

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION)	MEC Case No. 13-96
OF THE PACIFIC,)	
)	DECISION No. 167 - MEC
Complainant,)	
)	
v.)	ORDER OF DISMISSAL
)	
WASHINGTON STATE FERRIES,)	
)	
Respondent.)	
)	

THIS MATTER came before the Marine Employees' Commission (MEC) on October 16, 1996 when the Inlandboatmen's Union of the Pacific (IBU) filed an unfair labor practice complaint against the Washington State Ferries (WSF).

IBU'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.

IBU alleged that WSF refused to fully implement the parties' 1995-1997 Collective Bargaining Agreement, which had been recently negotiated, thereby depriving IBU members of contractually guaranteed benefits and undermining the collective bargaining process. The IBU membership had ratified the agreement on August 23, 1995. As of the date of the filing of the complaint, WSF had not signed the agreement. IBU asserted that WSF had publicly indicated its intent to honor the agreement, and had indeed implemented certain provisions of the agreement that, in the Union's opinion, were beneficial to the Employer. IBU asserted that WSF had, however, refused to implement other provisions which were not favorable to the Employer. IBU sought an order requiring WSF to abide by the terms of the 1995-1997 collective bargaining agreement, to retroactively provide all benefits given under that contract and such other relief as the Commission deemed just and proper.

Upon review, the MEC determined that the facts alleged, if later found to be true and provable, may constitute unfair labor practices. Chairman Henry L. Chiles, Jr., was appointed to act as hearing examiner, pursuant to WAC 316-45-130. A prehearing conference and hearing were scheduled for December 6, 1996 and February 12, 1997, respectively.

On November 25, 1996, the Inlandboatmen's Union filed an amended statement of facts and requested remedy. In its amended complaint, IBU alleged that WSF had refused to execute and abide by the letter of understanding agreed to between the parties regarding a process by which to determine the appropriate pay level for terminal agents. IBU alleged that WSF had refused to execute and abide by the letter of understanding agreed to between the parties in which the ferry system and IBU agreed to submit to arbitration the issue of "whether the accrued interest on the four percent (4%) COLA, which was appropriated by the Washington state legislature, should be allotted to the bargaining unit employees, and if so, to specify the term(s) of payment," to Arbitrator Michael Beck. The Union further alleged that WSF refused to execute and abide by the letter of understanding agreed to between the parties in which WSF agreed to "make a good faith effort to explore ways to address the parking concerns of the IBU employees located at the Coleman (sic) Dock." IBU sought an order requiring WSF to abide by the terms of the 1995-1997 collective bargaining agreement, to retroactively provide all benefits given under that contract, execute and abide by the agreed upon letters of understanding, submit the interest issue to interest arbitration before Arbitrator Beck and such other relief as the Commission deemed just and proper.

A prehearing conference was held in this matter, as scheduled, on December 6, 1996. On the scheduled hearing date, the parties met with MEC Director Janis Lien for purposes of mediating a number of issues contained in the amended complaint which the parties had been unable to resolve. The parties did reach settlement in two of three remaining issues at that time. Written settlement agreements of those two issues are attached hereto. (See letter from

Elizabeth Ford, dated February 18, 1997, also attached.) The hearing of the final issue was continued to February 21, 1997, and later to March 14, 1997.

On March 12, 1997, IBU attorney Elizabeth Ford informed the MEC by telephone that the parties had resolved the remaining issue, and asked that the March 14, 1997 hearing date be stricken. Attorney Ford indicated that a withdrawal of the matter would be forwarded as soon as possible. On April 14, 1997, IBU Business Agent Dennis Conklin withdrew the unfair labor practice charges contained in MEC Case No. 13-96. A copy of the written settlement agreement of the final issue (the clean up of blood) is also attached to this dismissal.

ORDER

It is hereby ordered that the unfair labor practice complaint, filed by IBU against WSF and docketed as MEC Case No. 13-96, is dismissed.

DONE this 30th day of April, 1997.

MARINE EMPLOYEES' COMMISSION

/s/ HENRY L. CHILES, JR. Chairman

/s/ JOHN P. SULLIVAN, Commissioner

/s/ DAVID E. WILLIAMS, Commissioner

SETTLEMENT AGREEMENT

In settlement of Paragraph 1.c. of MEC Case Number 13-96, the Washington State Ferries (“WSF”) and the Inlandboatmen’s Union (“IBU”) agree as follows:

1. The parties clarify Rule 30.01 of the 1995-1997 collective bargaining agreement as follows: The clean up of blood does not include the emptying of sanicans in the women’s restroom unless there is a necessity to clean or come in contact with blood or bloody items.

