

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

DISTRICT NO. 1, MARINE
ENGINEERS' BENEFICIAL
ASSOCIATION
and
INLANDBOATMEN'S UNION
OF THE PACIFIC,

Complainants,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC Case No. 13-02

MEC Case No. 26-02

DECISION NO. 318 - MEC

ORDER DISMISSING
ADJUSTED COMPLAINTS

Davies, Roberts and Reid, attorneys, by *Todd Lyon*, appearing for and on behalf of District No. 1, Marine Engineers Beneficial Association.

Schwerin, Campbell and Barnard, attorneys, by *Robert Lavitt*, 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 Washington State Ferries.

THESE MATTERS came on regularly before the Marine Employees' Commission as follows:

MEBA Unfair Labor Practice Complaint:

On December 26, 2001, District No. 1, Marine Engineers Beneficial Association (MEBA) filed an unfair labor practice complaint, MEC Case No. 13-02, against WSF. Pursuant to WAC 316-45-110, following initial review of the complaint, the MEC determined that the facts alleged may constitute an unfair labor practice, if later found to be true and provable.

ORDER DISMISSING
ADJUSTED COMPLAINTS -1-

In its complaint, MEBA charged WSF with engaging in unfair labor practices within the meaning of RCW 47.64.130(1) by refusing to bargain collectively with representatives of employees.

Specifically, MEBA alleged that WSF unilaterally changed policy, without negotiating the changes with the Union, when it implemented a new drug policy on October 2, 2001.

Chairman John Nelson was designated as Hearing Examiner. A settlement conference was scheduled for March 15 and a hearing for April 10, 2002.

IBU Unfair Labor Practice Complaint:

On January 24, 2002, IBU filed an unfair labor practice complaint, MEC Case No. 26-02, against WSF. Pursuant to WAC 316-45-110, following review, the Commission determined that the facts alleged may constitute an unfair labor practice, if later found to be true and provable.

In its complaint, IBU 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 exercise of rights and refusing to bargain collectively with representatives of employees.

Specifically, IBU alleged that on or about September 2001, WSF unilaterally altered working conditions when it issued a new drug and alcohol policy to all deck employees without first negotiating with the Union. IBU further asserted that WSF interfered with the Union's ability to represent its members and with those members' right to engage in collective bargaining.

PROCEDURAL BACKGROUND

On January 31, 2002, upon review of the facts and principles of law involved in MEC Cases 13-02 and 26-02, the Commission ordered them consolidated for the purpose of conducting a settlement conference and hearing. The settlement conference was rescheduled for

March 13, 2002, with Commissioner John Byrne reassigned as Mediator. The hearing date remained scheduled for April 10, 2002. On February 7, 2002, IBU amended its complaint. On February 22, Commissioner John Sullivan was reassigned to act as Hearing Examiner in the consolidated cases.

On March 15, 2002, WSF filed a Motion to Make Complaint More Definite and Certain in both Case 13-02 and 26-02, asserting that the complaints were “so vague and uncertain as to hamper respondent in the preparation of its answer, and in the preparation of its case.” Counsel for MEBA and for IBU filed responses to WSF’s Motion—MEBA on March 22 and IBU on March 27. IBU also filed a request for continuance of the April 10 hearing at this time.

On March 28 and 29, 2002, Examiner John Sullivan issued Order Granting WSF’s Motion to Make Complaint More Definite and Certain in Part, directing MEBA and IBU each to file an amended complaint providing additional facts. Examiner Sullivan subsequently continued the hearing to May 22, 2002.

IBU filed an Amended Complaint in response to the Examiner’s Order on April 12; MEBA filed its Amended Complaint on April 16, 2002. On May 6, 2002, WSF filed Answers to both of the Amended Complaints.

* * *

On May 22, 2002, the parties gathered for a hearing in Case 13-02 and 26-02. Prior to convening the hearing, WSF reached agreements with both MEBA and IBU, resolving the unfair labor practice charges. On May 23, 2002, Examiner Sullivan delivered the signed settlement agreements to MEC staff. Each agreement includes the Union’s withdrawal of its complaint. The parties’ agreements are appended to and become a part of this Order by reference.

ORDER

It is hereby ordered that

1. The unfair labor practice complaint, filed by District No. 1 MEBA against WSF and docketed as MEC Case No. 13-02, be dismissed.

