

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

MATTHEW GRUBER,)	
)	MEC CASE NO. 9-90
Complainant,)	
)	
v.)	DECISION NO. 55 - MEC
)	
WASHINGTON STATE FERRIES)	ORDER OF DISMISSAL
and DISTRICT NO. 1 -)	
PACIFIC COAST DISTRICT,)	
NATIONAL MARINE ENGINEERS)	
BENEFICIAL ASSOCIATION,)	
)	
Respondents.)	
_____)	

Matthew A. Gruber, pro se, appeared for and on behalf of himself.

Allan Brotsky, Attorney, by Elton Eilert, Employee Relations Director, appearing for and on behalf of Washington State Ferries, and by James Webster and Lynn Weir, Attorneys, appearing for and on behalf of National Marine Engineers Beneficial Association.

THIS MATTER came on before the Marine Employees' Commission (MEC) on July 3, 1990 when Matthew A. Gruber filed a request for grievance arbitration in accordance with chapter 316-65 WAC and an unfair labor practice complaint (ULP) in accordance with chapter 316-45 WAC against the respondents, both documents based upon the same alleged factual situation.

Grievant Gruber alleged that he is medically insured through his employment as an Oiler in Washington State Ferries (WSF) and by the MEBA health care trust plan, but that plan has refused to cover his treatment for HIV infection. His condition was diagnosed in November, 1987 while the Oilers were represented by the Inlandboatmen's Union of the Pacific (IBU) and his health insurance was covered by the IBU/WSF health care plan. When MEBA was recognized as the sole representative of WSF Oilers in April, 1988, treatment for Gruber's HIV infection came under the MEBA health care trust. The MEBA trust administrator required Gruber to

provide proof of the causative effects of (his) illness, which was medically impossible. Gruber appealed to the MEBA plan trustees who denied his appeal. Mr. Gruber claims that the public policy statement in the Marine Employees' Act (RCW 47.64.006) requires Washington State to "promote equality in compensation, benefits and working conditions between ferry system employees, private sector employees and other state employees in directly comparable positions. . . ." Therefore, he contends it is an unfair labor practice by both WSF and MEBA to deny him medical coverage for which other employees are eligible, which constitutes violations of RCW 47.64.130 and WAC 316-45-003.

He asserted that he has exhausted all his "appeals to the MEBA and am currently without medical coverage for my HIV condition."

On July 9, 1990 MEC served acknowledgement of both filings, and notified all parties that MEC would discuss the unfair labor practice complaint, pursuant to WAC 316-45-100, to determine whether the facts as alleged may constitute an unfair labor practice, at its next regular meeting on July 19, 1990. The parties were advised by that notice that the discussion would not be an evidentiary hearing, and the participants would not be under oath.

Discussion at the July 19 meeting revealed that Mr. Gruber had not utilized the remedies available to him under the WSF/MEBA Collective Bargaining Agreement pursuant to RCW 47.64.150 and WAC 316-65-050(5). Therefore MEC voted to dismiss the request for grievance arbitration, and on August 3, 1990 entered Decision and Order No. 54-MEC dismissing Gruber's grievance arbitration request without prejudice.

At the request of the respondents to be allowed time to prepare briefs, and because the ULP raised too many questions for proper

determination, further discussion of the ULP was deferred until August 3, 1990.

At the August 3rd continuation, both WSF and MEBA moved for dismissal on two counts. First, the respondents asserted that they had not been served copies of the ULP. Second, they argued that the State of Washington is preempted by the Employee Retirement Income Security Act of 1974 (ERISA), as amended, 29 U.S.C. 1001 et seq.

MEC took the motions under advisement for later determination, and proceeded with the discussion as to whether or not Mr. Gruber's alleged facts may constitute unfair labor practices, if upon evidentiary hearing they were found to be true and provable pursuant to WAC 316-45-110.

