

MARINE ENGINEERS BENEFICIAL)	MEC CASE NO. 7-92
ASSOCIATION/NATIONAL)	
MARITIME UNION,)	
)	
Complainant,)	
)	DECISION NO. 99
v.)	
)	ORDER OF DISMISSAL
WASHINGTON STATE FERRIES)	
and MARINE ENGINEERS)	
BENEFICIAL ASSOCIATION/)	
DISTRICT 1 PACIFIC COAST)	
DISTRICT,)	
)	
Respondents .)	
)	

administration of an employee organization; and encouraging or discouraging membership in an employee organization by discrimination in regard to: hiring, tenure, or any term or condition of employment. Specifically, MEBA/NMU charged WSF with refusing to recognize MEBA/NMU as the exclusive representative of engine room employees by failing to pay dues withheld from WSF employees to MEBA/NMU and by accepting employees dispatched for employment with the ferry system by District No. 1 PCD/MEBA, all in violation of RCW 47.64.130 and WAC 316-45-003. The complaint further charged District No. 1 PCD/MEBA with restraining or coercing employees in the exercise of the rights guaranteed by Chapter 47.64 RCW, to wit, asserting its right to dispatch and receive dues from Washington State Ferries employees.

Subsequent to the filing of these charges, the Marine Employees' Commission held a discussion of the complaint at its June 19, 1992 monthly meeting, and determined that the facts alleged may constitute unfair labor practices if later found to be true and provable. Chairman Dan E. Boyd was assigned to act as hearing examiner, and prehearing conference, answers by respondents and hearing dates were scheduled.

At the October 30, 1992 prehearing conference, the parties proposed hearing dates of January 7 and 8, 1993 to enable their national representatives to conduct settlement negotiations. Mark Brennan, counsel for complainant MEBA/NMU, indicated that although not every issue had been worked out, he had been informed that settlement was near. Thereafter, the parties were granted several joint requests to continue the matter pending the outcome of mediation efforts at the national level. Counsel for all parties participated in periodic telephone conferences to keep the hearing examiner apprised of ongoing settlement efforts.

On August 20, 1993, Mark Brennan filed a request for withdrawal of the complaints filed herein, citing the terms of a settlement agreement between MEBA/NMU and District 1 PCD/MEBA, which provided for the dismissal of all litigation pending between the parties. A copy of the proposed settlement agreement is attached to this order of dismissal.

Therefore, MEC should accept the withdrawal pursuant to WAC 316-45-090 and dismiss the matter. There may, however, be issues not properly resolved by the settlement agreement between MEBA/NMU and Dist. 1 PCD/MEBA, incorporated by reference herein. By its dismissal of this matter, the MEC does not intend to preclude the filing of future complaints to address any such unresolved issues, and does therefore, dismiss the complaint without prejudice.

ORDER

The complaint of unfair labor practices filed by MEBA/NMU against the Washington State Ferries and District No. 1 PCD/MEBA, is hereby dismissed without prejudice.

DONE THIS 31st day of August, 1993.

/s/ DAN E. BOYD, Chairman

/s/ DONALD E. KOKJER, Commissioner

/s/ LOUIS O. STEWART, Commissioner

Interim Agreement
for Settlement of Disputes
between

District No. 1, MEBA/NMU

and

District No. 1 - PCD, MEBA

June 4, 1993

CONTEXT OF THE DISPUTES

This dispute is a direct outgrowth of the 1988 merger between MEBA and NMU, followed by the 1990 election of a new slate of officers, (commonly referred to as the Ward group) to lead the Licensed Division, and the subsequent establishment of District No. 1 – PCD in January 1992.

Many lawsuits have been filed and are still pending in Federal and State Courts, resulting in compounding legal fees, depletion of assets, as well as creating chaos in the industry. The individuals most seriously affected by this continuing battle are the members of the respective organizations.

