

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

DISTRICT NO. 1, MARINE
ENGINEERS' BENEFICIAL
ASSOCIATION,

Complainant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC CASE NO. 8-05

DECISION NO. 487 - MEC

ORDER CLOSING
SETTLED COMPLAINT

Reid, Pedersen, McCarthy and Ballew, by *Thomas Leahy*, Attorney, appearing for District No. 1, Marine Engineers' Beneficial Association.

Rob McKenna, Attorney General, by *David Slown*, Assistant Attorney General, appearing for Washington State Ferries.

THIS MATTER came on regularly before the Marine Employees' Commission on July 27, 2004, when District No. 1, Marine Engineers' Beneficial Association (MEBA) filed an unfair labor practice complaint, MEC Case No. 8-05, against Washington State Ferries (WSF).

In its complaint, MEBA 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, MEBA alleged that WSF no longer disclosed to the Union, the names of employees testing positive for alcohol or drugs on the job.

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Pursuant to WAC 316-45-110, following initial review of the complaint, the MEC determined that the facts alleged may constitute an unfair labor practice, if later found to be true and provable. Commissioner John Sullivan was assigned to serve as Mediator at a settlement conference scheduled for August 31, 2004. On August 30, the MEC was notified that MEBA Representative Mario Micomonaco was ill, resulting in the conference being continued to September 27. Chairman John Swanson was designated to act as Hearing Examiner; the hearing was scheduled for November 30, 2004.

The parties made some progress toward settlement during the September 27, 2004 conference. On November 16, MEBA requested and was granted a continuance of the November 30 hearing to allow the parties more time to work on a potential settlement.

On May 19, 2005, at MEBA's request, the MEC scheduled another settlement conference for August 19 and a hearing for September 20. WSF filed its Answer to the Complaint on September 7. The September hearing was not held, but continued at MEBA's request to May 23, 2006.

By telephone on May 22, 2006, AAG Slown notified the MEC that the parties' had reached an agreement. On July 17, 2006, the MEC received a copy of the parties' signed settlement agreement (which includes MEBA's withdrawal of the complaint). That agreement is appended to and becomes a part of this Order by reference.

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ORDER

It is hereby ordered that the unfair labor practice complaint, filed by District No. 1 MEBA against WSF and docketed as MEC Case No. 8-05, is closed in acknowledgment of the parties' agreement.

DATED this 28th day of July 2006.

MARINE EMPLOYEES' COMMISSION

/s /JOHN SWANSON, Chairman

/s/ JOHN SULLIVAN, Commissioner

/s/ ELIZABETH FORD, Commissioner

SETTLEMENT AGREEMENT

MEC Case No. 8-05

IN FULL AND COMPLETE SETTLEMENT of the unfair labor practice charge that led to MEC Case No. 8-05, the parties, the Marine Engineers' Beneficial Association, (MEBA) and Washington State Ferries (WSF) agree as follows:

1. In all cases in which MEBA-represented employees are notified of a positive drug or alcohol test, WSF will include the attached letter (Attachment A) with the letter that notifies an employee that he/she has failed and/or tested positive under the WSF's drug and alcohol testing program. It shall be the responsibility of MEBA to update and change Attachment A as needed, and provide WF with a copy of each update. It shall be the obligation of WSF to include the current version of the Attachment as outlined above. IF WSF believes any update to the Attachment is not appropriate to send to employees, it will immediately notify MEBA and will continue to send the old version until the matter is resolved.
2. MEBA will withdraw the above-referenced unfair labor practice. A signed copy of this agreement shall constitute a request for withdrawal, and may be presented by either party.
3. MEBA and WSF reserve the right to raise issues related to the above-referenced unfair labor practice in future contract negotiations, however, MEBA understands (without agreeing) that WSF will regard any proposals which require WSF to notify MEBA of the results of a drug or alcohol test, without the prior consent of the affected employee, as an illegal subject of bargaining.
4. MEBA reserves the right to grieve any discipline that is related to the above-referenced unfair labor practice, including, but not limited to, alleging a violation of Section 2(f) of the licensed collective bargaining agreement.
5. Both MEBA and WSF are reserving their positions in relation to the WSF's duty to turn over documents related to employees failing drug tests and/or testing positive.

Dated this 23rd day of May, 2006.

For MEBA:

/s/ Jeffrey Duncan

For WSF:

/s/ Paul H. Brodeur