

STATE OF WASHINGTON

BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION OF)	
THE PACIFIC,)	MEC Case No. 18-00
)	
Complainant,)	
)	DECISION NO. 253 - MEC
v.)	
)	DECISION AND ORDER
WASHINGTON STATE FERRIES,)	
)	
Respondent.)	
_____)	

Schwerin, Campbell and Barnard, attorneys, by *Stephanie Cogen*, appearing for and on behalf of the Inlandboatmen's Union of the Pacific.

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

This matter came on regularly before the Marine Employees' Commission on July 20, 2000 when the Inlandboatmen's Union of the Pacific (IBU) filed an unfair labor practice against the Washington State Ferries (WSF). IBU's complaint charged WSF with engaging in unfair labor practices within the meaning of RCW 47.64.130 by interfering with, restraining or coercing employees in the exercise of rights. IBU further alleged that WSF refused to bargain.

IBU alleged that WSF unilaterally altered the terms and conditions of employment, and interfered with the administration of the collective bargaining agreement when it violated the parties' agreement to hold pre-disciplinary meetings at the Employer's main office. In so doing, IBU alleges WSF implemented a new policy without negotiating with the Union.

As a remedy for the alleged unfair labor practice, IBU requests an order requiring WSF to cease the practice of holding pre-disciplinary meetings aboard vessels, and return to the practice of scheduling such meetings at the Employer's main office.

Background

The Commission reviewed the charges pursuant to WAC 316-45-110 and determined that the facts, as alleged by the IBU may constitute an unfair labor practice, if later found to be true and provable. Commission Chairman John D. Nelson was assigned to act as Hearing Examiner.

Commissioner John P. Sullivan was appointed to act as the settlement coordinator, and the parties agreed to a settlement conference which was held on August 3, 2000. No settlement was achieved and the matter was set for hearing on October 3, 2000. WSF timely filed its answer to the complaint on September 29, 2000. As part of its answer, WSF pledged to delay implementation of its announced policy until the matter was resolved by the MEC. The hearing concluded on October 3. A brief was timely filed by the IBU.

NATURE OF THE CASE

The IBU represents a unit of WSF employees under chapter 47.64 RCW. This case is grounded basically on IBU's allegation that WSF performed an unlawful act when it announced a change in the practice of conducting pre-disciplinary meetings at the WSF main office in favor of holding such meetings aboard the vessels. In response to this contention, WSF maintains that the collective bargaining agreement between it and the IBU is silent on the subject of where pre-disciplinary meetings are to be held. WSF further maintains that there is no agreement in force which controls the location of such meetings.

THE ISSUE

The issue presented is whether WSF committed an unfair labor practice under RCW 47.64.130 and if so, what remedy is appropriate?

DISCUSSION

IBU is the collective bargaining agent and has historically played such a role, for a unit of employees employed by WSF in deck department jobs. In the course of employment with WSF, employees represented by IBU have on occasion been subject to a pre-disciplinary meeting. The parties stipulated at the hearing in this matter that a pre-disciplinary meeting is

that meeting required by the collective bargaining agreement at which the employee has a right to respond to the written charges of which he or she has been notified by a management representative. The employee has a right to be represented at such meeting by a union representative and/or by counsel of the employee's choice. And the employee has the right to present any information bearing upon the alleged misconduct which the employee chooses to present. The pre-disciplinary meeting is the last meeting typically held before imposition of discipline which is done by letter, if warranted.

For at least the last twenty years, the parties have engaged in a practice of holding the pre-disciplinary meetings at the WSF main office. The actual physical location of such meetings has varied from offices at Pier 52, Colman Dock locations, to more recently, the 2911 Building, or the North or South Regional offices respectively, in Everett or Bremerton. There has been some effort over the years to schedule the pre-disciplinary meetings such that more than one situation can be dealt with at the same meeting. Testimony suggests that meetings can last from one to six hours, but that the average length of such a meeting is approximately one and one half-hour.

At some point in 1991 or 1992, Dick Jackson, then Director of Human Resources for WSF, contacted the IBU representative and suggested a change in the format of pre-

disciplinary meeting so that future meetings would be held aboard the vessel to which the employee, who was subject of the meeting, was assigned. The IBU objected and contacted an Assistant Director for WSF, Armand Tiberio, who agreed to meet with IBU Representative Dennis Conklin and Human Resources Director Jackson. The outcome of this meeting was to continue the unwritten practice of conducting the pre-disciplinary meetings in the WSF main office.