It is with this recognition that the leaders of both organizations have participated in this on-going effort to bring some semblance of order and restructure to this situation. In many regards it would be easier and politically safe to continue “fighting the war.” Yet both sides have realized the direct effects on the members and the industry of such a continuation of strife. The candid dialogue and exchange of concerns among the parties has provided the sincere belief that the leadership of both organizations desire to find a reasonable compromise, regardless of whether or not each is convinced of their success in the pending court cases.

Finally, the parties recognize that there are direct limitations imposed on a such a settlement by such statutory laws as the Labor-Management Reporting and Disclosure Act (Landrum-Griffin) and ERISA, directed specifically at matters involving the MEBA Constitution, conventions, elections, and pension and benefit plans.

In addition, while the only direct participants in this meditation process have been representatives of District No. 1 – MEBA/NMU and District No. 1 – PCD, MEBA, two other existing districts – District No. 2 – AMO and District No.

3 ROU -- will also be affected by any proposed settlement, and their interests must also be taken into consideration.

PROPOSED TERMS OF SETTLEMENT

THIS INTERIM AGREEMENT FOR SETTLEMENT OF DISPUTES

("Agreement") is made this 4th day of June, 1993, by and between District No. 1 – MEBA/NMU (hereinafter, "MEBA/NMU") and District No. 1 – PCD, MEBA (hereinafter, "PCD/MEBA")

NOW, THEREFORE, in consideration of their mutual covenants, promises and agreements, as hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties do hereby covenant, promise and agree as follows:

1. Pending Litigation

- (a.) All pending litigation initiated by either "MEBA/NMU" or "PCD/MEBA," including administrative proceedings, will be promptly dismissed with prejudice.
- (b.) The parties, in good faith, will use their joint efforts to seek withdrawal or resolution of any pending litigation not under the direct control of either organization.
- (c.) Internal Union charges brought by present and former union officials pending against either the Ward or Cullison groups will be promptly dropped, and no further charges shall be based on events through the date of this Agreement.

(d.) Neither party will file, or encourage, support or finance any other person or entity to file any new cases against the other, including administrative proceedings, based on events up to and including the date of this Agreement.

(e.) The parties will make joint and separate efforts to resolve the pending litigation involving the return of severance pay by the recipients. District 1 (as defined below) agrees to hold the remaining Districts (as defined below) harmless against claims for attorney's fees incurred by the plaintiffs in Ward v. DeFries, which are incurred after January 31, 1993.

2. New Union Structure:

(a.) In view of the fact that the 1988 merger of MEBA/NMU, as envisioned, has been so controversial and is no longer serving the needs of the membership as a whole, and in view of the changed circumstances involving the individual entities making up NMEBA, it is agreed that, subject to any necessary ratification, the 1988 merger of MEBA and NMU is terminated, subject to and conditioned upon the simultaneous restructuring of National MEBA as described below.

(b.) Subject to any necessary pending ratifications (see paragraph 17.), upon execution of this Agreement, District No. 1 – MEBA/NMU will cease to exist, and hereby renounces its claim to appoint trustees to the MEBA Plans and the MEBA JEC.

(c.) National MEBA, which shall continue to hold the AFL-CIO charter, shall be reconstructed to comprise six autonomous Districts, as follows:

District No. 1 - MEBA

District No. 2 – American Maritime Officers
District No. 3 – Radio-Electronics Officers Union/NMEBA
District No. 4 – NMU/MEBA
District No. 5 – ITPE/MEBA
District No. 6 – PASS/MEBA

(d.) The present District No. 1 – PCD, MEBA will be called District No. 1 - MEBA, and will consist of all Licensed Officers; POID (APL), Samson Tugs and Washington State Ferry System employees; and all pre-merger affiliates, bargaining units, and members of the pre-merger MEBA. The Federation of Public Employees may choose to retain its pre-merger membership status or choose to become an affiliate, with all rights and obligations attendant thereto.

(e.) The present Unlicensed Division, District No. 1 – MEBA/NMU will be called District No. 4 – NMU/MEBA.

