STATE OF WASHINGTON

BEFORE THE MARINE EMPLOYEES' COMMISSION

GEORGE B. GREENWOOD, et al Complainants, v. DISTRICT NO. 1 PACIFIC COAST DISTRICT, MARINE ENGINEERS BENEFICIAL ASSOCIATION, Respondent.	)	MEC CASE NO. 7-93 DECISION NO. 102 - MEC DENIAL OF MOTION FOR TEMPORARY RELIEF

George B. Greenwood, Matt Galle, and Charles J. Weythman, pro se, appearing for and on behalf of themselves.

Davis, Roberts and Reid, attorneys, by Ken Pedersen, appearing for and on behalf of District No. 1 Pacific Coast District, Marine Engineers Beneficial Association.

THIS MATTER came on before the Marine Employees' Commission (MEC) on October 18, 1993, when George B. Greenwood, Matt Galle and Charles J. Weythman (hereinafter Greenwood et al) filed a Motion For Temporary Relief pursuant to WAC 316-45-430. Greenwood et al had filed an unfair labor practice complaint (ULP) against District No. 1 Pacific Coast District, Marine Engineers Beneficial Association (PCD #1/MEBA) on August 5 1993, and had amended it on August 30 and again on October 18, 1993.

Greenwood et al complained that PCD #1/MEBA as representative of WSF unlicensed engineroom employees had refused to bargain collectively with WSF when MEBA Port Agent Mark Austin ignored instruction from the unlicensed engineroom employees "and instead follow[ed] his own agenda." The August 30 amendment added the

charge that PCD #1/MEBA Executive Vice President William B. Langley had restrained or coerced the WSF Oilers in the exercise of their rights guaranteed by chapter 47.64 RCW and chapter 316-45 WAC by retaliatory actions against the Unlicensed Engineroom Employees Bargaining Committee by disbanding said elected committee and appointing a committee of his own choosing and allowing non-bargaining unit members to vote on the unlicensed employees' issues.[1]

On August 30, 1993 MEC determined that the allegations set forth in the complaint and first amendment thereto may constitute an unfair labor practice if found to be true and provable. MEC designated Commissioner Louis O. Stewart as hearings examiner in the matter pursuant to WAC 316-45-130.

Examiner Stewart scheduled and conducted a prehearing conference on October 12, 1993. During said prehearing conference, Mr. Greenwood stated complainants' intentions to file the Motion for Temporary Relief, and on October 18, 1993 did file said motion.[2] Greenwood et al filed the motion itself on October 18, 1993. The complainants want a Superior Court "injunction to prevent PCD #1/MEBA from negotiating any aspect of 1993-1995 licensed and unlicensed WSF engineroom employees contract and to keep said injunction in place until such time that MEC case No. 7-93 has been resolved in full." On October 26 they filed statements in support of their motion along with a motion for a 30-day continuance of the hearing scheduled for October 26 and 27, 1993. On October 21,

[1] The October 18 amendments only pertain to the remedies sought section of the complaint and do not appear to be material to the instant motion for temporary relief.

[2] Examiner Stewart has acknowledged that he misunderstood Mr. Greenwood's oral statement of intent and wrongly stated that MEC had no authority to do what he understood Greenwood to want. The misunderstanding was corrected the following day by letter to the parties.

1993, Examiner Stewart notified the parties by telephone that he was canceling the October 26 and 27 hearing, but that he would

bring them together in a telephone conference call on October 26 to discuss the length of the continuance and the Motion for Temporary Relief. On October 26, 1993 nine persons were so convened by telephone.[3] Examiner Stewart set November 3, 1993 as the date by which the respondents could file a counter affidavit relating to the temporary relief motion, which they timely did.

DISCUSSION

Competence of the Motion

WAC 316-45-430(3)provides that "any complainant desiring temporary relief may file with the commission a motion for temporary relief together with affidavits as to the risk of irreparable harm and the adequacy of legal remedies, . .." (Emphasis added) In the present instance the statements filed were not affidavits. During the telephone conference, October 26, 1993 the complainants stated that their work assignments aboard the ferries had prevented them from getting their statements notarized. Counsel for MEBA was understood by the two MEC participates to say that he would not object to complainants' unsworn statements this time, but then he correctly pointed out that they could file their statements under penalty of perjury without a notary witness. He went so far as to dictate slowly the proper penalty of perjury language. The complainants did not refile their statements "under oath."

