Washington State Ferries, Decision 11335-A (MRNE, 2012)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

JONATHAN D. PEARSON, Complainant, vs. WASHINGTON STATE FERRIES, Respondent.	CASE 24126-U-11-6174 DECISION 11335-A - MRNE MARINE EMPLOYEES COMMISSION DECISION

Jonathan D. Pearson, appeared on his own behalf.

Attorney General Robert M. McKenna, by *Don L. Anderson*, Assistant Attorney General, for the employer.

This case comes before the Marine Employees Commission (MEC), a division of the Public Employment Relations Commission (Commission), on an appeal filed by Jonathan D. Pearson (Pearson). In his complaint filed on February 12, 2010, Pearson alleged that the Washington State Ferries (employer) committed unfair labor practices by interfering, dominating, discriminating or refusing to bargain in violation of RCW 47.64.130(1) when it terminated his employment. Examiner Emily H. Martin held a hearing and determined that the employer did not commit any unfair labor practices, dismissing the complaint. Pearson now appeals that decision.

On appeal Pearson makes numerous arguments, none of which we find persuasive. The Examiner accurately stated the procedural and factual background in the decision below. The Examiner also cited the relevant provisions of Chapter 47.64 RCW Marine Employees – Public Employment Relations. To address Pearson's arguments, we incorporate those portions of the

Examiner's decision here as we see no reason to restate them. We find that Pearson failed to meet his burden of proof to sustain any of the unfair labor practice claims. Substantial evidence exists to support the Examiner's findings of fact, and those findings in turn support the Examiner's conclusions of law. For the reasons set forth below, we affirm the Examiner's decision.

Before we analyze the specific facts of the case, it is necessary to explain our process of review. The MEC now operates under the same procedures as the Commission. It, therefore, reviews an examiner's findings of fact to determine whether they are supported by substantial evidence and, if so, whether the findings in turn support the examiner's conclusions of law. *Brinnon School District*, Decision 7210-A and 7211-A (PECB, 2001), *citing Curtis v. Security Bank*, 69 Wn. App. 12 (1993). Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *Renton Technical College,* Decision 7441-A (CCOL, 2002); *Brinnon School District*, Decision 7210-A and 7211-A, *citing World Wide Video Inc. v. Tukwila*, 117 Wn.2d 382 (1991), *cert. denied*, 118 L. Ed. 2d 391 (1992). Considerable weight is attached to the factual findings and inferences made by examiners, and this deference, while not slavishly observed on every appeal, is even more appropriate in fact-oriented appeals. *Brinnon School District*, Decision 7210-A and 7211-A. Conversely, our examiners generally apply the preponderance of evidence standard. *City of Bellingham*, Decision 7322-B (PECB, 2002) (citations omitted); *see also Irish v. Washington State Ferries*, Decision No. 128 (MEC, 1994).

Most appeals present mixed questions of law and fact. The MEC, like the Commission, reviews an examiner's interpretation of the law de novo. *City of Pasco v. Public Employment Relations Commission*, 119 Wn.2d 504 (1992); *Clover Park Technical College*, Decision 8534-A (PECB, 2004). Thus, an examiner's interpretation of the law does not bind the MEC.

The appealing party who assigns error to the examiner's findings of fact has the burden of showing a challenged finding is in error and not supported by substantial evidence; otherwise findings are presumed correct. *Brinnon School District*, Decision 7210-A and 7211-A, *citing Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364 (1990) (citations omitted). In the

absence of any challenge, findings are taken as verities on appeal. *C-TRAN*, Decision 7087-B and 7088-B (PECB, 2002). It is not enough for an appealing party to merely disagree with an examiner's findings of fact as contrary to their version of events. *Clark County*, Decision 9127-A (PECB, 2007). Rather, the party pursuing an appeal must demonstrate how the examiner's findings are not supported by substantial evidence through the evidence presented at hearing. *Clark County*, Decision 9127-A. Thus, as long as an examiner applies the correct legal standard to facts supported by substantial evidence, the decision should be upheld.

As the Examiner reviewed in more detail, the events that lead to this dispute demonstrate that Pearson's real issue is with his termination, a grievance, not an unfair labor practice. He was terminated on May 19, 2009, as part of the employer's effort to clear inactive employees from its roles. Pearson had not worked since 2001, when he took leave for a sleep condition. In 2001 and again in 2004, Pearson failed to provide medical documentation requested by the employer to justify the *extended leave*. Although the employer began pre-disciplinary proceedings in 2003, which culminated in a doctor's letter providing that Pearson was *fit to return to duty*, Pearson did not return to duty, nor did the employer complete the termination. When Pearson was finally terminated in 2009, he was represented by the International Organization of Masters, Mates and Pilots (union), and the union filed a grievance but did not pursue an appeal. Neither that grievance nor the union's representation is before the MEC.

