

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION  
OF THE PACIFIC,

Complainant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC CASE NO. 36-04

SUPPLEMENT TO  
DECISION NO. 429-MEC

**NATURE OF THE PROCEEDING**

Complainant Inlandboatmen's Union of the Pacific brought this matter before the Marine Employees' Commission on a Motion for [partial] Reconsideration of the Decision and Order issued in this case. The Union seeks the elimination of Finding of Fact 22 and asks that the remedy be altered in two respects. Washington State Ferries opposes all aspects of the Motion for Reconsideration. Washington State Ferries does not seek any alteration to the decision at issue.

**RECORD BEFORE THE COMMISSION**

The Marine Employees' Commission has the following record before it in deciding this Motion:

1. The Motion for Reconsideration filed by the Inlandboatmen's Union on December 7, 2004.
2. The Response to the Motion for Reconsideration filed by Washington State Ferries on December 17, 2004.

3. The entire record before the Commission in Case No. 36-04 as well as the earlier Decision in this case, No. 429-MEC.

### **DECISION ON THE MOTION**

The Marine Employees' Commission hereby denies those portions of the motion which seek to eliminate Finding of Fact 22 and which request a mandatory posting of an official Notice of the Decision in this case.

The Marine Employees' Commission hereby grants the request that the remedy be altered to encompass the possibility that there are affected employees whose medical leaves were terminated during the period covered by the case for reasons found improper by the Marine Employees' Commission and who, on losing the prospect of securing medical benefits by the use of 8 hours of compensated time per month, chose to buy personal insurance for the period at issue.

### **RATIONALE FOR THE DENIALS**

The Marine Employees' Commission denies the request that Finding of Fact 22 be eliminated because Finding of Fact 22 is based firmly on and is supported by the Record including the testimony that the Commission credited (see, by example, Transcript pages 253-255, 264-267, 285, and 314). The documentary evidence in the record supports the Finding as well, as the Union implicitly acknowledges. The Union's argument that that documentary evidence is not, by itself, sufficient to support the Finding ignores the presence of the direct, credible testimony.

The Request for an official, mandatory posting of a Notice is denied because the employer's conduct in this case is neither of a nature nor of a magnitude sufficient to require an extraordinary remedy. There is nothing in the record before the Marine Employees' Commission

to indicate that the employer was attempting to subvert the collective bargaining process. Instead, the record indicates that the employer's violation is more a result of inattention and lack of coordination. While the violation had a potentially severe impact upon certain individuals, it did not have the kind of bargaining-unit wide impact that would call for a bargaining-unit wide posting.

### **RATIONALE FOR GRANTING A PORTION OF THE REQUEST FOR RECONSIDERATION**

The Marine Employees' Commission intended its decision to correct the violation where employees lost medical benefit coverage because they were improperly forced off medical leave and onto personal leave. The Union's motion properly points out that there may be individuals who chose to buy their own medical insurance during that period on account of the loss of the 8 compensatory hour per month policy for those on medical leave. If there were such employees, they would be within the range of those for whom the Marine Employees' Commission intended to draft a remedy.

As a consequence, the remedy portion of the Order is hereby rewritten to include the following:

**In addition to the buy-back remedy for those forced off medical leave who used more than 8 compensated hours per month to secure Washington State Ferries medical benefit, those who chose to substitute personal medical benefits are also entitled to a remedy. The class of those entitled to this remedy is made up of all persons who were terminated from a medical leave in the manner found to be a violation in this case from 180 days prior to February 17, 2004 to the present and who had compensatory time on the books but who were denied the use of the 8 compensatory hours per month system for the continuation of Washington State Ferries medical benefits. Those persons are entitled to recoup the amount they paid for personal medical insurance minus the dollar value of 8 hours per month compensated time and minus the self-pay or co-pay amount (if any) of the Washington State Ferries medical benefits.**

This addition to the remedy does not otherwise alter the case in any way. The purpose is to make sure that there is a remedy for affected individuals for the narrow and very specific violation found in this case. This remedy is not intended to expand the scope of the remedy to cover that portion of the case that was withdrawn from the case by the stipulation of the parties.

### **FINALITY OF THE DECISION**

Except as altered by this decision, the Marine Employees' Commission decision in case 36-04 is hereby made final. This decision is to be part of the final decision and the two portions must be viewed together in the event that the case is reproduced or cited in the future.

### **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 30th day of December 2004.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN BYRNE, Hearing Examiner

Approved by:

/s/ JOHN SWANSON, Chairman

/s/ JOHN SULLIVAN, Commissioner