

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES' COMMISSION

DOUGLAS E. SCHLIEF, et al.	)	MEC Case No. 5-96
	)	
Complainants,	)	
	)	DECISION NO. 151 - MEC
v.	)	
	)	
INLANDBOATMEN'S UNION OF	)	ORDER OF DISMISSAL
THE PACIFIC and	)	
WASHINGTON STATE FERRIES,	)	
	)	
Respondents.	)	
_____	)	

THIS MATTER came before the Marine Employees' Commission on April 29, 1996 when Douglas E. Schlief and other Washington State Ferries employees working as Terminal Agents, who are members of the Inlandboatmen's Union, filed an unfair labor practice complaint. The matter was docketed as MEC Case No. 5-96. On May 6, 1996, MEC received a letter from Inlandboatmen's Union counsel Cheryl French requesting that the matter be dismissed because it had been untimely filed and because contractual remedies were not exhausted prior to filing unfair labor practice charges. Ms. French indicated that she mailed copies of her letter to each individual complainant and to respondent WSF. On May 15, 1996, MEC received a letter dated May 9, 1996 submitted by several complainants in which they provided further information to the Commission for its consideration. On May 16, 1996, Assistant Attorney General Gretchen Gale filed a notice of appearance on behalf of the Washington State Ferries in this matter.

Commissioner John P. Sullivan has reviewed all of the above information pursuant to WAC 316-45-110, "Initial processing of complaint," as well as WAC 316-45-020, "Unfair labor practice complaints—Time limitations," to determine whether the facts presented would constitute unfair labor practices if later found to be true and provable in an adjudicative hearing. Commissioner Sullivan has determined that the facts alleged do not, as a matter of law, constitute violations of RCW 47.64.130.

#### REASON FOR DISMISSAL OF THE COMPLAINT

The complainants herein charged that IBU and WSF violated RCW 47.64.130 by settling disputes charged as unfair labor practices filed before the MEC. The acts which the complainants allege in their complaint commenced on or about May 19, 1994, when the Inlandboatmen's Union filed unfair labor practice charges against the Washington State Ferries. Specifically, the IBU alleged that (1) the parties had settled certain grievances in favor of the grievants, but that WSF refused to remit payment to those employees in a timely manner, and (2) the ferry system's refusal to pay its claims as agreed upon in the settlements is identical to WSF actions in two earlier cases, thus establishing a pattern wherein the employer did not pay in accordance with agreements with the union until ordered to do so as a result of the filing of unfair labor practice complaints, and thus diluting the status of the union as the employee's representative. See, MEC Case No. 7-94, Decision No. 121 – MEC, Order of Dismissal. MEC Case No. 7-94 was scheduled for hearing on August 3, 1994. On August 2, 1994, IBU Patrolman Dennis Conklin sent by facsimile a written agreement signed by himself and WSF Personnel Officer Dave Rice, and requested that the August 3, 1994 hearing be canceled. Thereafter on August 2, 1994, Conklin forwarded a notice of withdrawal of the charges. On August 10, 1994, the MEC entered an order dismissing the charges.

In their letter dated May 9, 1996, the complainants herein stated that after the resolution of the "grievances" (disputes filed as unfair labor practices referenced in MEC Case No. 7-94), many of Terminal Agents inquired as to the outcome of that hearing. The

Complainants were consistently told by Dennis Conklin that the IBU had “won the grievances” before the MEC. That statement was corroborated by a union attorney as recently as three months ago. The complainants stated that only recently did they discover that the outcome of the dispute was by settlement between the parties, not by a decision of the MEC.

WAC 316-45-020 sets time limits for the filing of unfair labor practices. “Unless otherwise stated by statute or rule, a complaint charging an unfair labor practice may not be filed later than one hundred eighty calendar days after the party filing such complaint knew or should have known of the event, activity or practice alleged to be violations of protected rights under RCW 47.64.130 and WAC 316-45-003.” The complainants herein stated that many Terminal Agents inquired as to the outcome of the matter when the disputes (“grievances”) were resolved. The IBU and WSF settled the matter on August 2, 1994 and IBU thereafter withdrew the charges. The MEC dismissed the matter on August 10, 1994, some 19 to 20 months prior to the filing of the charges herein. The complainants made no allegations that the respondents had engaged in any fraudulent concealment and deception as to the alleged unlawful conduct. The fact that the complainants only recently discovered that the dispute was settled rather than decided after hearing by the MEC does not toll the time limits pursuant to the exception noted in WAC 316-45-020(3). The complaint and additional facts allege that many Terminal Agents were interested in the outcome of the dispute and made inquiries as to that outcome in August, 1994, and therefore had constructive knowledge of the alleged unfair labor practice (the settling of unfair labor practice charges in MEC Case No. 7-94) much earlier than 180 days prior to the filing of the complaint.

#### APPEAL OF COMMISSIONER DECISION TO DISMISS

Pursuant to WAC 316-45-110, an order of dismissal of a complaint charging unfair labor practices entered by a commissioner may be appealed to the entire commission pursuant to WAC 316-45-350 “Petition for review of examiner decision.” The rule specifies an appeal shall be filed within 20 days following the date the order issue by the commissioner.

The petition for review shall be filed with the commission at its Olympia office, and the party filing the petition shall serve a copy on each of the other parties to the proceeding. A petition shall contain in separate numbered paragraphs statements of the specific orders on which the party filing seeks review, including any appeal brief or written argument which the party filing the appeal desires to have considered by the commission. Other parties to the proceeding have fourteen days following the date on which they are served a copy of such petition for review to file a responsive brief or written argument. In the event no timely petition for review is filed, the order of the commissioner shall automatically become the order of the commission and shall have the same force and effect as if issued by the commission.

Based on the reasons stated herein, and pursuant to WAC 316-45-110, the charges filed against the Washington State Ferries and the Inlandboatmen's Union are hereby dismissed.

DONE this 28<sup>th</sup> day of May, 1996.

/s/ JOHN P. SULLIVAN

Commissioner