In this appeal, Pearson alleges that the employer made errors in his termination process, i.e., that his due process rights were violated, that the employer did not follow steps in its progressive disciplinary process, and that he did not receive a Loudermill hearing.[1] As was the case before the Examiner, the case before us is an unfair labor practice and is not an arbitration of Pearson's grievance regarding his termination. The MEC, like the Commission, does not resolve "violation of the contract" allegations in unfair labor practice proceedings. *Mukilteo School District*, Decision 1381 (PECB, 1982). The Examiner also cited the correct legal standard that the

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[1] It is important to note that Pearson asserts that his hire date was June 16, 1984, and that he worked for the employer as an extra relief mate. The employer stated his hire date was July 3, 1988, and that he worked as a master. Although Pearson asserts that is evidence of the employer's unlawful conduct, the issue of Pearson's hire date and working title does not rise to the level of an unfair labor practice and is irrelevant to our decision.

remedy for a contract violation must come through the grievance and arbitration machinery of the contract, or through the courts.

Pearson failed to meet his burden of proof to sustain an unfair labor practice because he did not present evidence that demonstrated how the Examiner's findings were not supported by substantial evidence through the evidence presented at hearing. In fact, notwithstanding his assertions, Pearson submitted no evidence which showed that the employer interfered with the pursuit of his union rights, or dominated or provided unlawful assistance to the union, discriminated against him, or refused to bargain.[2] We feel it is important to note here, as the Examiner did in her decision, that Pearson's grievance was the result of his termination and not its cause.

In conclusion, we have reviewed the entire record and fully considered the arguments of the parties. The Examiner applied the correct legal standards, and Pearson failed to prove that the challenged findings were in error. We find there is substantial evidence in the record to support the Examiner's findings of fact, and the findings of fact support the conclusions of law. We find that the employer did not interfere, dominate, discriminate or refuse to bargain in violation of RCW 47.64.130(1). Thus, we affirm the Examiner's decision.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law and Order of Examiner Emily H. Martin are AFFIRMED and ADOPTED as the Findings of Fact, Conclusions of Law and Order of the Commission, except as modified herein. The complaint charging unfair labor practices in the above-captioned matter is DISMISSED.

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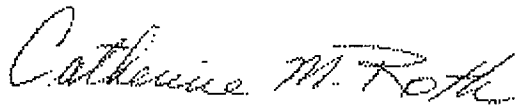
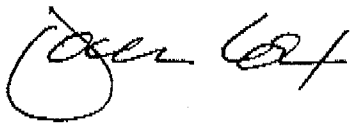
[2] The MEC does not deem it necessary to address whether individuals have standing to raise failure to bargain allegations under RCW 47.64.130(1) because no evidence of a substantive violation was presented.

ISSUED at Olympia, Washington, this 4th day of September, 2012.

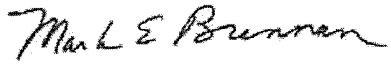
MARINE EMPLOYEES COMMISSION
A division of the
PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHERINE ROTH, Chairperson



JOHN COX, Commissioner



MARK BRENNAN, Commissioner

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY/S/ ROBBIE DUFFIELD

CASE NUMBER:	24126-U-11-06174	FILED:	07/06/2011	FILED BY:	PARTY 2
DISPUTE:	ER MULTIPLE ULP				
BAR UNIT:	MARINE OFFICER				
DETAILS:	See 24196-U MEC #11-10				
COMMENTS:					

EMPLOYER: WASHINGTON STATE FERRIES
ATTN: RICK HALL
210 11TH AVE SW STE 331
PO BOX 43113
OLYMPIA, WA 98504-3113
Ph1: 360-725-5540

REP BY: DON ANDERSON
OFFICE OF THE ATTORNEY GENERAL
PO BOX 40145
7141 CLEANWATER DRIVE SW
OLYMPIA, WA 98504-0145
Ph1: 360-586-2466 Ph2: 360-664-4167

PARTY 2: JONATHAN D PEARSON
ATTN:
3315 NW 80TH ST
SEATTLE, WA 98117
Ph1: 206-515-3400