(f.) Unlicensed personnel who presently pay dues to the Unlicensed Division. District No. 1 – MEBA/NMU and sail under the District No. 1 Washington Seattle Ferry contract will become members of District No. 4 and will pay dues to District No. 4. The 38 persons affected by this provision, and their social security numbers, are listed on Exhibit A attached hereto. District No. 4 will pay the cost of any grievances/arbitrations which District No. 1 undertakes on such members' behalf.

(g.) District No. 5 will consist of ITPE members.

(h.) District No. 6 will consist of PASS members.

(i.) In the event of any of the affiliates described in (d) above choose to affiliate with another District, they shall do so pursuant to the procedure provided for in their own governing documents.

3. Governance of National MEBA During Interim Period:

(a.) Effective upon execution of this Agreement, and continuing until such time as a new national convention is convened and a new national constitution for the National MEBA is duly adopted, and until officers of the National MEBA are elected pursuant to such new national constitution (the “Interim Period”), the National MEBA shall be governed by an Interim National Executive Committee (the “Interim Committee”), which shall have the power to act only upon the unanimous consent of its members.

(b.) The members of the Interim Committee shall be the president of each of the six new districts of the National MEBA. The Interim Officers of the NMEBA shall be Gordon Ward, Interim President; Louis Parise, Interim Secretary-Treasurer; Ray McKay, Interim Executive Vice President, and Interim Vice Presidents comprised of the Presidents of Districts 3, 5, and 6.

The officers shall hold said offices until the election of National Officers, which must take place no later than March, 1994. The National Officers shall work under the direction of the Interim Executive Committee and shall be subject to the authority of the Interim Executive Committee.

Checks drawn on the account of the National MEBA shall be signed by the Interim President and Interim Secretary Treasurer.

(c.) The members of the Interim Committee shall not receive additional salaries for serving as such, but shall be compensated solely by their respective Districts.

(d.) The Interim Committee's responsibilities may include the following functions, each of which the Interim Committee may assume as soon as possible after the Interim Committee establishes any necessary procedures for the performance of that function and reaches agreement as to how the cost of performing the function shall be paid:

1. establishment and coordination of appropriate per capita collection.
2. coordination of PAC distribution limitations.
3. coordination of communications between the Districts.
4. dealing with the AFL-CIO
5. bookkeeping and membership functions.

(e.) During this Interim Period, the National Constitution, as adopted by District 1, PCD, MEBA, shall serve as the authority for the performance of national functions, unless inconsistent with the provisions of this Agreement.

(f.) The Interim Committee shall have such additional powers and authority as the members of the Interim Committee may determine; provided, however, that the Interim Committee may not place the Districts of the National MEBA in trusteeship, or take disciplinary action against Districts, District Officers, or District members. It is recognized that there must be some agreed upon mechanism for the Settlement of disputes

between Districts. In the event that the Interim Committee cannot agree upon a satisfactory mechanism, binding arbitration, pursuant to paragraph 15, shall be utilized as such a mechanism until the new NMEBA Constitution is adapted.

4. National Constitutional Convention:

(a.) The Interim Committee shall expeditiously prepare and publish to the members of the National MEBA a proposed national constitution for consideration at a national constitution convention.

(b.) The Interim Committee shall convene a national constitutional convention no later than March, 1994.

(c.) The Interim Committee shall establish rules and procedures for the constitutional convention, provided that no provision of the national constitution shall have been duly adopted unless and until approved by the President of each District, which approval may be given by a President only upon approval of the members of such President's District, in accordance with each District's Constitution and By-Laws.

(d.) If the Interim Committee is unable to agree in any provision of the proposed constitution, the proposed constitution published to the members of the National MEBA shall include alternative provisions, to be considered at the convention, as may be requested by any member of the Interim Committee; provided, however, that the proposed constitution shall contain the following provisions, and no alternative provision inconsistent with the following provisions, or inconsistent with any provision of this Agreement, shall be published to the members of the National MEBA.

