

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION OF)	
THE PACIFIC,)	MEC Case No. 50-00
)	
Complainant,)	DECISION NO. 258 – MEC
)	
v.)	ORDER DISMISSING
)	ADJUSTED COMPLAINT
WASHINGTON STATE FERRIES,)	
)	
Respondent.)	
_____)	

Schwerin, Campbell and Barnard, attorneys, by Dmitri Iglitzin, appearing for and on behalf of the Inlandboatmen's Union of the Pacific.

Christine Gregoire, Attorney General, by David Slown, Assistant Attorney General, for and on behalf of Washington State Ferries.

THIS MATTER came on regularly before the Marine Employees' Commission (MEC) on December 26, 2000, when the Inlandboatmen's Union of the Pacific (IBU), filed an unfair labor practice complaint against the Washington State Ferries (WSF). IBU's complaint, filed by counsel, Dmitri Iglitzin, charged WSF with engaging in unfair labor practices within the meaning of RCW 47.64.130(1) by interfering with, restraining or coercing employees in the exercise of rights; and refusing to bargain collectively with representatives of employees.

Specifically, IBU alleged that WSF unlawfully 1) implemented its Respirator Mask Policy, generally, without bargaining over the impacts and effects of that policy, and 2) implemented the first step of that policy, the sending out of the Medical Questionnaire to employees, without bargaining over the impacts and effects of the Questionnaire.

The complaint was forwarded to MEC Commissioners for initial review. The Commission reviewed the complaint and determined that the facts alleged may constitute unfair labor practices, if later found to be true and provable. Chairman John D. Nelson was assigned to act as Hearing Examiner.

An expedited hearing was scheduled for January 23, 2001. MEC declined to hear further argument concerning the impact and effect on working conditions of WSF's contemplated implementation of WAC regulations pertaining to the use of respirators by IBU ferry employees. Decision No. 197-MEC decided that issue and was affirmed by Thurston County Superior Court on December 24, 1998. MEC advised the parties that it would consider only the issue of whether the medical questionnaire and cover letter sent to employees on December 1, 2000, constituted a new issue, cognizable under 47.64 RCW.

The parties gathered for hearing on January 23, 2001. Following opening statements, Hearing Examiner Nelson allowed WSF and IBU additional time alone for further settlement discussions. The parties reached a mutually agreeable settlement, which is attached hereto and becomes a part of this Order by reference. (On January 25, 2001, Hearing Examiner Nelson provided the MEC office with a copy of the parties' signed agreement.) IBU's withdrawal of the complaint was incorporated into the settlement agreement.

ORDER

It is hereby ordered that the unfair labor practice complaint filed by IBU against WSF and docketed as MEC Case No. 50-00, be dismissed.

DATED this 6th day of February 2001.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN D. NELSON, Chairman

/s/ JOHN P. SULLIVAN, Commissioner

/s/ DAVID E. WILLIAMS, Commissioner

SETTLEMENT AGREEMENT

MEC No. 50-00

IBU and WSF agree to resolve and dismiss the above-referenced unfair labor practice charge upon the following conditions:

Medical Evaluation Questionnaire Issues

1. WSF will insert into the paycheck of each Deck Department IBU-represented employee a memo stating substantially as follows:

“Some Deck Department IBU-represented employees may have filled out a Virginia Mason Occupational Medicine (VMOC) OSHA Respirator Medical Evaluation Questionnaire that required you to sign below a statement granting permission for the use of your medical information “as it pertains to decisions regarding appropriate job placement and worker safety.” Please be advised that, pursuant to an agreement between WSF and the IBU, this language has been deemed to be null and void. Neither VMOC nor WSF will use any of the information you provided on this Questionnaire for any purpose other than as part of the process of evaluating your suitability for being fit-tested with a respirator mask.”

2. IBU-represented employees who are required to make follow-up visits to VMOC or any other physician regarding their suitability for being fit-tested with a respirator mask will, except under unusual circumstances, make those visits during their regular working hours. If such a follow-up visit cannot be held during regular working hours, the employees will receive mileage and travel time as set forth in the collective bargaining agreement, plus a minimum of two hours of overtime pay for any such appointment, followed by additional whole hours of overtime time for time actually expended at appointments in excess of two hours.

3. The IBU agrees to write a letter to its represented employees and/or to permit WSF to make representations to such employees, explaining that the IBU has now agreed to the appropriateness of IBU-represented employees filling out the VMOC Questionnaire and following up with that process, and to encourage IBU-represented employees to cooperate in this process. If WSF chooses to make representations itself to IBU-represented employees regarding this agreement, it must include a copy of this Settlement Agreement in any mailing or communication that it chooses to send.