Were MEC to grant the motion under WAC 316-45-430(4)(a), and were MEC to file for injunctive relief in the Thurston County Superior

[3] Two licensed WSF engineers who have filed a Motion for Intervention were added to the telephone conference even though they will not be heard on their motion until the scheduled December 13, 1993 hearing pursuant to WAC 316-02-560.

Court, the question "Does counsel for the respondents actually have authority to set aside the requirements of MEC rules?" would very likely arise.

Therefore, before attempting to reach a decision over the competency of complainants' "affidavits" by splitting legal hairs, MEC went on to the merits of the motion in order to determine whether MEC would have good and sufficient grounds to petition the Superior Court for a stay of the collective bargaining process.

Merits of the Motion

The purpose of the affidavits required by WAC 316-45-430 is to set forth the risk of irreparable harm to the petitioners and the risk of other adequate legal remedies. In order for MEC and its assigned assistant attorney general to prevail, they must be armed with factual statements describing a dire and urgent situation with predictable results from which no relief can reasonably be expected. Only the Superior Court can save the respondents from the situation. It must be told, "No relief from ordinary procedures can help if the temporary relief is not granted."

Sworn or unsworn, the complainants' statements do not present MEC (nor the Superior Court, through MEC) with such a predicament.

As part of their motion document, the complainants assert that PCD #1/MEBA representation "knowingly and willfully compiled contract proposals in a manner that violates both state and federal law," and "that if PCD #1/MEBA representatives are allowed to negotiate with WSF management prior to . . . obtain[ing] a judicial hearing on the merits of this case, it would render such case moot and would further deprive WSF unlicensed engineroom employees of the work already accomplished by the elected unlicensed engineroom

employees negotiating committee." Basically this statement only reiterates the reason for the ULP matter.

In his October 26 "affidavit" Matt Galle expressed concern over Port Agent Mark Austin's perception of the definitions in the current agreement. No where is there any assertion of impending dire consequences requiring Thurston County Superior Court action.

In his "affidavit," George Greenwood refers to irreparable harm, but goes on to discuss disagreement with Austin regarding definitions. Greenwood goes on to reiterate the basic ULP complaint, viz., that the "appointed" negotiating committee plans are contrary to the desires of the WSF unlicensed engineroom employees, and have improperly been voted upon by persons outside the bargaining unit. MEC can find no assertion of predictable irreparable harm and lack of protection therefrom.

Charles Weythman, in his "affidavit" charges Austin with wanting to change the contractual definitions, but he adds that Austin said he plans to discontinue the practice of oilers "bumping-up" to assistant engineers. This is the only statement asserted to result in irreparable harm. However, Weythman does not say why it takes a court order to stop this from happening. Also, PCD #1/MEBA in its counter-statement claims that Weythman was not present at the unlicensed committee meetings.

The rationale for an urgent court order to stop the WSF/Unlicensed Engineroom Employees collective bargaining lost much of its shine when the complainants asked for a 30-day continuance of a hearing scheduled to occur in the following week. It is possible that Examiner Stewart caused a day's (or even several days') delay in preparing for both the hearing on the ULP complaint and the Motion for Temporary Relief. However, MEC was prepared to go forward on an expedited basis, and Stewart did tell the parties during the

telephone conference that if the hearing were to proceed on October 26 as scheduled, MEC would do its best to enter a decision within three weeks. However, the complainants insisted on the continuance.

However, even with the continuance of the hearing until December 13-14, 1993, but only if the parties cooperate in keeping the hearing meaningful and orderly, MEC should be able to enter a decision by January 14, 1994.

In the judgment of MEC, we could not possibly obtain a Superior Court injunction to stop the WSF/MEBA collective bargaining on the basis of the information given to the Commission.

MEC has taken notice that the first meeting of the bargainers has occurred on November 2, 1993. MEC ha been given no reason to believe that agreement can be reached in these days of fiscal difficulty and factional dispute and an agreement ratified prior to January 14, 1994. Pursuant to WAC 316-45-430(4)(c), the request for temporary relief may again be sought if the complainants prevail in their ULP.

DECISION AND ORDER

The Motion for Temporary Relief filed by George B. Greenwood, Matt Galle and Charles Weythman as part of MEC Case No. 7-93 (Greenwood, et al v. PCD #1/MEBA) is hereby denied, without prejudice.

DONE this 9th day of November, 1993.

MARINE EMPLOYEES' COMMISSION

/s/ DONALD E. KOKJER, Commissioner

/s/ LOUIS O. STEWART, Commissioner