STATE OF WASHINGTON

BEFORE THE MARINE EMPLOYEES' COMMISSION

DOUGLAS E. SCHLIEF, et al. Complainants, v. INLANDBOATMEN'S UNION OF THE PACIFIC and WASHINGTON STATE FERRIES, Respondents.	)	MEC Case No. 5-96 DECISION NO. 156 - MEC DECISION AND ORDER AFFIRMING DECISION NO. 151-MEC

THIS MATTER came before the Marine Employees' Commission on July 1, 1996 when Douglas E. Schlief and others filed a Petition for Review of Decision No. 151-MEC, Order of Dismissal, MEC Case 5-96.

BACKGROUND

MEC Case No. 7-94

On May 20, 1994 the Inlandboatmen's Union filed an unfair labor practice complaint against Washington State Ferries. IBU's complaint charged WSF with engaging in unfair labor practices by 1) dominating or interfering with formation or administration of an employee union pursuant to RCW 47.64.130(1)(b) and WAC 316-45-003(1)(b); and 2) refusing to bargain collectively with representatives of employees pursuant to RCW 47.64.130(1)(a)(e) and WAC 316-45-003(1)(a)(e).

Specifically, IBU alleged that it had settled certain grievances with WSF in favor of the grievants, but WSF refused to remit payment to those employees in a timely manner. IBU further alleged that WSF's refusal to pay its claims as agreed upon in the settlement was identical to WSF actions in two earlier cases. By its pattern of not paying in accordance with negotiated agreements until ordered to do so as a result of ULP complaints, WSF diluted the status of the union as the employees' representative.

The matter was docketed as MEC Case No. 7-04. The charges were discussed at the regular public MEC meeting on June 24, 1994, following which the Commission determined that the facts alleged by IBU may constitute an unfair labor practice, if later found to be true and provable. The hearing was scheduled for August 3, 1994.

WSF timely filed an answer to the complaint on July 22, 1994.

On August 2, 1994, IBU Patrolman Dennis Conklin notified MEC by telephone that the parties had reached agreement and IBU would be withdrawing its complaint. At his request, the August 3, 1994 hearing was canceled.

Later on August 2, 1994, by facsimile, Conklin filed a copy of the agreement with MEC. It was signed by Conklin and Dave Rice, WSF Personnel Officer. A copy of that Agreement was attached to MEC's Order of Dismissal in Case No. 7-94, Decision No. 121-MEC. The Order of Dismissal was signed on August 10, 1994 by all MEC Commissioners and served on IBU and WSF.

Upon service of Decision No. 121-MEC, MEC Case 7-94 on the parties, a copy of the decision was placed in a binder for public inspection along with other MEC decisions and orders, as required by law.[1]

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[1] Pursuant to RCW 34.05.220, the Administrative Procedures Act, and RCW 42.17.260, the Public Records Law, the MEC must keep on file for public inspection, all final orders, decisions and opinions in adjudicative proceedings.

On a date unknown, but sometime prior to April 19, 1996, Douglas Schlief contacted the MEC to request a copy of the decision entered in MEC Case No. 7-94. A copy of that decision was provided to him by MEC staff. (On April 19, 1996, Douglas Schlief contacted MEC staff to request additional information he would need a file a case before the MEC. Staff complied with this request on April 22, 1996.)

MEC Case 5-96

On April 29, 1996, Douglas Schlief filed unfair labor practice charges against the Washington State Ferries and the Inlandboatmen's Union of the Pacific, alleged that by their actions in settling MEC Case No. 7-04, the respondents had violated RCW 48.64.130. Respondent IBU requested that the matter be dismissed, alleging that the matter was filed outside of time limitations specified by rule. After consideration of the facts alleged to be violations of RCW 47.64.130, and the arguments of respondent IBU, MEC Commissioner John P. Sullivan entered an order of dismissal of MEC Case 5-96.

For purposes of clarification, the events which gave rise to MEC Case 7-94 and MEC Case 5-96 are set forth below:

CHRONOLOGY—MEC CASE NO. 7-94

1. May 20, 1994—complaint filed and docketed as MEC Case No. 7-94.
2. June 24, 1994—discussed at the regular monthly public meeting of MEC. Following the meeting, a hearing was scheduled for August 3, 1994.
3. August 2, 1994—parties reached a settlement; advised the MEC and sent by facsimile a copy of agreement signed August 2, 1994.
4. August 10, 1994—Order of Dismissal, with settlement agreement attached entered by the full Commission and served on the parties.

CHRONOLOGY—MEC CASE NO. 5-96

1. April 29, 1996—Douglas E. Schlief and others filed with MEC an unfair labor practice complaint that was docketed as MEC Case No. 5-96. This was based upon MEC Case No. 7-04 which was dismissed on August 10, 1994—over 19 ½ months earlier.

2. May 6, 1996—MEC received a letter from counsel for IBU, Cheryl French, requesting that the matter be dismissed because it was untimely filed and contractual remedies had not been exhausted.

3. May 15, 1996—MEC received a letter submitted by several complainants providing additional information for MEC consideration.

4. May 16, 1996—Assistant Attorney General Gretchen Gale filed a notice of appearance on behalf of WSF.

5. May 28, 1996—MEC Case No. 5-96 was assigned to Commissioner John P. Sullivan who reviewed all the material files and records and entered Order of Dismissal, Decision No. 151-MEC, on May 28, 1996.

6. June 13, 1996—MEC received a request from Bob Wheeler (for Douglas E. Schlief) for an extension of time, pursuant to WAC 316-45-350, to file a petition for review of Decision No. 151-MEC.

7. June 13, 1996—MEC considered Mr. Wheeler's request and granted a fifteen day extension for filing a petition for review (petition due on or before July 2, 1996).

