

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. 15-08

DECISION NO. 552-A - MEC

ORDER DENYING IBU'S
PETITION FOR
RECONSIDERATION

APPEARANCES

Schwerin, Campbell, Barnard and Iglitzin, 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 Ferries (WSF).

ANALYSIS

On November 24, 2008, the IBU filed a Petition for Reconsideration of Decision No. 552 Granting WSF's Motion to Dismiss IBU's complaint. On December 10, the WSF filed a Response to Complainant's Petition for Reconsideration.

I am not convinced by the IBU's argument. The case cited by the IBU is significantly different than the current case. In *WSF v. MEBA*, Decision No. 410-MEC (2004), the parties had been without a contract for a significant period of time. The 2001 to 2003 biennium had passed without the parties successfully negotiating a successor agreement. In May 2003, the Union refused to bargain over the 2001 to 2003 agreement, and requested to proceed immediately to

negotiate a four year contract for the period 2001 to 2005. The Washington State Ferries insisted on negotiations for two separate agreements.

In that case, the Commission applied the Supreme Court's definition of waiver: "when it comes to the question of whether or not one party or the other has totally abandoned its legal right to bargain new contracts. As a consequence, the Marine Employee's Commission must analyze the facts of this case in light of the rule laid down by the Supreme Court."

The instant case is much narrower in its scope. Here, the WSF did not refuse to bargain. In fact, it agreed to bargain in the context of negotiations for a successor collective bargaining agreement by making a proposal at the parties next scheduled bargaining session. The WSF met its obligation and made a proposal.

The Union failed to respond. See *Stone Container Corporation*, 313 NLRB 336 (1993), where the Board stated:

The Respondent expressed its willingness to discuss the subject . . . and proposed giving no wage increase . . . Further, while the Respondent made its proposal in time for bargaining over the matter if the Union wished to bargain, the Union made no counterproposal . . . and did not raise the issue again during negotiations. Thus, we find that the Respondent satisfied its bargaining obligation . . .

In addition, it would be bad public policy to order the WSF to bargain over a matter which potentially has a financial impact on the State. The collective-bargaining process was set out to require the parties to agree on the State's financial obligations in sufficient time for the global review of all collective-bargaining agreements by the Governor's office, inclusion in the Governor's budget, and subsequent review by the Legislature. Failing to address economic issues during negotiations for a successor collective-bargaining agreement allows one party, by failing to respond to an economic proposal during negotiations, to bypass the process.

ORDER

The IBU's Petition for Reconsideration is denied.

DATED this 30th day of December 2008.

MARINE EMPLOYEES' COMMISSION

/s/ PATRICIA WARREN, Hearing Examiner

Approved by:

/s/ JOHN SWANSON, Chairman

/s/ JOHN COX, Commissioner