

STATE OF WASHINGTON

BEFORE THE MARINE EMPLOYEES' COMMISSION

OFFICE AND PROFESSIONAL)	MEC Case No. 4-97
EMPLOYEES' INT'L UNION,)	
LOCAL 8,)	
)	
Complainant,)	
)	DECISION NO. 176-MEC
v.)	
)	ORDER DISMISSING
WASHINGTON STATE FERRIES,)	ADJUSTED COMPLAINT
)	
Respondent.)	
)	

THIS MATTER came before the Marine Employees' Commission on February 18, 1997, when the Office and Professional Employees' International Union Local 8 (OPEIU) filed an unfair labor practice complaint against the Washington State Ferries (WSF), charging WSF with interfering with, restraining or coercing employees in exercise of their rights, and refusing to bargain collectively with the representative of employees, in violation of RCW 47.64.130.

OPEIU Local 8, alleged that the Washington State Ferries and particularly Marjorie Davis, WSF Finance Manager, used temporary workers to remove bargaining unit work from OPEIU members.

Specifically, OPEIU alleged that the week of February 10, 1997, Ms. Davis arranged to subcontract out bargaining unit work, in violation of RCW 47.64.130. The union alleged that this was a unilateral change which represented a direct attack on the union security provisions of the WSF/OPEIU, Local 8 collective bargaining

Agreement. OPEIU further alleged that the use of temporary workers and subcontracting to skim unit work from bargaining unit members and transfer it to management positions, was an attempt by WSF to weaken the OPEIU bargaining unit.

The complaint was docketed as MEC Case No. 4-97. A letter acknowledging receipt of the ULP complaint was sent to the parties. Copies of the complaint were distributed for review and processing by the MEC. Pursuant to WAC 316-45-110, the MEC determined that the facts alleged may constitute an unfair labor practice, if later found to be true and provable. Commissioner David E. Williams was assigned to act as hearing examiner.

On February 25, 1997, Linda Dalton, Senior Assistant Attorney General, requested that MEC consolidate this matter for hearing with MEC Case No. 1-97 and No. 2-97 (unfair labor practice complaints filed by OPEIU). Ms. Dalton noted there was significant duplication of issues in the three complaints. On March 6, 1997, MEC received a letter from Ron Weigelt, OPEIU, objecting to consolidation of the three complaints, arguing that the issues were not the same and that their differences would become more obvious at the prehearing.

A prehearing conference was scheduled for May 1, 1997; a hearing in these matters was scheduled for June 26, 1997. The prehearing was continued to and held on May 22, 1997. Washington State Ferries filed an Answer to Complaint on June 2, 1997. On June 19, 1997, Ron Weigelt notified MEC that a tentative agreement had been reached in this case, and asked that the June 26, 1997 hearing not be held. WSF provided a settlement agreement in MEC Case Numbers 2-97, 4-97, 5-97, and 6-97 on July 2, 1997. By letter dated August 8, 1997, Mr. Weigelt notified MEC that the matter was settled and was being withdrawn by OPEIU Local 8.

ORDER

Based upon the settlement agreement between the parties and the request by OPEIU that the charges contained herein be withdrawn, it is hereby ordered that the unfair labor practice complaint, filed by OPEIU against WSF and docketed as MEC Case No. 4-97, is dismissed.

DATED this 15th day of August 1997.

MARINE EMPLOYEES' COMMISSION

s/s HENRY L. CHILES, JR. Chairman

s/s JOHN P. SULLIVAN Commissioner

s/s DAVID E. WILLIAMS Commissioner

SETTLEMENT AGREEMENT

MEC 2-97, 4-97, 5-97 and 6-97

I. STATEMENT OF PURPOSE

The parties to the above-captioned matters, Washington State Ferries (WSF) and the OPEIU, understand and recognize that with the exception of claims raised by employee Kathleen Flynn, the above-captioned cases all arise out of employee concerns and perceptions regarding certain practices within the accounting unit at WSF. These practices include the following areas:

- A. Promotion;
- B. Testing;
- C. Training
- D. Clarification of job descriptions
- E. Interaction/communication between supervisors and employees; and
- F. Subcontracting of bargaining unit work.

This settlement agreement is intended by all parties to address the above concerns in a constructive, positive manner, and to achieve full and final resolution of all claims raised in the above cases. The claims relating to employee Kathleen Flynn are not included in this agreement, and will be separately addressed.

II. PROMOTION AND TESTING PRACTICES

A. WRITTEN TESTING PROCEDURES

1. Testing for promotion into a vacant position within the Accounting Assistant series will be designed to test for the skills required for the specific job classification.
2. Written test questions shall be reviewed by Human Resources to verify that the questions and answers are appropriately written, and fairly reflect the job skills required for the vacant promotional position.
3. After reviewing and finalization, written test questions and answers shall be retained by Human Resources in a secure location until the test is administered to the applicants.
4. The written test shall be administered under the supervision of someone other than the immediate supervisor.
5. Written tests will be scored by a person within the supervisory chain of command. In the event no person within the supervisory chain is available to perform this function in a timely manner, management may designate another qualified individual to score the written test. The parties agree and understand that members of the bargaining unit will not be asked to perform this function. If a candidate disputes the scoring, Human Resources will audit the examination for errors.