- (1) A District may secede from the National MEBA, provided that at least sixty percent of the District's members voting on the issue of secession approve such secession.
- (2) If a District secedes, the District will remain liable for all of its financial obligations, it does so without its Article XX protection, and the secession will act as a surrender of the District's charter as a District of the National MEBA.
- (3) In the event that District No. 1 secedes, it may call itself (and any District seceding with it) MEBA and shall with the support of the remaining Districts, seek a new charter from the AFL-CIO. The remaining Districts will continue to hold the original AFL-CIO charter.
- (4) In the event that District No. 1 secedes, it may call itself (and any District seceding with it) the NMU if it chooses, and in that event the remaining Districts shall not use the NMU name.
- (5) The National MEBA will not have the power to place the Districts of the National MEBA in trusteeship, or to take disciplinary action against the Districts, District officers, or District members.
- (6) Members of the Districts will not have the right to appeal District decisions to the National MEBA.
- (7) The National Constitution, once adopted by the National convention, may only be amended pursuant to the specific procedure adopted in the National Constitution.

5. Article XX Violations:

It is the intent of the parties that a procedure be agreed upon and implemented, prospectively, to provide relief against any District which fails to correct Article XX violations occurring after execution hereof and would thereby subject all other Districts to raiding without recourse. Accordingly, the Interim Committee shall promptly set up an internal hearing procedure, including the utilization of prominent third-party neutrals, to address this issue.

6. Collective Bargaining Agreements:

(a.) MEBA/NMU hereby assigns its rights and responsibilities regarding all collective bargaining agreements as follows:

- (1) The Federation of Public Employees and POID Cape Canaveral will retain their contracts with employers, either as District No. 1 or as an affiliate of District No. 1 as per paragraph 2(d) above.
- (2) District 1 will succeed to/keep all existing contracts for Licensed Officers, as well as other bargaining units that were part of what was the Licensed Division, District No. 1 – MEBA/NMU except as otherwise provided in (1) above.
- (3) District 4 will succeed to all contracts of the Unlicensed Division.
- (4) District 5 will succeed to all contracts of the ITPE.
- (5) District 6 will succeed to all contracts of PASS.

(b.) To maximize present and future job opportunities for the memberships, District 1 and District 4 will endeavor to cooperate fully in bidding for jobs on ships, provided that this obligation to cooperate shall not be legally binding or enforceable or subject to arbitration.

7. Disposition of Certain Assets

(a.) District No. 1 shall own all interests in property and all contract rights which were owned by PCD/MEBA at the time of the Merger, and the parties shall promptly take all appropriate measures to effect that result, including executing and delivering deeds and assignments of leases.

(b.) District No. 4 shall own all interests in property and all contract rights which were owned by the National Maritime Union at the time of the Merger, and the parties shall promptly take all appropriate measures to

effect that result, including executing and delivering deeds and assignments of leases.

(c.) District No. 4 shall own the Seattle hall occupied by Unlicensed Division, District No. 1 – MEBA/NMU, and the parties shall promptly take all appropriate measures to effect that result, including executing and delivering a deed.

(d.) District No. 4 shall pay District No. 1 an agreed upon monthly rental for use of a portion of the Wilmington, California hall occupied by both Districts. District No. 1 agrees to lease part of the Wilmington, California hall to District No. 4 for a period not to extend beyond April 1, 1995, unless District No. 1 determines that it wishes to extend the lease.

(e.) Possession of the Norfolk Hall and the Peach Orchard estate in Easton, Maryland, and the Georgetown townhouse will be returned to PCD/MEBA (District 1) immediately, including all furnishings therein.

8. Creation of Expense Fund:

(a.) Promptly after the execution of this Agreement, the Presidents of Districts 1 and 4 shall establish an Expense Fund. Disbursements and other withdrawals from the Expense Fund shall require the signature of the Presidents of Districts 1 and 4. The following items shall be deposited into the Expense Fund:

(1) MEBA/NMU JEC monies due for the 4th quarter of 1991 and the four quarters of 1992, and the first quarter of 1993.

