

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION)	MEC Case No. 12-96
OF THE PACIFIC,)	
)	DECISION NO. 163 - MEC
Complainant,)	
)	
v.)	DECISION AND ORDER
)	
WASHINGTON STATE FERRIES,)	
)	
Respondent.)	
_____)	

Schwerin, Burns, Campbell and French, attorneys, by Elizabeth Ford, appearing for and on behalf of the Inlandboatmen's Union of the Pacific.

Christine Gregoire, Attorney General, by Gretchen Gale, Assistant Attorney General, for and on behalf of Washington State Ferries.

INTRODUCTION AND BACKGROUND

On October 16, 1996, the Inlandboatmen's Union of the Pacific (IBU) charged Washington State Ferries (WSF) with an unfair labor practice within the meaning of RCW 47.64.130(1) by interfering with, restraining or coercing employees in exercise of rights guaranteed by chapter 47.64 RCW. IBU charged that within the six months previous to the filing of the complaint, WSF had refused to honor settlement agreements and orders in certain MEC charges and grievances filed by the union, including:

- (a) As a result of filing a grievance with WSF, Dave Rice agreed to pay Arvelene McKinsey at the AB pay rate if

she wrote him an econogram so requesting. The request was signed by Rice, who indicated it was approved by Captain Mecham. WSF refuses to pay Ms. McKinsey as agreed.

- (b) As the result of an agreement between the Union and WSF in MEC Case No. 7-94, WSF agreed to promote Phil Olwell, Michelle Peters and Debbie Smith to on-call Agent positions if the written settlement was not signed on a date specific. The agreement was not timely signed, and WSF now refuses to promote the individuals named as previously agreed.
- (c) WSF refuses to pay employees who work overtime on a holiday at the triple time rate ordered in MEC Case No. 10-94, Decision 131-MEC.

IBM sought an order requiring WSF to honor their settlement agrees in the cases specified above and such other relief as the Commission deemed just and proper.

The Marine Employees' Commission determined that the facts alleged by IBU may constitute an unfair labor practice if later found to be true and provable. WAC 316-45-110. Chairman Henry L. Chiles, Jr. was appointed to act as hearing examiner pursuant to WAC 316-45-130.

A prehearing conference was scheduled for December 6, 1996; a hearing was scheduled for January 30, 1997. WSF timely filed an answer on January 16, 1997.

At the December 6, 1996 prehearing conference, the parties held settlement negotiations on all issues in this matter. At that time, counsel for the parties informed the Hearing Examiner that the issues outlined in (b) and (c) above were settled. They

agreed to continue to work towards a solution of the issue set forth in (a), to-wit: whether an agreement had been reached in the grievance of Arvelene McKinsey.

In its Answer submitted January 16, 1997, at paragraph II (2), the Washington State Ferries admitted the charges as specified in paragraph number 1 (a) of the complaint. Thereafter, by letter dated January 23, 1997, Elizabeth Ford, on behalf of the Union, and Gretchen Gale, on behalf of WSF, jointly requested that the remaining issue in MEC Case No. 12-96 be decided by the Commission upon stipulated facts. The Stipulation of Facts, attached to the letter dated January 17, 1997 from Gretchen D. Gale, was signed and dated on January 24, 1997 by each counsel.

STATEMENT OF THE ISSUE

No stipulation of issue was agreed to by the parties. The following statement was formulated by Hearing Examiner Chiles as follows:

- I. Did WSF commit an unfair labor practice within the meaning of RCW 47.64.130(1) by failing or refusing to implement its agreed-upon grievance settlement with IBU concerning the payment of Arvelene McKinsey at the AB rate pursuant to Rule 7.09 of the WSU/IBU collective bargaining agreement?

- II. If the answer is "yes", what is/are the remedy/remedies?

Having read and carefully considered the facts as stipulated by the parties, as well as the entire record, the Marine Employees' Commission now hereby enters the following findings of fact.

FINDINGS OF FACT

1. Arvelene McKinsey works for the Washington State Ferries as an able seaman (AB), a position represented by the Inlandboatmen's Union of the Pacific.
2. In 1996, Ms. McKinsey initiated a grievance with the Washington State Ferries based on WSF's failure to pay her at the AB rate during a time when she was unable to work an AB job.
3. David Rice, WSF Personnel Manager, agreed that, if Ms. McKinsey wrote him an econogram asking for the AB pay, he would agreed to pay it.
4. Subsequent to Mr. Rice's agreement, Arvelene McKinsey submitted an undated econogram, sent to the attention of Captain Jerry Mecham, WSF Port Captain, which stated:

Message

I'm writing to you in regard to my situation involving fire fighting, as you know! I'm unable to get certification for a fire fighting due to a medical condition. I'm asking you to consider (under Rule 7.08) that I receive AB pay for my work with W.S.F.

Ms. McKinsey received the following response to her econogram:

Reply

¹ Rule 7.08 of the WSF/IBU Collective Bargaining Agreement states: "An able seaman with ten (10) or more years of service may change jobs without loss of pay if the employee becomes handicapped to the extent that the employee might otherwise lose the job, or if the employee is assigned to such other job by the Employer."

Approved by Capt. Mecham
8/30/96
(signed) Dave Rice

5. Thereafter, WSF refused to pay Ms. McKinsey at the AB rate as agreed by WSF Personnel Manager Dave Rice and approved by WSF Port Captain Jerry Mecham on August 30, 1996.

Having entered the foregoing findings of fact, the Marine Employees' Commission now hereby enters the following conclusions of law.

CONCLUSIONS OF LAW

1. MEC has jurisdiction over the subject matter and the parties' involved in this case. Chapter 47.64 RCW, especially RCW 47.64.130, 47.64.150 and 47.64.280.
2. WSF reached agreement on the McKinsey grievance with IBU. WSF thereafter refused to honor the agreement it had made. Repudiation of its agreement arrived at through the collective bargaining procedures undermined the collective bargaining process.

MEC must conclude that WSF failed to fulfill its obligation to bargain in good faith by having reached an accord on a problem and thereafter having reneged on the commitment it had made to the IBU.

MEC must conclude on the basis of facts to which the parties stipulated herein, that WSF, by its repudiation of its agreement with IBU in the McKinsey grievances, failed to bargain in good faith and has committed an unfair labor practice within the meaning of RCW 47.64.130(1)(e). See Pratt v. Whitney Aircraft, 310 NLRB 1126 (1993).

Having read the stipulation of facts entered jointly by the parties as well as the record herein, the Marine Employees' Commission now enters the following order.

ORDER

1. The Inlandboatmen's Union of the Pacific's charge of unfair labor practice against Washington State Ferries (concerning Arvelene McKinsey) filed on October 16, 1996 and docketed as MEC Case No. 12-96, has been proven by a preponderance of evidence and is hereby sustained.
2. Washington State Ferries shall immediately honor the agreement made in its behalf by David Rice and approved by Captain Mecham, to pay Ms. McKinsey at an AB rate for time during which she was unable to work as an AB, pursuant to Rule 7.08 of the WSF/IBU contract. Her wages shall be made whole.
3. The remaining issues contained the complaint docketed herein have been resolved and withdrawn and are hereby dismissed.

DATED this 14th day of February, 1997.

MARINE EMPLOYEES' COMMISSION

/s/ Henry L. Chiles, Jr., Chairman

/s/ John P. Sullivan, Commissioner

/s/ David E. Williams, Commissioner