On July 10, 2000, IBU Representative Conklin was contacted by Port Captain, Tim Saffle and Dispatch Operations Manager, Bob Wheeler, who reported that they had been directed by Mike Manning, Labor Relations Director for WSF, to schedule future pre-disciplinary meetings aboard the vessel. Thereafter the first pre-disciplinary meeting scheduled was scheduled to take place aboard one of the vessels in the WSF fleet. The IBU protested this action and filed the instant unfair labor practice charge. While defending its actions as justified by economy and efficiency, and permitted by the contractual provisions preserving its right to manage, WSF nonetheless agreed to withhold implementation of its July 10 announcement pending the resolution of this matter before MEC.

WSF has maintained throughout this proceeding, its right to hold the pre-disciplinary meetings that are the subject of this proceeding, as close to the work site as possible. While conceding the historical practice of conducting such meetings at a central office location, WSF maintains that such practice need not be maintained indefinitely. Citing benefits ranging from convenience and greater efficiency, to cost savings and greater effectiveness, WSF maintains that in the absence of a written contractual agreement covering this issue, it may rely on the management's rights provision of the collective bargaining agreement. In explaining the need for the change, WSF suggests that with a number of new employees hired in recent time, attendance problems have become more prevalent. To bring an employee in to the WSF office to discuss attendance problems usually requires a relatively short meeting. However, if the employee is scheduled to be working on the day of the meeting, WSF must find a replacement worker and still pay the

employee called for the pre-disciplinary meeting a contractual minimum of eight hours pay.

IBU maintains that the nature of the pre-disciplinary meeting is always stressful to the employee and frequently involves subject matter which is sensitive. The availability of facilities permitting privacy aboard vessels is denied by IBU, while WSF maintains that such facilities exist.

On the facts of the record and based upon the discussion above, the Commission now makes the following:

FINDINGS OF FACT

1. The Inlandboatmen's Union and the Washington State Ferries are entities covered by RCW 47.64. Complainant IBU is, and at all material times was, the exclusive collective bargaining agency for a unit of WSF employees, under the cited statute.
2. In the history of the relationship between WSF and IBU there exists a practice covering at least twenty years, whereby pre-disciplinary interviews or meetings have been held at the office(s) of WSF.
3. On July 10, 2000, WSF gave notice to IBU of a change in the pre-disciplinary meeting policy to conduct future pre-disciplinary meetings aboard the vessel to which the employee subject of the pre-disciplinary meeting was assigned.
4. No offer or opportunity to bargain over the prospective change was afforded IBU.
5. The filing of IBU's formal charge of unfair labor practice against WSF with the MEC and WSF's answer thereto were timely and otherwise in order under the cited statute and applicable sections of the Washington Administrative Code.

And, on such findings of fact, the Commission now reaches the following:

CONCLUSIONS OF LAW

1. MEC has jurisdiction relative to the parties and subject matter herein.
2. The issue of pre-disciplinary meetings is clearly a mandatory subject of bargaining under the test employed in *NLRB v. Borg-Warner Corp.*, 356 US 349 (1958).
3. While no contractual provision governs the conduct of a pre-disciplinary meeting, the history of the relationship of the parties establishes a continuous practice of conducting such meetings at the WSF office. In the past, when WSF has proposed changing such practice, IBU objected and WSF agreed to maintain the practice.
4. There is no waiver by the Union based on rule 4.01 of the collective bargaining agreement. *Johnson-Batemen Co.*, 295 NLRB 26 (1989).
5. By announcing a change in practice regarding pre-disciplinary meetings, WSF has violated RCW 47.64 without the IBU's consent or waiver, and thereby departed from its lawful duty to bargain in good faith as required by such statutes.
6. By way of remedy for such violation, WSF should be required to cease and desist in the scheduling of pre-disciplinary meetings upon the vessel to which employees subjected to such meetings are assigned.

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ORDER

Now, therefore, it is hereby ordered that the complaint of unfair labor practice by IBU against WSF should be and hereby is affirmed and granted. By way of remedy therefor, WSF is directed to forthwith cease and desist in the scheduling of pre-disciplinary meetings aboard the vessels. Any such change in the practice of scheduling pre-disciplinary meetings must be submitted to IBU for bargaining.

DATED this _____ day of December 2000.

MARINE EMPLOYEES' COMMISSION

JOHN D. NELSON, Chairman

JOHN P. SULLIVAN, Commissioner

DAVID E. WILLIAMS, Commissioner