4. Each IBU-represented employee will be instructed regarding his or her obligations vis-à-vis the VMOC Questionnaire in a face-to-face meeting with a Port Captain prior to any disciplinary or pre-disciplinary measures being taken against such employee. WSF may schedule such meetings with multiple employees at the same time.

5. WSF will not oppose the wishes of any employee who seeks to have a Union representative present at any face-to-face meeting with a Port Captain (as described in par. 4, supra) or at any followup medical visit, so long as the Union representative does not seek in any way to delay or obstruct such meeting or visit.

Implementation-Upon-Impasse Issues

6. WSF will, upon its belief that impasse has been reached regarding negotiations over the "impacts and effects" of the Respirator Mask Policy, provide the IBU with 60 days written notice of its intent to implement its last, best, and final offer regarding same. (All time periods set forth in this Settlement Agreement reference calendar days.)

7. IBU will have 15 days from the date of its receipt of the notice referenced in par. 6, supra, to file an Unfair Labor Practice charge with the MEC and a Request for Order Staying Implementation of WSF's last, best, and final offer.

8. WSF will have 15 days from the date of its receipt of the IBU's Request for Order Staying Implementation to respond to same.

9. IBU will have 5 days from the date of its receipt of WSF's response to file a reply brief in support of its Request for Order, if it chooses to file one.

10. The MEC will rule within 30 days of its receipt of WSF's response (regardless of whether the IBU files a reply brief) on the IBU's Request for Order Staying Implementation, and will communicate its ruling to IBU and WSF.

11. IBU and WSF agree to convey to the MEC the authority to preclude WSF from implementing its last, best, and final offer, or any other disputed actions constituting implementation of WSF's Respirator Mask Policy, pending final resolution by the MEC of the Unfair Labor Practice charge filed by the IBU pursuant to par. 7, supra. The MEC agrees to accept and, in its own discretion, exercise that authority.

12. WSF agrees not to implement its last, best, and final offer regarding implementation of its Respirator Mask Policy until the 60 day period set forth in par. 6, supra, has expired. If the IBU files a Request for Order Staying Implementation, WSF further agrees not to implement its last, best, and final offer regarding implementation of its Respirator Mask Policy until the MEC has issued a ruling on that Request.

13. Other than as described above, the underlying Unfair Labor Practice charge will be processed and addressed by and before the MEC according to the MEC's normal policies and procedures.

Declaratory Judgment Issues

14. The IBU will file a Petition for Declaratory Relief with the MEC seeking declaratory judgment on the issue of whether an impasse reached in the ongoing

negotiations between IBU and WSF over the impacts and effects of WSF's Respirator Mask Policy is appropriately subject to the interest arbitration procedures set forth by pertinent statutes and regulations. WSF commits to agree to be bound by said ruling, and hereby stipulates to the appropriateness of the MEC exercising jurisdiction over this Petition for Declaratory Relief.

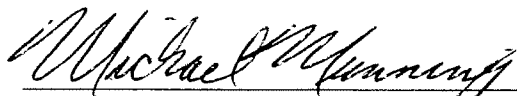
15. The MEC agrees that, based on the representations made herein, both the IBU and WSF have agreed to submit the issue of whether an impasse reached in the ongoing negotiations between IBU and WSF over the impacts and effects of WSF's Respirator Mask Policy is appropriately subject to the interest arbitration to the MEC, and the MEC agrees to exercise jurisdiction over that question, if it is brought before the MEC in a fashion otherwise suitable for MEC resolution.

16. The IBU's Petition as described in par. 14, supra, will be brought as follows: the IBU will file a motion that is supported by a legal memorandum and such documents, declarations and/or affidavits as the IBU sees fit to include. WSF will, in a timely fashion, file a legal memorandum supported by such documents, declarations and/or affidavits as the WSF sees fit to include, opposing the IBU's motion. Neither the IBU nor WSF will seek or request an evidentiary hearing, but the MEC may, in its discretion, order such a hearing to occur.

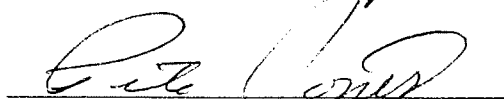
17. Other than as described above, the MEC will address a Petition for Declaratory Relief in accordance with its normal policies and procedures. Neither party is subject to any time, length, or other restrictions not set forth above or hereafter imposed by the MEC, and the MEC is not subject to any restrictions regarding the timing or nature of its resolution of the declaratory question before it.

18. Approval of this Settlement Agreement by the MEC will constitute agreement by the MEC to its obligations and commitments contained herein. Upon approval by the MEC, the IBU will withdraw with prejudice the above-referenced unfair labor practice charge.

Signed this 23rd day of January, 2001:



Michael Manning
Washington State Ferries



Pete Jones
Inlandboatmen's Union of the Pacific