

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

OFFICE AND PROFESSIONAL
EMPLOYEES INTERNATIONAL
UNION, LOCAL 8,

Complainant,

v.

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION, FERRIES
DIVISION,

Respondent.

MEC CASE NO. 1-10

DECISION NO. 576 - MEC

ORDER CLOSING
SETTLED COMPLAINT

Robblee, Brennan and Detwiler, by *Mark Brennan* and *SaNni Hull*, appearing for Office and Professional Employees International Union, Local 8 (OPEIU).

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

THIS MATTER came on regularly before the Marine Employees' Commission (MEC) on August 3, 2009, when the Office and Professional Employees International Union, Local 8, filed an unfair labor practice complaint, MEC Case No. 1-10, against the Washington State Ferries. On September 2, the OPEIU notified the MEC of its intent to file a motion for temporary relief in accordance with WAC 316-45-430.

OPEIU's complaint charged WSF with engaging in unfair labor practices within the meaning of RCW 47.64.130(1) by interfering with, restraining, or coercing employees in the exercise of rights; and by refusing to bargain collectively with representatives of employees. Specifically, OPEIU alleged that WSF refused to bargain over the decision to centralize WSF payroll in Olympia, thereby removing work from the OPEIU represented bargaining unit and unilaterally giving the work to employees miles away who are represented by another labor union.

Following review of OPEIU's complaint, the Commission determined that the facts alleged may constitute an unfair labor practice, if later found to be true and provable. On

September 8, 2009, the MEC notified the parties that the complaint had been accepted for processing and that they would be contacted shortly to schedule the case.

On September 22, 2009, OPEIU filed its Motion for Temporary Relief requesting that MEC seek an injunction to restrain WSF from moving WSF payroll functions to Olympia until administrative proceedings on MEC Case 1-10 were completed. On September 29, WSF filed a Response to Motion for Temporary Relief and supporting affidavits with the MEC.

A settlement conference was set for November 6, 2009 with Chairman John Swanson assigned to serve as Mediator. Commissioner Patricia Warren was designated to act as Hearing Examiner; the hearing was scheduled for December 11, 2009.

On October 2, 2009, the MEC concluded that OPEIU had made a showing of irreparable harm if the status quo was not preserved until the Commission could complete the processing of the unfair labor practice complaint and granted OPEIU's Motion to Seek Temporary Relief. On October 7, AAG Spencer Daniels, counsel for the MEC, filed a Complaint for Injunctive Relief with Thurston County Superior Court. The Complaint requested an order from the Court enjoining WSF from taking further action to implement its decision to transfer payroll operations from Seattle to Olympia until the Commission had completed processing Case 1-10.

On October 9, 2009, AAG Spencer Daniels filed a Motion for Temporary Restraining Order and Order to Show Cause with the Court seeking to restrain WSF from taking further action to implement the transfer of its payroll operations from Seattle to Olympia until the Court could consider whether a preliminary injunction should be issued. On October 12, WSF filed a response to the Motion and Order. On October 14, Judge Richard Hicks denied the Motion for Temporary Restraining Order and Order to Show Cause.

The MEC settlement conference on November 6, 2009, concluded with OPEIU and WSF signing a preliminary settlement agreement. Complete and final version of the settlement agreement was to be executed on or before November 20; however, the parties later extended that to mid-December. On December 22, Suzanne Mode, OPEIU Business Manager, notified the MEC that the matter was fully resolved.

By letter on January 6, 2010, OPEIU withdrew Case 1-10, providing the MEC with a copy of the parties' final signed settlement agreement, which is appended to and becomes a part of this Order by reference.

ORDER

It is hereby ordered that the unfair labor practice complaint, filed by OPEIU against WSF and docketed as MEC Case No. 1-10, is closed in acknowledgment of the parties' settlement agreement.

DATED this 5th day of February 2010.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN SWANSON, Chairman

/s/ PATRICIA WARREN, Commissioner

/s/ JOHN COX, Commissioner

Settlement Agreement

JAN 06 2010

MARINE EMPLOYEES COMMISSION
OLYMPIA WA

By and Between

The Office and Professional Employees International Union, Local 8 (OPEIU)

and

The Washington State Department of Transportation (WSDOT)

in the settlement of

ULP #1-10/MEC Case #1-10 and OPEIU's Demand To Bargain

Via the terms and conditions of this Settlement Agreement:

Washington State Department of Transportation Agrees:

- To provide Ms. Marivic Feliciano with the following OPEIU covered, non-permanent assignment at Ferries Division:

Position Title: Personnel Assistant I
Office: Office of Human Resources
Location: Seattle, 2901 Building, 5th floor
Start Date: January 1, 2010

- To provide Ms. Pat Johnson-Perez with the following OPEIU covered, non-permanent assignment at Ferries Division:

Position Title: Contracts Coordinator II
Office: Legal Services and Contracts
Location: Seattle, 2901 Building, 3rd floor
Start Date: Determined by the final move of payroll functions to Olympia

- To provide both Ms. Feliciano and Ms. Johnson-Perez a maximum of six (6) months starting from the date they start the position identified above, to determine if they want to continue with these new duties. At the conclusion of the six (6) months, or at any time during the six (6) months, the employee(s) can elect to terminate their temporary assignments. If either or both employees terminate their temporary assignment, they will return to their former permanent position (which will be abolished) and immediately exercise their layoff rights under Article 11 of the Collective Bargaining Agreement between the State of Washington and Office and Professional Employees International Union, Local 8 (OPEIU), 2009-11. If after six (6) months, the employees choose to remain in their new position, the position will become permanently assigned.
- To keep Ms. Feliciano and Ms. Johnson-Perez at their current salary and benefits during this temporary assignment and the employees will be eligible for any

contractual increases. Additionally, should either or both employee(s) choose to remain in the positions identified above on a permanent basis, WSDOT agrees to maintain their current salary and benefits, and the employee(s) will be eligible for any contractual increases.

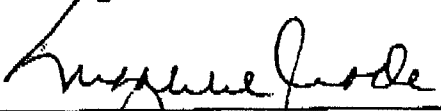
- Effective upon the date that all signatures have been attached to this settlement agreement, WSDOT agrees to provide Mr. Joseph Sequeria a maximum of six (6) months to make a decision about whether or not he wants to continue in his Fiscal Analyst 3 position in the WSDOT HQ Payroll Office in Olympia. At the conclusion of the six (6) months, or at any time during the six (6) months, Mr. Sequeria can elect to return to his former position (which will be abolished) and immediately exercise his layoff rights under Article 11 of the Collective Bargaining Agreement between the State of Washington and Office and Professional Employees International Union, Local 8 (OPEIU), 2009-11.
- To provide Mr. Sequeria with assistance in accessing available commuting alternatives to include assistance in locating a vanpool from Bellevue to Olympia.
- That, if in the future WSDOT moves payroll duties back to Seattle, Washington, WSDOT will provide prior written notice to OPEIU. This notice will include the nature of the work and potential representational issues related to the move.

Office and Professional Employees International Union, Local 8 (OPEIU) Agrees:

- To provide written notice to the Marine Employees Commission of their withdrawal of ULP # 1-10 within seven (7) calendar days after all signatures have been attached to this Settlement Agreement.
- To provide written notice to the OFM/Labor Relations Office of its withdrawal of the Demand To Bargain within seven (7) calendar days after all signatures have been attached to this settlement agreement.
- That during the six (6) month period non-permanent appointment outlined above for all three employees, WSDOT retains the right to exercise appropriate action should Ms. Feliciano, Ms. Johnson-Perez, or Mr. Sequeria fail to meet the standards related to their new position. Should such action result in termination from their new position, Ms. Feliciano, Ms. Perez-Johnson, and/or Mr. Sequeria will return to Ferries Division and their old position (which will be abolished) and exercise their layoff rights under Article 11 of the Collective Bargaining Agreement between the State of Washington and Office and Professional Employees International Union, Local 8 (OPEIU), 2009-11.
- However, if any of the named employees are terminated for willful misconduct, there shall be no right to reinstatement to the old position, or to exercise layoff rights.

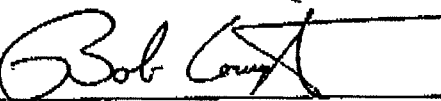
It is hereby further agreed:

- This settlement agreement constitutes full and final settlement/resolution of the above referenced unfair labor practice (MEC Case No. 1-10) and OPEIU's Demand To Bargain.
- That by entering into this settlement agreement, OPEIU, Ms. Feliciano, Ms. Johnson-Perez, and Mr. Sequeria, their heirs, assigns, or other successors in interest release the WSDOT and the State of Washington, its officers, agents, and employees from all claims, causes of action, grievances, unfair labor practice complaints, and/or suits, civil or otherwise, known or unknown, based upon actions taken in their official capacities that arise out of or related to this unfair labor practice charge and Demand To Bargain. This includes, but is not limited to, any claims and/or causes of action under Title VII, the Washington Law Against Discrimination, the Americans with Disabilities Act, the Fair Labor Standards Act, Washington Minimum Wage Act, and/or the Family Medical Leave Act.
- This settlement agreement and the mutual obligations under this settlement agreement do not constitute an admission by any party as to the validity of any claims or defenses of any other party.
- The settlement agreement is not precedent setting and does not/will not establish a practice of any kind.
- This settlement agreement shall become effective on the date of final signature and constitutes the full agreement and resolution of all disputes that may exist between the parties unless otherwise specifically noted within this settlement agreement.




OPEIU Representative

12/23/09
Date



WSDOT Representative

12/29/09
Date



OFM, Labor Relations Office
Representative

12/29/09
Date