2. The unfair labor practice complaint, filed by the IBU against WSF and docketed as MEC Case No. 26-02, be dismissed.

DATED this 3rd day of June 2002.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN NELSON, Chairman

/s/ JOHN SULLIVAN, Commissioner

/s/ JOHN BYRNE, Commissioner

Settlement Agreement

MAY 23 2002
MARINE EMPLOYEES' COMMISSION
OLYMPIA WA

This Settlement Agreement ("Agreement") is between Marine Engineers' Beneficial Association, District No. 1-PCD, AFL-CIO ("MEBA" and "Union") and Washington State Ferries ("WSF" or "Employer"). MEBA and WSF wish to settle the unfair labor practice charge in Case No. 13-02. The parties therefore agree as follows:

1. The parties agree to sign a Memorandum of Understanding embodying the parties' past practice of alcohol test results of .02% or greater but less than .04%. Specifically, the past practice has been if an employee has an alcohol test result of .02% or greater but less than .04%, the employee will be sent home without pay for the remainder of that day. The employee may return to work in accordance with WSF's substance abuse (drug and alcohol) policy, Section IX. B. Discipline for alcohol as outlined in the Code of Conduct shall not be initiated or implemented. The Union reserves the right to object and demand to bargain over WSF's reporting to the Coast Guard alcohol test results of .02% or greater but less than .04%. WSF acknowledges that by signing the Memorandum of Understanding, MEBA has not waived any right to file grievances on behalf of its members or to bargain the reporting requirements during any future negotiations.
2. The parties agree to sign a Memorandum of Understanding indicating the parties' agreement to change the name or title of the agreement the employee signs before he or she returns to work from "Last Chance Agreement" to "Return to Work Agreement" so as to conform to the Code of Conduct.
3. The parties agree to sign a Memorandum of Understanding indicating that the employee must successfully complete the recommended rehabilitation and that any alleged failure to comply with the recommended rehabilitation program shall be subject to the grievance/arbitration provision in the parties' collective bargaining agreement. At arbitration, the only issue for the arbitrator shall be whether the employee failed to comply with the recommended rehabilitation program. If the arbitrator determines that the employee failed to comply with the recommended rehabilitation program, the arbitrator shall deny the grievance and shall have no authority to mitigate the discipline or discharge.

before and

4. The parties agree to sign a Memorandum of Understanding indicating that after any disciplinary suspension for a positive substance abuse result, the employee may use his or her accrued leave or comp time while going through the rehabilitation program.
5. The parties agree to sign a Memorandum of Understanding indicating that by entering into the Memorandum of Understanding the Union has not waived its right to grieve any discipline imposed for an alleged violation of the alcohol or illegal drug policy as outlined in the Code of Conduct.
6. The parties agree that WSF shall pay for the cost of any pre-employment, random, reasonable cause/suspicion and split sample testing.
7. The parties have agreed to conduct additional investigation and/or legal research into whether WSF is required to conduct a pre-employment drug test for those employees covered by the Coast Guard regulations governing pre-employment drug testing and for whom the Employer has granted a waiver. The parties will meet again to discuss this matter within 30 days from the date of this Agreement.
8. The Union hereby withdraws the unfair labor practice charge in Case No. 13-02.

Mike Manning
 Mike Manning
 Labor Relations Manager

5/21/02
 Date

David Slown
 David Slown
 Counsel for WSF

5/21/02
 Date

Mario Micomphaco
 Mario Micomphaco
 MEBA, WSF Representative

5/21/02
 Date

Todd A. Lyon
 Todd A. Lyon
 Counsel for MEBA

5/21/02
 Date

BEFORE THE MARINE EMPLOYEE'S COMMISSION

MAY 23 2002
MARINE EMPLOYEES' COMMISSION
OLYMPIA, WA

Inlandboatmen's Union of the Pacific,
Complainant,

MEC Case 26-02
SETTLEMENT AGREEMENT

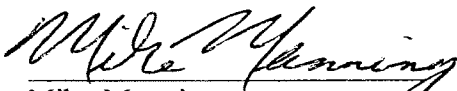
v.
Washington State Ferries,
Respondent.

This Settlement Agreement ("Agreement") is between the (Inland Boatman's Union of the Pacific "IBU" or "Union") and Washington State Ferries ("WSF" or "Employer"). IBU and WSF wish to settle the unfair labor practice charge in Case No. 26-02. The parties therefore agree as follows:


1. The parties agree to continue their past practice of alcohol test results of .02% or greater but less than .04%. Specifically, the past practice has been if an employee has an alcohol test result of .02% or greater but less than .04%, the employee will be sent home without pay for the remainder of that day. The employee may return to work in accordance with WSF's substance abuse (drug and alcohol) policy, Section IX. B. Discipline for alcohol as outlined in the Code of Conduct shall not be initiated or implemented. The Union reserves the right to object and demand to bargain over WSF's reporting to the Coast Guard alcohol test results of .02% or greater but less than .04%. WSF acknowledges that IBU has not waived any right to file grievances on behalf of its members or to bargain the reporting requirements during any future negotiations.
2. The parties agree to change the name or title of the agreement the employee signs before he or she returns to work from "Last Chance Agreement" to "Return to Work Agreement" so as to conform to the Code of Conduct.
3. The parties agree to sign a Memorandum of Understanding indicating that the employee must successfully complete the recommended rehabilitation and that any alleged failure to comply with the recommended rehabilitation program shall be subject to the grievance/arbitration provision in the parties' collective bargaining agreement. At arbitration, the only issue for the arbitrator shall be whether the employee failed to comply with the recommended rehabilitation program. If the arbitrator determines that the employee failed to comply with the

recommended rehabilitation program, the arbitrator shall deny the grievance and shall have no authority to mitigate the discipline or discharge.

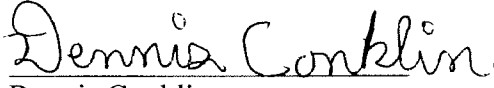
4. The parties agree that before and after any disciplinary suspension for a positive substance abuse result, the employee may use his or her accrued leave, sick leave, vacation or comp time while going through the rehabilitation program.
5. The parties agree that by entering into this Settlement Agreement the Union has not waived its right to grieve any discipline imposed for an alleged violation of the alcohol or illegal drug policy as outlined in the Code of Conduct.
6. The parties agree that WSF shall pay for the cost of any pre-employment, random, reasonable cause/suspicion and split sample testing.
7. The parties have agreed to conduct additional investigation and/or legal research into whether WSF is required to conduct a pre-employment drug test for those employees covered by the Coast Guard regulations governing pre-employment drug testing and for whom the Employer has granted a waiver. The parties will meet again to discuss this matter within 120 days from the date of this Agreement.
8. The Union hereby withdraws the unfair labor practice charge in Case No. 26-02. Additionally, the parties agree to discuss the notification procedures for employees who are required to submit to a pre-employment drug test.


Mike Manning
Labor Relations Manager


5-22-02
Date


David Slown
Counsel for WSF

05-22-02
Date


Dennis Conklin
IBU Representative

05-22-02
Date


Robert Lavitt
Counsel for IBU

5/22/02
Date

AUG 25 2003
MARINE EMPLOYEES' COMMISSION
OLYMPIA, WA

SUPPLEMENTAL SETTLEMENT AGREEMENT

This Supplemental Settlement Agreement ("Supplemental Agreement") is between the Marine Engineers' Beneficial Association, District No. 1 - PCD, AFL-CIO ("MEBA" or "Union") and Washington State Ferries ("WSF" or "Employer"). MEBA and WSF wish to resolve the remaining outstanding matter from the unfair labor practice charge in Case No. 13-02.

RECITALS

WHEREAS, pursuant to paragraph 7 of the parties' Settlement Agreement executed on May 21, 2002, the parties agreed to conduct additional investigation into whether WSF must rely upon the Federal Transit Administration's pre-employment drug testing as opposed to the Coast Guard's pre-employment drug testing.

WHEREAS, on April 22, 2002, the Federal Transit Administration issued a Notice indicating that ferry operations that receive federal transit funds and comply with Coast Guard drug testing will be in concurrent compliance with the Federal Transit Administration's drug testing.

In consideration of the aforementioned Recitals and as a means of resolving and compromising various claims of the parties in this matter, the followings terms are hereby agreed:

1. The parties' agree to revise the WSF's Substance Abuse Policy. Specifically, Article VI Circumstances For Testing, Section A., Subsection 1. Pre-employment Testing, subparagraph (d) formerly stated:

When a covered employee or applicant has not performed a safety sensitive function for ninety (90) consecutive calendar days regardless of the reason, and the employee has not been in WSF's random pool during that time frame, the employee shall submit to a pre-employment test.

This section shall now read as follows:

WSF shall waive a pre-employment test if the employee provides satisfactory evidence that he or she has:

1. Passed a drug test within the previous six (6) months with no subsequent positive drug test during the remainder of the six-month period; or

2. Been subject to random drug testing for at least sixty (60) days of the preceding 185 days and did not fail or refuse to participate in a drug test.

2. Nothing in this Supplemental Agreement is intended to change any of the remaining items agreed upon in the Settlement Agreement dated May 21, 2002 and the Memorandum of Understanding dated July 25, 2002.

Mike Manning
Mike Manning
WSF Labor Relations Manager

6/9/03
Date

Mario Micomonaco
Mario Micomonaco
MEBA - WSF Representative

April 28, 2003
Date