

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

GEORGE B. GREENWOOD,

Complainant,

v.

DISTRICT NO. 1, MARINE
ENGINEERS' BENEFICIAL
ASSOCIATION,

Respondent.

MEC CASE NO. 32-05

DECISION NO. 439 – MEC
SUPPLEMENT

ORDER ON REQUEST
FOR REVIEW

George Greenwood, appearing for George Greenwood.

Reid, Pedersen, McCarthy and Ballew, by *Michael McCarthy*, Attorney, appearing for District No. 1, Marine Engineers' Beneficial Association.

ON JANUARY 18, 2005, COMPLAINANT GEORGE B. GREENWOOD filed a complaint alleging that the Marine Engineers' Beneficial Association (MEBA) committed an unfair labor practice by having entered into a settlement agreement in MEC Case No. 50-04. Pursuant to WAC 316-45-110, the Commission reviewed the complaint and concluded Complainant's "statement of facts is not sufficient to allow the Commission to determine whether it meets the required threshold for a complaint." Accordingly, Complainant was given opportunity to amend his original complaint.

On February 15, 2005, Complainant submitted an additional letter concluding, "my grievance was handled in an arbitrary and capricious way" but offering no additional factual allegations.

On March 6, the Commission entered an Order of Dismissal of Complainant's charge holding that "the allegation that a union entered into a settlement agreement with which a grievant does not agree, without more, does not constitute a violation of RCW 47.64 130.

On April 12, 2005, Complainant submitted a Request for Review re-alleging that Complainant's underlying grievance was meritorious and, therefore, the Marine Engineers' Beneficial Association breached its duty of fair representation by entering a settlement agreement rather than pursuing the matter to a hearing. On June 15, 2005, MEBA filed its response to Mr. Greenwood's Request for Review. MEBA argues, among other things, that the request was not timely filed.

As to Commission decisions declining to conduct an adjudicative proceeding, WAC 316-02-620 provides "unless the complainant, petitioner or grievant files a request for review within thirty days following receipt of the denial, the denial shall be entered as an order which shall be final and binding in accordance with RCW 47.64.280." The MEC rules also require "[a]ll formal papers served by the commission or by any party shall be served upon all counsel then of record and upon all parties not represented by counsel or upon their agents designated by them or by law."

The Commission's Order of Dismissal was mailed to Mr. Greenwood on March 15 and received by him on March 16, 2005. Mr. Greenwood's Request for Review was filed with this Commission on April 12, 2005, within the 30-day period. However, Mr. Greenwood did not serve MEBA with a copy of his request. Because service was not made within the 30-day time period, Mr. Greenwood's request was not made within the time period allotted and on that basis may be dismissed.

In addition, to establish a breach of a union's duty of fair representation the Complainant must show that the union acted arbitrarily, discriminatorily or in bad faith. The settlement of a grievance that the Complainant believes to be meritorious, even on terms the Complainant believes to be inadequate, is insufficient by itself to establish a breach of the duty of fair representation.

ORDER

The Complainant's Request for Review is hereby DISMISSED. The MEC hereby ORDERS that Decision No. 439 – MEC is final and binding in accordance with RCW 47.64.280.

APPEAL RIGHTS

This order will start the period running for any appeal to the Washington State Superior Court, pursuant to RCW 34.05.542 and 34.05.514.

DATED this 29th day of July 2005.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN SWANSON, Chairman

/s/ JOHN SULLIVAN, Commissioner

/s/ ELIZABETH FORD, Commissioner