. In the fall of 2008, Doug Schlieff, WSF management, contacted IBU Business Agent Margaret Pelland concerning parking at the Bainbridge Terminal. He told IBU that because of necessary construction (storm water drainage project) at the terminal, the employee parking area would have to be temporarily moved. Based upon that representation, the Union agreed.

2. The parties stipulated to the admission of Joint Exhibit 1, a site map showing the layout of Bainbridge Island Terminal. Parking for IBU represented employees at Bainbridge was moved from area "A" near the holding lanes, to area "B" located north and east of the terminal building.

3. On December 11, 2008, WSF issued a Quick Notice providing all vessels and terminals with specifics of the relocation of the employee parking at Bainbridge, necessitated by the construction.

4. On December 12, 2008, WSF issued a Quick Notice informing terminal and vessel employees that the construction of a storm water treatment system at Bainbridge would occur between December 15, 2008 and January 9, 2009. A January 13 Quick Notice advised

employees that the construction crew would continue working within the site at the south end of the holding lot of the Bainbridge Terminal through February 13, 2009.

5. During construction at Bainbridge Terminal, WSF decided to make significant improvements in safety, security and efficiency at the Terminal. In addition, HB 2358 became effective which required WSF to look at ways to reorganize holding areas and minimize on-dock employee parking to maximize dock size.

6. Upon completion of the construction project, Paul Ganalon, WSF Labor Relations Manager notified IBU by letter on June 2, 2009, that WSF had decided the Bainbridge Terminal employee “temporary” parking in area “B” would become permanent.

7. There was no bargaining between the parties prior to WSF announcing its decision to make the temporary change in parking a permanent one.

ANALYSIS

There is no factual dispute in this case. WSF does not claim that notice to or negotiations with the IBU occurred over the decision to make the temporary parking move a permanent change. WSF agrees that parking is a mandatory subject of bargaining, but argues that there was no change to terms and conditions of employment when the parking move was made permanent, and therefore no unfair labor practice. The Employer contends that the parking was about the same distance from the vessels and much closer to the terminal, after the change, than before and that parking in the new location was equal to what employees had always enjoyed.

The IBU argues that parking is a mandatory subject of bargaining and that WSF unilaterally implemented a permanent change in parking at Bainbridge following completion of construction work, without affording the Union opportunity to bargain. IBU was notified prior to the temporary relocation of employee parking at Bainbridge, but not when WSF later decided the temporary relocation would become a permanent policy. IBU is critical of certain aspects of new parking area “B” related to accessibility, safety and distance from the vessel; all substantive issues to the Union.

WSF justifies its decision to make the new parking arrangement permanent by pointing out the improvements to safety and operational efficiency made during the temporary parking relocation, including a reduction in on-dock employee parking which complies with a directive in HB 2358 and improved security standards related to the potential for increased Maritime

Security (MARSEC) status. WSF maintains that the moving of employee parking from area “A” to area “B” allowed for increased safety for employees, pedestrians, bicyclists and vehicle traffic, with no adverse effects to employees.

Regardless of WSF’s reasons for declaring the parking move permanent, IBU contends that WSF has committed an unfair labor practice.

MEC precedent has clearly established that parking is a mandatory subject of bargaining and WSF may not impose changes to it without fulfilling its statutory duty to give notice and bargain with the employees’ bargaining representative. *IBU v. WSF*, 193-MEC (1997). Even if the change in parking is in the best interest of the Employer as the improvements in terminal safety, security and efficiency clearly are, the change is still a subject for bargaining. Further, the Union’s agreement to temporarily move the parking does not relieve the Employer’s obligation to bargain the permanent move.

CONCLUSIONS OF LAW

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

1. The Marine Employees’ Commission has jurisdiction in this matter under chapter 47.64 RCW and chapter 316-45 WAC.
2. The parties 2007-2009 Collective Bargaining Agreement was in full force and effect during the time covered by this matter. The case is properly before the Marine Employees’ Commission for decision.
3. The WSF made a unilateral change to employee parking at the Bainbridge Terminal. By failing to engage in collective bargaining with the IBU prior to a permanent change in the location of employee parking at Bainbridge, WSF committed an unfair labor practice, in violation of RCW 47.64.130.

ORDER

1. Returning to the status quo is not a viable alternative in view of safety, security and efficiency improvements accomplished by WSF during the construction that prompted the “temporary” change in parking. The new parking area “B” addresses the many concerns brought

forward by WSF during the hearing. To remedy its unfair labor practice, WSF will pay attorney's fees incurred by the IBU in bringing this complaint before the MEC.

2. WSF will give notice to and bargain with the IBU prior to implementing any future change regarding the parking arrangements for employees represented by IBU.

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 13th day of April 2010.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN COX, Hearing Examiner

Approved by:

/s/ JOHN SWANSON, Chairman

/s/ PATRICIA WARREN, Commissioner