

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. 1-09

DECISION NO. 560 - 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).

**NATURE OF PROCEEDING**

On August 1, 2008, the Inlandboatmen's Union of the Pacific filed a complaint charging the Washington State Ferries with violating RCW 47.64.130 by refusing to honor the Settlement Agreement reached in MEC Case 14-06, *IBU v. WSF*, Decision No. 481-MEC, dated May 12, 2006. The IBU alleges the WSF failed to issue a Loudermill notice within the four-week time frame agreed to in the above-referenced case and improperly issued discipline to the involved employee.

**RECORD BEFORE THE MARINE EMPLOYEES COMMISSION**

1. The IBU's complaint charging unfair labor practices dated August 1, 2008.
2. The Notice of Scheduled Settlement Conference and Hearing, dated September 4, 2008.
3. WSF's Answer to the complaint filed December 22, 2008.
4. The official transcript from the January 9, 2009 hearing; six (6) Joint Exhibits, and two (2) IBU exhibits.
5. Post-hearing brief of Complainant IBU.
6. Post-hearing brief of Respondent WSF.

## ISSUE

1. Did the WSF commit an unfair labor practice by failing to issue a Loudermill notice to Susan Valley within the four-week time frame contained in the settlement of MEC Case 14-06, Decision 481-MEC (2006).
2. If so, what is the remedy?

## 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. The WSF and the IBU are parties to a collective bargaining agreement governing the terms and conditions of certain employees of the WSF.

2. The parties stipulated to the admission of Joint Exhibit 1, the Order Closing Settled Complaint on MEC Case No. 14-06 (Decision 481-MEC), dated May 24, 2006. Page 3 of Joint Exhibit 1 contained the Settlement Agreement between the parties, which stated in relevant part:

2. WSF agrees to inform employees at fact-finding meetings that they may expect resolution within four weeks, unless an extension is requested of the union.
3. In cases in which more than four weeks are needed to complete an investigation, WSF may request more time by letter to the IBU. Any such request shall not be unreasonably withheld by the IBU.

3. On May 13, 2008, the WSF issued a letter to IBU member Susan Valley of a scheduled fact finding/pre-disciplinary conference over a shortage in her working fund revealed by a spot audit. The hearing was scheduled for May 22, 2008 (Jt. Ex. 2).

4. Subsequent to the May 22, 2008 conference, by letter dated June 27, 2008, the WSF notified Ms. Valley it had scheduled a Loudermill conference for July 11, 2008, more than four weeks after the May 22 pre-disciplinary conference (Jt. Ex. 3).

5. Five days after the May 22 conference, Ms. Valley fell and broke her ankle in two places. After her injury, she called Doug Schlieff and told him about her injury and that she was immobile.

6. Without contacting IBU, Schlieff decided Ms. Valley would be physically unable to attend a meeting within the four-week time frame agreed to in the settlement.

7. On June 10, Ms. Valley requested to exercise her rights under the Collective Bargaining Agreement (CBA) to self-demote. Appendix B, Rule 2.11 of the CBA allows

employees with more than 10 years seniority to self-demote if they are physically unable to perform the functions of their current position and keep their same pay rate.

8. The WSF denied Ms. Valley's request as it came during a disciplinary proceeding. She was subsequently demoted and her pay was reduced by \$3.35 an hour.

### **ANALYSIS**

#### **WSF Failure to Comply with the Timeline**

There is no factual dispute here. The WSF freely admits that it did not act within the four-week time frame agreed to between the parties in settlement of a prior unfair labor practice charge. It had some justification for doing so (the involved employee reported a serious injury which left the employee immobile), but it made a decision which did not comply with an agreed upon timeline, and it did so without seeking the agreement of the IBU. The decision of the WSF was unilateral. The question before the Commission is whether a single violation of a settlement agreement on a procedural matter rises to the level of an unfair labor practice.

The IBU contends any failure to abide by the terms of a settlement constitutes an unfair labor practice. They cite *IBU v. WSF*, Decision 87-MEC (1992) in support of their position. That case involved the repudiation by the WSF of a settlement reached in a grievance context.

The WSF contends that any violation of the terms of the settlement were inadvertent. In addition, the WSF points out the settlement did not contain the penalty sought by the IBU of rendering any discipline moot if the timeline were violated.

Here, the WSF does not repudiate the previous ULP settlement. In fact, the WSF has complied with the terms of the settlement reached in 2006 until the matter covered by the instant charge.

The Commission does not agree that a single violation of a settlement reached on a procedural matter rises to the level of an unfair labor practice. Here, the WSF has not repudiated an agreement. They failed to abide by a timeline. While such failure *may* be a contractual violation, the matter before the Commission is an unfair labor practice, not an arbitration.

#### **The Denial of Ms. Valley's Request to Self-Demote**

First, I would note the denial of the request was not specifically alleged in the unfair labor practice charge. Since it was not specifically alleged, it was not covered in the Answer by the WSF. However, the WSF did not object to the presentation of evidence on this matter and the Commission will therefore consider it.

However, if the underlying failure to follow the timeline is not an unfair labor practice, any consequence which flowed from that failure, including the denial of the request to self-demote, is also not an unfair labor practice. While it is possible the denial constituted a contract violation, once again the matter before the Commission is an unfair labor practice, not an arbitration. I do not find the WSF's actions to constitute an unfair labor practice.

### **CONCLUSIONS OF LAW**

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

1. The Marine Employees Commission has jurisdiction over the parties and the subject matter pursuant to RCW 47.64.280 and 47.64.130.
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 failure of the WSF to issue the Loudermill notice to Ms. Valley within four weeks of its fact-finding meeting did not rise to the level of an unfair labor practice.

### **ORDER**

The charge filed by the IBU, Case 1-09, is dismissed.

//

//

//

//

//

## 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 8th day of May 2009.

MARINE EMPLOYEES' COMMISSION

/s/ PATRICIA WARREN, Hearing Examiner

Approved by:

/s/ JOHN SWANSON, Chairman

/s/ JOHN COX, Commissioner