8. July 1, 1996—complainants filed a Petition for Review of Decision No. 151-MEC.

9. July 15, 1996—Respondent IBU filed its reply opposing complainants' request for review. Respondent WSF did not file a reply to the petition. (At the July 26, 1996 regular monthly MEC meeting, WSF advised MEC orally that the IBU covered all the points WSF wanted to be considered.)

THE TIME LIMITATIONS IN FILING UNFAIR LABOR PRACTICE CHARGES

WAC 316-45-020 Unfair labor practices complaint—Time limitations, sets forth the time limits within which an unfair labor practice must be filed with the Marine Employees' Commission. The rule provides that such a complaint "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 the statute. WAC 316-45-020(1). The rule further defines the limitation period: "The limitation period specified…may be tolled where the charging party did not have actual or constructive knowledge of the alleged unfair labor practice." WAC 316-45-020(3).

There is no question that more than 180 days have elapsed from the time of the Dismissal, August 10, 1994, and the filing of MEC Case No. 5-96, on April 29, 1996.

CONSTRUCTIVE KNOWLEDGE

The Complainants argue in their Petition for Review that the 180 day period specified by the WAC should be tolled because they did not have actual or constructive knowledge of the alleged unfair labor practice. In their Petition, complainants quote from West's Legal Thesaurus/Dictionary (1985): "Constructive Knowledge; Knowledge of a fact that the law presumes a person has, if in the exercise of reasonable care, he or she would have known it."

In its Response to Complainants' Request for Review, respondent IBU quotes from Black's Law Dictionary 284 (5th ed. 1979): "If one by exercise of reasonable care would have known a fact, he is deemed to have constructive knowledge of such fact; e.g. matters of public record."

Here, the key consideration is whether the charging party knew the factual, not the legal, a basis for the cause of action. "The action accrues when the plaintiff knows or should know the relevant acts, whether or not the plaintiff also knows that these facts are enough to establish a legal cause of action." Allen v. State, 118 Wn.2d 753, 750 (1992).

When the facts upon which a cause of action "are contained in a written instrument which is placed on public record, the aggrieved party receives constructive notice of its contents." Trust Fund v. Harold Jordan Co., 52 Wn. App. 387, 391 (1988). Thus, the limitation period here begins to run on August 19, 1994, the date of the filing of the Order of Dismissal with the MEC.

The complainants admit that they had actual knowledge of the settlement and resolution of MEC Case No. 7-94 as it concerned fellow prospective Terminal Agents. They knew the result of the ending of MEC Case No. 7-94, but claim they thought it was by entry of a MEC decision instead of an agreed settlement between their representative, IBU, and WSF. In August 1994, these complainants had actual knowledge of all of the facts and essential elements of the charges they are attempting to bring in MEC Case No. 5-96.

Thus, the complainants had constructive knowledge of the basis for their claims here as of the date the decision and settlement agreement was placed on file by the MEC on August 10, 1994 and could have learned the precise manner in which that result was reached. They failed to exercise due diligence in finding out more information regarding the disposition of MEC Case No. 7-94, Decision No. 121-MEC.

CONCLUSION

In this case, complainants have registered a complaint of unfair labor practice against both of the named respondents, which, plainly, on its face, is not timely because the events composing the gravamen thereof took place, to complainants' constructive

knowledge, much more than 180 days before such complaint was filed here (WAC 316-45-020).

The ultimate essence of such apparently untimely complaint is that those respondents have, in accord with status and standing accorded to them, under the governing statute, definitely resolve a problem, as to a bargainable subject, by negotiating effectively and, in that manner and fashion, generating a solution.

In this connection and context, an initial and fundamental reference ought to be made to WAC 316-02-005, whereby it is the pronounced, published and binding policy of this Commission,

> to promote bilateral collective bargaining negotiations between and among the Washington ferry system management, ferry employees and their exclusive representatives in accord with chapter 47.64. RCW.

(Emphasis added.)

The cited statute states (RCW 47.64.006(3)), inter alia, that it is indeed express public policy, in this jurisdiction, to promote harmonious labor relations by permitting ferry employees to "bargain collectively." (Emphasis added.)

While, seemingly, complainants are not in agreement with the results of respondents' bargaining, they have failed to advance a basis in fact (as distinguished from subjective conclusions) for interference therewith by this Commission.

Indeed, complimentary to the principles explained in the quoted regulatory provisions and by the Supreme Court of the United States in Ford Motor Company v. Huffman, 315 U.S. 330 (1953), whereby a "wide range of reasonableness must be allowed a statutory bargaining agency in serving the unit it represents" (emphasis added), we find

No persuasive basis here for assuming jurisdiction, responsive to the complaint in issue, given the clarity of the limitation enunciated by WAC 316-45-020.

While it is true that the "wide range of reasonableness" ought to be exercised in "complete good faith" and with "honesty of purpose", this standard cannot be applied fairly upon the basis of subjective and argumentative assertions which rely in essence on the proposition that some of the employees concerned do not like a particular collective bargain, effected by the employer and the representative union, in the mainstream of their labor relations community. This is to say that, in this context, complainants' remedy, if any there is , will be found in the processes and procedures of union government and not before this Commission.

Upon consideration and review of the material files and records before the Commission in this matter and in consideration also of the material sections of the Washington Administrative Code, including expressly WAC 316-45-020, we have determined that the Order of Dismissal entered on May 28, 1996 by Commissioner Jon P. Sullivan, for which review has been sough by complainants, should be and hereby is affirmed and validated in all respects and particulars. Charges filed against the WSF and IBU in MEC Case 5-96 are dismissed.

DATED this 14th day of August 1996.

MARINE EMPLOYEES' COMMISSION

/s/ HENRY L. CHILES, JR., Chairman

/s/ DAVID E. WILLIAMS, Commissioner