(2) NMU/JEC monies.

(3) All payments made pursuant to the \$1.7 million loan from the District No. 1 to NATCA.

(4) escrowed dues.

(5) the escrowed Crowley money, except that portion payable to the injured engineers and/or the MEBA Funds.

(6) all cash of the Licensed Division, MEBA/NMU.

(b.) Any additional Crowley monies not listed in Section 8(a)(5) shall be the property of PCD/MEBA.

(c.) If the severance pay lawsuit (Ward v DeFries), is settled by June 30, 1993, the money recovered, after payment of plaintiffs' attorneys' fees and costs, shall not be deposited into the Expense Fund, but shall be the property of PCD/MEBA. However, if settlement occurs after June 30, 1993, any money recovered from the severance pay lawsuit after payment of plaintiffs' and attorneys' fees and costs, shall be deposited into the Expense Fund.

(d.) In connection with the establishment and administration of the Expense Fund, each of PCD/MEBA and MEBA/NMU shall, for reasonable cause shown, make their books and records available to the other for audit.

9. Disbursements from Expense Fund:

(a.) The Presidents of Districts 1 and 4 must jointly authorize disbursements from the Expense Fund for liabilities of PCD/MEBA and liabilities of MEBA/NMU in accordance with this Section. In the event of any dispute arising over the implementation of disbursements, the parties must agree on a procedure to resolve such disputes. Disbursements shall be made from the Expense Fund for the following liabilities:

1. Phillips and Cappiello – National Maritime Union legal expenses.
2. Licensed Division Officials' salaries (January 1-15, 1992).
3. Licensed Division appointed employees' salaries from 1991.
4. Licensed Division expenses (previously unpaid) from 1/1/91 until 1/15/92.
5. Licensed Division legal expenses from 1/1/91 until 1/15/92.
6. PCD/MEBA legal expenses.
7. Mediation costs.
8. Printing and Insurance costs.

(b.) (1.) It is our understanding that the remaining liabilities, not specified in (a) above, include, but are not necessarily limited to: Dickstein, Shapiro & Morin; Shea and Gardner; PASS severance pay; Licensed Division compensation arising after January 15, 1992; expenses associated with NATCA's 1992 Convention, and unpaid rental on New Jersey rental property.

(2.) With regard to the remaining liabilities identified in (b)(1) above, they should be the subject of immediate further discussion, in an attempt to seek a justiciable resolution of their payment by July 30, 1993. Absent such resolution, the parties may consider submitting any unresolved issues regarding these liabilities to final and binding arbitration, in lieu of generating any further litigation.

(c.) The parties shall cooperate in providing supporting documentation for all amounts referred to in this Section in the event that any question arises as to the actual amounts involved.

(d.) Should there be any money remaining in the Expense Fund after the payment of all amounts required or permitted by this Section, such remaining funds shall be divided equitably between Districts 1 and 4 as agreed upon by the Presidents of District 1 and 4.

(e.) In the event that the funds in the Expense Fund are insufficient to fully satisfy the outstanding liabilities set forth in subparagraph “a” above, the Presidents of District 1, 4, 5, and 6, shall determine an equitable schedule of payments to be made by Districts 1, 4, 5, and 6. As described in this Agreement, Districts 1, 4, 5, and 6 are the successors to divisions of District No. 1 – MEBA/NMU. As such, Districts No. 1, 4, 5, and 6 will equitably share, as determined by their Presidents, in any liabilities of District No. 1 – MEBA/NMU not discharged pursuant to this Agreement, based on the division of District 1 – MEBA/NMU in which the liability arose.

10. Per Capita Payments:

Each District will be responsible for paying its share of the AFL-CIO per capita, and any other applicable per capita. Such payments shall be submitted to the National MEBA, which in turn shall submit the per capita payments on behalf of the Districts. The per capita payments shall not be deposited into the Expense Fund.