B. ORAL PANEL

1. When an oral interview is conducted by a panel, the panel shall consist of no less than three persons.

2. The members of the panel shall be chosen primarily for their ability to judge the qualifications of applicants objectively. Management agrees that it will make a good faith effort to recruit at least one panel member from outside Washington State Ferries, with expertise in the field of accounting. The parties understand and acknowledge, however, that it is often difficult to recruit an outside panel member, and in the event an outside panel member is not available within time frames acceptable to management, the oral pane may be comprised entirely of persons employed by Washington State Ferries. Under such circumstances, at least one member of the oral panel shall possess expertise in the field of accounting.
3. A representative from Human Resources shall provide orientation for panelists to ensure that panelists understand the appropriate interview practices.
4. Each panelist shall be provided with instructions, written questions, and model answers.
5. Each panelist shall independently score the applicant's answer to each question before the next question is asked, and consensus reached prior to assigning a final examination score.
6. Oral exam questions shall be reviewed by Human Resources to verify that the questions are appropriately worded and job related.
7. After review and finalization, the list of oral panel test questions and model answers shall be retained by Human Resources in a secure location until the panel interview process takes place.
8. The oral panel scores shall be checked and verified by Human Resources.

9. Members of oral panels shall disclose each instance in which they know an applicant to the extent that they have formed a prior personal bias for or against an applicant and shall disqualify themselves without rating the applicant or biasing the remaining members, if they believe their personal bias renders them unable to fairly and impartially rate the applicant.

C. SCORING WEIGHT

Prior to the testing process, applicants will be notified of the weight, expressed in percentage terms, to be allocated between the written and oral exams.

D. ADDITIONAL TESTS

The parties agree that any additional tests to be administered shall conform to the general principles as noted above, for the purpose of ensuring objectivity and fairness in the administration of testing and test scoring.

III. TRAINING

- A. Management and the Union are both equally committed to the principle that training opportunities shall be offered to permanent employees, and that training priority shall be extended to permanent employees ahead of temporary employees, except in specific instances where a temporary employee requires orientation training or training to meet the base requirements of the position.
- B. Management and the Union agree to assess current training opportunities for permanent employees within the Accountant and Accounting Assistant classifications. Management and the Union agree to meet and discuss training proposals for permanent employees, designed to enhance skills necessary for advancement and promotion.

IV. JOB CLARIFICATION

- A. Management agrees to review Classification Questionnaires (CQs) for each employee in the accounting unit to ensure that the CQs do not contain job duties that are inconsistent with job duties assigned to other positions within the unit.
- B. The parties agree that the process of job clarification will also be addressed as necessary by the facilitator designated in part 5 of this agreement. It is parties' intent that each employee in the accounting work unit has a thorough understanding of his or her job duties.

V. FACILITATION

The parties agree that the interaction and communication between employees and supervisors existing within the accounting unit could be improved through the use of a facilitator. If, within four months from the date this agreement is signed, either party determines that the services of a facilitator are required for the accounting division, a facilitator will be retained. The facilitator will be selected by WSF management. Said facilitation will occur, if at all, no later than six months from the date this agreement is signed by all parties. The parties agree that in the event an outside facilitator is selected, the WSF shall be required to pay for no more than 16 hours of services.

VI. SUBCONTRACTING

WSF agrees to provide written notice to the Finance Manager of the Accounting Unit, instructing that the OPEIU should receive advance notification of plans to subcontract bargaining unit work. Said notification shall be directed to a union representative/business agent.

VII. WITHDRAWAL OF GRIEVANCES AND ULP COMPLAINTS

In consideration for the above promises, OPEIU agrees to withdraw and dismiss all outstanding grievances and unfair labor practice complaints currently pending before the MEC.

Specifically, these pending cases are identified as follows: MEC 2-97; MEC 4-97; MEC 5-97; and MEC 6-97. The parties agree that the claims pertaining to Kathleen Flynn will be addressed separately.

VIII. ADMISSIBILITY

The parties to this agreement understand and agree that this settlement is intended solely for the purpose of resolving differences identified in the above-captioned cases and shall not be construed as an admission of fault or wrongdoing by either side in this dispute. Further, the parties to this agreement agree that this document shall not be used as an exhibit for any purpose in any future litigation other than litigation seeking enforcement of the specific terms of the agreement. The parties further agree that this agreement is non-precedential, and will not be used as evidence in any future dispute, without prior written consent of all parties to this agreement.

/s/ JIM YEARBY, DIRECTOR
HUMAN RESOURCES
WASHINGTON STATE FERRIES

/s/ RON WEIGELT
UNION REPRESENTATIVE
OPEIU – LOCAL 8