2. The WSF will make the pay orders from August 23, 1996 to the date of this agreement available for review by Dennis Conklin or someone designated by Mr. Conklin. Mr. Conklin or his designee will identify the pay orders which he/she believes should be paid under the above-agreed definition. Within thirty (30) days of the date Mr. Conklin delivers his review to Jim Yearby, WSF will either arrange to pay the penalty pay requested or notify the individual by letter that WSF will not pay the penalty pay. If WSF fails to either pay or notify individual whose claim it wishes to deny within the thirty (30) day period, and this failure is brought to the attention of WSF by either the IBU or the employee, and WSF fails to either pay or deny the claim within fifteen (15) days of said notification, then the employee’s claim be granted.

3. WSF agrees to pay claims if employees have indicated on their pay orders that they have cleaned up or come in contact with blood in accordance with the above definition. If an employee has put in claims for penalty pay more than 13 days in a month, WSF may deny the claim if the employee failed to give a satisfactory explanation. After denial, IBU may meet with a representative of the WSF and if the IBU can establish that he or she cleaned up blood consistent with the above clarification, WSF will pay the claim.

DATED this 13th day of February, 1997.

/s/ Dennis Conklin

/s/ James Yearby

In settlement of MEC Charge 13-96, paragraph 1.d., the parties agree to the attached letter of understanding.

Dated this 12th day of February.

/s/ Dennis Conklin

/s/ James Yearby

**LETTER OF UNDERSTANDING
BY AND BETWEEN
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
OPERATOR OF THE WASHINGTON STATE FERRIES
AND
INLANDBOATMEN'S UNION OF THE PACIFIC
MARINE DIVISION OF THE I.L.W.U.**

The above named parties hereby enter into this Letter of Understanding for the purpose of establishing a committee for a class study of the Terminal Department Dock Agents. This study will be conducted to determine if a wage increase is appropriate for the Terminal Agents. The parties agree to conduct this study under the following conditions:

1. The committee shall consist of three (3) representatives of the WSF and three (3) representatives of the Union (two [2] Terminal Agents and the Regional Director).
2. The WSF agrees to pay all IBU committee members for work hours spent participating on the committee.
3. The committee will meet for a ninety (90) day period, or a maximum of five meetings and submit its findings to the WSF. WSF will then have thirty (30) days in which to respond to the committee findings.
4. If there is a disagreement as to the results of this study, the IBU reserves the right to move the issue onto arbitration. The parties agree that WSF is not waiving any objection or legal defense it might otherwise have.
5. If after reviewing the results of the study, the parties agree to an increase, it shall be retroactive to June 1, 1996.

FOR THE EMPLOYER:

/s/Jim Yearby

FOR THE UNION:

/s/ Dennis Conklin

Date: 2/12/97

In settlement of paragraph 1.e. of MEC Charge 13-96 the WSF and the IBU agree as follows:

The WSF and the IBU will submit to the MEC for a declaratory ruling the issue of whether the legislation appropriating the 4% COLA allows the bargaining unit members to be allotted interest, if any, is a proper subject of arbitration. If the MEC rules that the issue is arbitrable and after the WSF has exhausted its appeal avenues, if any, the WSF and the IBU will proceed to interest arbitration within 30 days. If the MEC rule that the issue is not arbitrable and that decision is affirmed in appeal, if any, the parties will not proceed to interest arbitration.

Dated this 12th day of February.

/s/ Scott Brayman

/s/ Jim Yearby

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ELIZABETH FORD

February 18, 1997

Janice Lien
Marine Employees' Commission
Main Floor S.W. Quadrant FJ-11
Evergreen Plaza Building
P.O. Box 40902
Olympia, WA 98504-0902

RE: MEC Charge No. 13-96
Our File No. 3026-351

Dear Ms. Lien:

The purpose of this letter is to set out the status of the above-referenced MEC Charge after Wednesday's mediation.

As to paragraph 1.b., the WSF has signed the 1995-1997 contract, so that charge is withdrawn. As to paragraph 1.c., the parties are currently negotiating over the issue regarding the clean up of blood. WSF has implemented the Maintenance and Cure provision of the contract, so that is no longer an issue. As to paragraph 1 .c., that issue has been settled in accordance with the attached agreement. As to paragraph 1.d. that issue has been settled in accordance with the attached agreement. The issue of arbitrability will be submitted to the MEC for declaratory ruling. As to paragraph 1.f., the parking agreement has been executed.

Thus, the blood issue is the only outstanding issue on which we may still need a hearing. Jeff Boudell and I have identified March 12 and March 14 as possible dates and will be checking with our clients to confirm.

Sincerely,

/s/ Elizabeth Ford

EF: amd
OPEIU #8, AFLC-CIO
Enclosure

WW/LTRS/LIEN8:amd