11. Political Action Funds:

(a.) Each District shall be responsible for the maintenance of its own political action fund. Political contributions shall also be coordinated through the National MEBA for FEC limits.

(b.) The present political action fund of MEBA/NMU, containing contributions from members of ITPE/NMU/PASS/Federation members, as well as licensed officers, shall be equitably divided between Districts 1 and 4.

(c.) Pending such distribution, no further funds will be spent by the MEBA/NMU Political Action Fund without the consent of Districts 1 and 4.

(d.) The books and records of the MEBA/NMU political action fund, and of the MEBA political action fund, shall be available for audit as soon as possible.

12. Benefits Plans

(a.) The National MEBA will not be a participating sponsor of the MEBA's Benefit Plans, but National MEBA employees may participate in the MEBA Benefit Plans. It is understood that, upon the execution of this Settlement Agreement, appropriate action will be taken to ensure that all classifications of employees of either the National MEBA, its Districts and Affiliates who participate in the MEBA Plans or Staff Pension Plan shall be permitted to continue such participation, with the understanding that they shall withdraw from the MEBA Pension Plan and go into the Staff Pension Plan within a reasonable time, subject to the negotiation of a reciprocity agreement as hereinafter provided.

(b.) In order to effectuate the preceding intent, the parties will meet at a future date to draft appropriate reciprocity provisions so that pension

credits in the MEBA Pension Plan and the Staff Pension Plan may be combined for vesting and benefit purposes.

13. Non-Retaliation:

Neither party to this Agreement will take or permit any retaliation against any officer, member, or employee based upon their support for either side up to the date of this Agreement.

14. Dues:

To avoid penalizing any member by requiring duplication of dues payments, PCD/MEBA and MEBA/NMU each shall credit their respective members for dues payments made to the other. The parties agree to cooperate fully in the proper accounting of dues and updating of members' files.

15. Arbitration:

Except as provided herein, all disputes concerning the interpretation, implementation and enforcement of this Agreement, except as otherwise noted above, shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association; however, no Arbitrator shall have the power to impose duties, obligations or limitations not provided for herein. Unless otherwise agreed, all such arbitrations shall be held in Philadelphia. The parties further agree that the list from which said Arbitrators are selected shall consist of current members of the National Academy of Arbitrators.

16. Miscellaneous:

Neither party may assign this Agreement or any right or interest herein.

17. Membership Approval:

District No. 1-PCD, MEBA's approval of this interim Agreement is contingent upon a majority vote of its membership at the June 1993 membership meetings. Since all of the membership, property and plans of District No. 1-PCD, MEBA have been restored to it pursuant to this Agreement, this vote will be in lieu of a costly and time-consuming reference which has been rendered unnecessary by the agreement of the parties to return District No. 1 to its pre-merger position.

The above settlement agreement is adopted with the realization that existing labor laws limit the range of possible terms of settlement that would require amending the NMEBA Constitution as it relates to the authority and structure of the National organization through elected officers and the role of the NEC. Furthermore, care has been taken to provide the proper ratification of any changes to the existing NMEBA Constitution not only by the members of the respective signatory organizations, but also by the members of District 2 and District 3. Finally, it is recognized that it is necessary to conduct a new election for NMEBA officers in conjunction with the adoption of a new NMEBA Constitution.

By affixing our signatures to this Agreement, we are hereby affirming our individual and collective commitment to seeking implementation of these settlement terms, and working toward a democratic and responsible MEBA, dedicated to the furtherance of the benefit of the membership.

By affixing our signatures this 4th day of June, 1993, we accept this as our agreed-upon Proposal for Settlement

/s/ Alexander C. Cullison
On behalf of District No. 1, MEBA/NMU

/s/ Gordon M. Ward
On behalf of District No. 1 – PCD, MEBA

/s/ Louis Parise
On behalf of District No. 1, MEBA/NMU