

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

CHARLES MARINGER,)	
)	
Complainant,)	MEC CASE NO. 6-90
)	
v.)	DECISION NO. 59-MEC
)	
WASHINGTON STATE FERRIES)	
and INLANDBOATMEN'S UNION)	
OF THE PACIFIC,)	DECISION AND ORDER
)	
Respondents.)	
_____)	

Charles Maringer, pro se, appearing for and on behalf of himself.

Kenneth Eikenberry, Attorney General, by Robert McIntosh, Assistant Attorney General, appearing for and on behalf of Washington State Ferries.

Hafer, Price, Rinehart and Schwerin, Attorneys at law, by John Burns, appearing for and on behalf of the Inlandboatmen's Union of the Pacific.

INTRODUCTION AND BACKGROUND

Charles N. Maringer is an Able Bodied Seaman of many years' experience, who has been employed by Washington State Ferries (WSF) in an on-call capacity from 1964 up to the present time. Complainant Maringer is a member of the Inlandboatmen's Union of the Pacific (IBU) and of the bargaining unit which includes unlicensed deck personnel of WSF.

This matter, an unfair labor practice complaint (ULP), arise out of an earlier ULP (MEC Case No. 3-89) filed by Maringer against the same respondents. In that case, Maringer testified that WSF had not called him to work after he had filed his ULP and that IBU had not represented him in that added complaint.

The Marine Employees' Commission (MEC) ruled that this testimony was properly admitted in evidence as probative and relevant. However MEC acknowledged that this testimony constituted a new and additional complaint, against which the respondents did not have an opportunity to prepare a defense. In Decision No. 49-MEC, the Commission granted Maringer the right to file the present case as follows:

Charles N. Maringer is hereby granted the right to file, without prejudice, an additional and separate complaint, no later than ninety days after the date this decision and order is entered, if he believes he was unfairly discriminated against subsequent to August 25, 1989, subject to his allegations being found true and provable. Such complaint shall be filed and served on the designated respondent(s) in accordance with chapters 316-02 and 316-45 WAC as a new complaint.

On May 8, 1990, Mr. Maringer did file the present complaint, alleging that he was discriminated against by both WSF and IBU for not calling him to work after he had exercised his rights under 47.64 RCW; but, instead, WSF had chosen to pay twice Maringer's rate by using other employees at overtime rate.

The Marine Employees' Commission (MEC) discussed the new complaint at its regular meeting on May 24, 1990, and determined that the facts alleged, if later found to be true and provable in

accordance with WAC 316-45-110, may constitute unfair labor practices. MEC assigned Commissioner Louis O. Stewart to act as hearing examiner pursuant to WAC 316-45-130. Examiner Stewart scheduled a public hearing in accordance with the procedures of chapters 316-02 and 316-45 WAC on September 13, 1990.

After convening that hearing, Examiner Stewart offered the parties an opportunity to confer to attempt to reach an agreement, and recessed the hearing accordingly.

The parties did reach a tentative settlement, contingent upon the right of Mr. Marginer to review original WSF payroll records to verify the derivative record. If the review shows that the derivative record brought to the hearing is different from the original record in the number of days worked by people less senior to Maringer, "Mr. Maringer has the right to resume the hearing." TR 8.MEC would retain jurisdiction and would set a specific hearing date for continuation of the hearing if Mr. Maringer so indicated.

The parties agreed October 3, 1990 as the date for possible continuation.

Examiner Stewart drafted and distributed to the parties a proposed MEC decision and order based upon the "tentative agreement" as described by the parties at the September 13th hearing, to be used according to Maringer's decision. However, on October 1, Mr. Maringer notified MEC by telephone that he was withdrawing his complaint, following settlement with WSF and IBU. On October 3, 1990, Mr. Maringer filed a letter of withdrawal, including a statement that he had served copies to WSF and IBU.

Accordingly, the Marine Employees' Commission, having read the entire record, now enters an order as follows:

ORDER

The complaint of unfair labor practices, filed by Charles N. Maringer on May 8, 1990, against Washington State Ferries and the Inlandboatmens' Union of the Pacific, is hereby dismissed,

Entered this 22nd day of October, 1990.

MARINE EMPLOYEES' COMMISSION

/s/ DONALD E. KOKJER, Commissioner

/s/ LOUIS O. STEWART, Commissioner