

HOUSE BILL REPORT

HB 3113

As Reported by House Committee On:

Commerce & Labor

Transportation

Title: An act relating to requiring bargaining over past practices in ferry employee collective bargaining.

Brief Description: Regarding requiring bargaining over past practices in ferry employee collective bargaining.

Sponsors: Representatives Cooper, Conway, McDermott, Dickerson, Hunt, Cody, Sullivan, Chase, Kenney, Haigh and Simpson, G.

Brief History:

Committee Activity:

Commerce & Labor: 2/2/04, 2/5/04 [DPS];

Transportation: 2/9/04 [DP2S].

Brief Summary of Second Substitute Bill

- Requires the Washington State Ferries and ferry workers to negotiate over the practice of including preferential hiring and successor clauses in Requests for Proposals for contracts to operate vessel galley services.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins, Kenney and McCoy.

Minority Report: Do not pass. Signed by 4 members: Representatives McMorris, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Crouse and Holmquist.

Staff: Chris Cordes (786-7103).

Background:

Ferry workers bargain under the Marine Employees' Collective Bargaining Act (MECBA) with the Washington State Ferries (WSF) over wages, hours, working conditions, and insurance and health care benefits. Retirement benefits are not included in the scope of bargaining. Refusal of the parties to bargain over mandatory subjects of bargaining is an

unfair labor practice. The MECBA is administered by the Marine Employees' Commission (MEC).

In December 2003, the MEC decided an unfair labor practice case involving Request for Proposals (RFPs) issued by the WSF for food service contracts on Washington ferries. These services are provided by the employees of the business that contracts with the WSF to provide food service. The last contract for these services terminated December 31, 2003. The contractor's employees are represented by a union that also represents employees of the WSF.

The union filed an unfair labor practice case with the MEC after the WSF issued RFPs that did not contain language requiring contractors to give preferential hiring to current galley employees or to assume the existing collective bargaining agreement applying to the galley employees. The MEC found that although it did not have jurisdiction over labor relations between the food service contractor and the union, it did have jurisdiction to decide the unfair labor practice charge. It held that (1) whether the past practice of including preferential hiring and contract assumption clauses in the food service contract RFPs was to prevent a labor stoppage or to better its relationship with the union, it was a practice on which the union was entitled to depend, and (2) when the WSF chose to eliminate this provision in the RFP, without first bargaining with the union, the WSF violated its statutory obligation to bargain. The case is on appeal to the superior court.

Under earlier MEC decisions, the MEC has held that if there is not written agreement on a past practice, then for the past practice to be binding on the parties, it must be unequivocal, clearly enunciated and acted on, and readily ascertainable over a reasonable period of time as a fixed practice or policy accepted by both parties.

Summary of Substitute Bill:

To fulfil their responsibilities to negotiate under the MECBA, the ferry system management and the ferry employees must negotiate over the practice of including clauses in Requests for Proposals for contracts to operate vessel galley services that would require the contractor to:

- give preference to hiring employees that were providing the services under the previous contract; and
- apply to its employees providing galley services the same terms and conditions that applied to employees under the previous contract.

Substitute Bill Compared to Original Bill:

The substitute bill deletes the requirement for negotiations over changes in ferry system management past practices and, instead, requires the ferry system management and the ferry employees to negotiate over the practice of including preferential hiring and successor clauses in Requests for Proposals for contracts to operate vessel galley services.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: For many years, clauses requiring preferential hiring of previous galley workers and the application of previous terms and conditions of employment to these workers have been included in RFPs issued to solicit food service contractors. Part of the conditions of selling the Black Ball ferry system to the state in the 1950s was a requirement to honor the labor contracts. This practice has been followed since then with one exception, which was settled through negotiations. The MEC found that failing to bargain about this practice was an unfair labor practice. Essentially, the WSF has turned its back on 130 galley workers who have worked for years on the ferries. These workers are an integral part of the ferry crew and, in cases of emergency, would be required to assist the minimal crew now working on ferries. This bill puts in statute what the MEC has required the WSF to do. The MEC decision is within the mainstream of law. The WSF is spending taxpayer money to appeal the decision. The issue should not be left to the whim of a judge.

Testimony Against: To become a past practice, the practice must occur over time and the parties must have an agreement. This bill goes beyond the galley service issue and addresses all practices within the WSF management discretion. Although the WSF is appealing the MEC decision, the WSF did not ask the court for a stay and has complied with the decision in the new food service contractor RFP.

Persons Testifying: (In support) Representative Cooper, prime sponsor; and Gordon Baxter, Dave Freiboth, and Victoria Crumrine, Inlandboatmen's Union.

(Opposed) Mike Thorne, Washington State Ferries.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass. Signed by 18 members: Representatives Murray, Chair; Rockefeller, Vice Chair; G. Simpson, Vice Chair; Campbell, Clibborn, Cooper, Dickerson, Flannigan, Hankins, Hatfield, Hudgins, Lovick, Morris, Romero, Sullivan, Wallace, Wood and Woods.

Minority Report: Do not pass. Signed by 9 members: Representatives Ericksen, Ranking Minority Member; Jarrett, Assistant Ranking Minority Member; Armstrong, Bailey, Kristiansen, Mielke, Nixon, Rodne and Shabro.

Staff: Jill Satran (786-7315).

Summary of Recommendation of Committee On Transportation Compared to Recommendation of Committee On Commerce & Labor:

The second substitute adds that the Marine Employees' Commission's (MEC) jurisdiction is a matter of continuing and substantial public interest and that the bill's provisions relating to past practices are not intended to affect the court's power to review any MEC decision on appeal.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) This bill codifies the Marine Employees' Commission (MEC) decision and meets the standards set out by MEC. Clearly, preferential hiring and successor clauses are within the mainstream of labor relations. Clauses such as preferential hiring extend back to the purchase of the Black Ball, and at the time were a condition of that sale.

(With concerns) The Department of Transportation and the Washington State Ferries are not taking a position against labor, unions, or employees. However this bill would lock us into prior arrangements instead of leaving the matter in the most flexible position.

Testimony Against: None.

Persons Testifying: Representative Cooper, prime sponsor; David Freiboth and Gordon Baxter, Inland Boatmen's Union; and Gary Baldwin, Washington State Ferries.

(With concerns) Doug MacDonald, Department of Transportation; and Gary Baldwin, Washington State Ferries.

Persons Signed In To Testify But Not Testifying: None.