Based upon the complaint as filed and as recited by Complainant, the briefs filed by respondents, and the uncontested statements of fact in the two discussions by MEC and all parties, the Commission now enters the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Complainant Matthew Gruber is employed by Respondent WSF as an Oiler.
2. As an Oiler, Matthew Gruber was a member of a WSF bargaining unit previously represented by the Inlandboatmen's Union of the Pacific (IBU) and received treatment for an HIV infection under the IBU health care trust. As of April, 1988 MEBA was certified as the exclusive representative of WSF Oilers pursuant to RCW 47.64.011(3). Thereupon the Oilers became members of the MEBA Medical and Benefits plan, a joint labor-management trust fund.

3. On July 30, 1990 MEC Administrative Assistant Janis Lien notified Mr. Gruber by letter (with copies to respondents) that WSF had claimed at the July 19, 1990 hearing that WSF had not been served with a copy of the complaint, and advised Gruber that "I wish to notify you that unless you properly serve the respondents. . . , your complaint may be dismissed by the Commission"
4. In response to a direct question by MEC on August 3, Complainant Gruber did admit that he still had not served the respondents with copies of his ULP.
5. General requirements of service of paper in a contested case are governed by RCW 34.05.437(3), as follows:

34.05.437 Pleadings, briefs, motions, service.

. . . .

(3) A party that files a pleading, brief, or other paper with the agency or presiding officer shall serve copies on all other parties, unless a different procedure is specified by agency rule.

6. Filing of ULPs with MEC is governed by WAC 316-45-030, as follows:

WAC 316-45-030 COMPLAINT-NUMBER OF COPIES-FILING-SERVICE. Charges shall be in writing, in the form of a complaint of unfair labor practices. The original copy of the complaint shall be filed with the commission at its Olympia office. The party filing the complaint shall serve a copy on each party named as a respondent. (Emphasis added.)

Based upon the foregoing complaint, briefs, discussions and findings of fact, the Commission now enters the following conclusions of law, and order.

CONCLUSIONS OF LAW

1. The Employee Retirement Income Security Act of 1974 (ERISA) preempted State regulation of labor-management employee benefit plans. Wadsworth v. Sholand, C.A.N.H. 1977, 562 F.2nd 70, cert. denied, 98 S. Ct. 1630, 435 U.S. 980, 981, 56 L. Ed. 2nd 72.
2. The term "State" includes MEC as an agency or instrumentality of the State of Washington (29 USC 1144(a)(1976)); therefore, MEC is precluded from regulating, directly or indirectly, the terms and conditions of the MEBA Medical and Benefits plan.
3. If a bad faith denial of benefits were to exist as asserted by Claimant, that claim cannot be litigated before MEC. See Province v. Valley Clerks Trust Fund, 1984, 209 Cal. Rptr. 276, 163 C.A. 3d 249.
4. Complainant Gruber's claim that WSF's and MEBA's plan actions were knowing or intentional breach of duty of care, fiduciary duty and/or a contract obligation which they owed him as an HIV victim transferring from the IBU plan was preempted by ERISA in that Congress had specifically provided remedies for such wrongs. See Lucash v. Strick Corp., D.C. Pa. 1984, 602 F. Supp. 430.
5. Based upon the foregoing conclusions of law, if Gruber has a valid complaint, Mr. Gruber must seek such remedy as is provided in ERISA, and not through MEC.
6. MEC also must conclude that it lacks jurisdiction to consider the merits of this ULP complaint because of the failure to supply (i.e., properly serve) respondents with copies of the ULP complaint. See Findings of Fact No. 5 and 6. Dismissal of the ULP complaint without prejudice would enable

Complainant Gruber to file an amended or different complaint with MEC, properly, if he believes he perceives a legally valid basis for MEC to assume jurisdiction.

Having read the entire record and having thoroughly discussed the procedural questions raised by respondents, the Commission now hereby enters the following decision and order.

ORDER

The complaint of unfair labor practices, filed by Matthew A. Gruber on July 3, 1990, against Washington State Ferries and the National Marine Engineers Beneficial Association, is hereby dismissed without prejudice.

Dated this 21st day of August, 1990.

MARINE EMPLOYEES' COMMISSION

/s/ DAN E. BOYD, Chairman

/s/ DONALD E. KOKJER, Commissioner

/s/ LOUIS O. STEWART, Commissioner