

STATE OF WASHINGTON

BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION	)	MEC Case No. 9-97
OF THE PACIFIC,	)	
	)	DECISION NO. 182 - MEC
Complainant,	)	
	)	
v.	)	DECISION AND ORDER
	)	
WASHINGTON STATE FERRIES,	)	
	)	
Respondent.	)	
_____	)	

Schwerin, Campbell and Barnard, attorneys, by Dmitri Iglitizin, appearing for on and behalf of the Inlandboatmen's Union of the Pacific.

Christine Gregoire, Attorney General, by Stewart Johnston, Assistant Attorney General, for and on behalf of the Washington State Ferries.

THIS MATTER came on regularly before the Marine Employees' Commission on March 30, 1997, when the Inlandboatmen's Union of the Pacific (IBU) filed an unfair labor practice against the Washington State Ferries (WSF).

IBU's complaint charged WSF with engaging in unfair labor practices within the meaning of RCW 47.64.130(1)(a) by interfering with, restraining or coercing employees in exercise of rights. IBU charged that within six months prior to the filing of the complaint, WSF had failed to abide by the settlement of the MEC Case No. 10-96. Specifically, the Union charged that:

On September 30, 1996 the IBU filed an unfair labor Practice charges alleging that ' . . .WSF has refused

to meet with the Union of the purpose of resolving grievances as Step II as required by the collective bargaining agreement. [MEC Case No. 10-96]

In January, 1997, the parties executed a settlement agreement resolving the issues raised in MEC Case Number 10-96. Among other things, the WSF agreed 'not to issue any denial of grievances submitted by the Union in accordance with Step II of the contractual Grievance procedure until it has met with the IBU and negotiated in good faith to resolve that grievance.' (Exhibit 2 to the complaint.) On January 24, 1997, the MEC issued its Order Dismissing Adjusted Complaint, based on that settlement agreement.

Since the parties entered into that agreement, the WSF has continued to issue grievance denial letters in advance of meeting with the Union. . . . As early as January 16, 1997 -- 13 days after WSF signed the settlement agreement - WSF Human Resources Director Jim Yearby issued letters communicating that WSF found the grievances to be without merit before meeting with the Union. In February, Mr. Yearby issued letters demanding evidence from the Union and indicating that '[u]nless the above information is received, I will consider the grievance closed.' He stated at the outset of some letters that 'Mr. Eaton's issue is not a grievance, nor is it a violation of any contract provision,' or 'I cannot find any evidence that [the contract] has been violated.' This practice of issuing denials continues to today and puts the Union in the position of moving the grievance to the next step without having met with the WSF.

When the WSF wanted to, it was able to issue the appropriate letters. . . . In many of those cases, the parties met and resolved the grievances.

Mr. Yearby has also issued letters purporting to be the 'full and final settlement' of certain grievances without having met with the Union or obtained their agreement to these "settlements." . . .

IBU alleged that this continuing conduct by the Washington State Ferries was in direct violation of the agreement entered into in MEC Case No. 10-96 in January, 1997, and undermined the collective bargaining process.

As a remedy for these violations, IBU requested:

1. WSF be ordered to abide by its agreement not to issue denial letters in advance of meeting with the Union;
2. For each instance in which the WSF has issued such a letter in advance of meeting (including but not limited to the letters attached to this complaint), the Union seeks an order that those grievances were deemed to be granted by the WSF;
3. Such other relief as the Commission deems just and proper; and
4. Because of the flagrant nature of this violation, the Union requests an award of costs and attorneys fees for having to pursue this unnecessary charge.

Following review, the Marine Employees' Commission determined that the facts alleged by IBU may constitute an unfair labor practice if later found to be true and provable. WAC 316-45-110. Chairman Henry L. Chiles, Jr. was appointed to act as Hearing Examiner pursuant to WAC 316-45-130.

A notice dated April 18, 1997 scheduled a prehearing conference date of May 19, 1997 and a hearing date of June 4, 1997. The notice directed that an answer be filed on or before May 21, 1997.

On May 19, 1997, Hearing Examiner Chiles convened a prehearing conference. During the conference, the parties met privately and reached agreement on the violations alleged in the unfair labor practice complaint. Dmitri Iglitzin, counsel for IBU and Gretchen Gale, Assistant Attorney General representing WSF, requested that the hearing of the violations scheduled on June 4, 1997 be stricken. On the basis of the representations made by counsel, Hearing Examiner Chiles agreed at the prehearing conference to strike the June 4, 1997 hearing date. The parties agreed that upon execution of the agreement, the violations charged would be withdrawn by the Union and dismissed by the

Marine Employees' Commission. Thereafter, the MEC waited several months for a withdrawal of the charges based on the representations made at the prehearing conference. When no definitive status of the case could be ascertained by MEC staff, a hearing was scheduled on September 17, 1997. WSF filed an answer to the complaint on September 5, 1997.

A hearing was held on September 17, 1997. All parties had an opportunity to be heard. Both parties waived filing of briefs and made oral argument on the record.

#### POSITIONS OF THE PARTIES

##### Position of Inlandboatmen's Union

This is the second time that the IBU has been before the Commission on this issue. The WSF has shown continued disrespect for the IBU grievance process in that it simply refuses to take seriously the Union's legitimate desire to sit down and meet with the ferry system prior to the ferry system taking a stand that the grievance has no merit. WSF is flagrantly violating the contractual grievance procedures and the settlement agreed to in MEC Case No. 10-96 regarding the grievance process.

In that settlement agreement, WSF agreed formally that it would no longer issue denials of grievances submitted by the Union in accordance with Step II of the contractual grievance procedures until the parties had met and negotiated in good faith to resolve a grievance. It was clear at the settlement conference held in Case No. 10-96 that IBU did not want a letter from the ferry system prior to the final grievance meeting. The contract calls for a meeting as the first step toward resolving a grievance. It was clear to all parties that the IBU wanted the contract grievance clause followed.

Only a few days after Case 10-96 was settled and the IBU withdrew its unfair labor practice charge, WSF returned to its pattern and practice of sending letters to IBU prior to the Step II meeting. These letters were perceived by IBU as denials of a grievance; they did not permit the IBU to have the first meeting as called for in the contract.

The letters, signed by WSF Human Resources Director Jim Yearby, indicated that WSF did not take seriously the IBU's concerns. It was clear from the plain language of the settlement agreement in MEC Case No. 10-96 that the IBU only sought to achieve a meeting prior to any decision on the grievance by WSF.

IBU believes WSF is attempting to create new rules rather than follow the negotiated processes. By sending letters to IBU before the first meeting in spite of the settlement agreement, WSF continued to unilaterally change the IBU/WSF contract without bargaining and agreeing to the changes.

IBU seeks an order stating that the Washington State Ferries is not to issue any statement about grievances except an inquiry for information, to pay the grievances that have been settled, to deem granted the grievances that were not timely resolved and to pay attorney fees and costs because the IBU had to bring this matter back to the MEC again.

#### Position of Respondent WSF

The question presented in this case is whether or not the letters sent out by WSF Human Resources Director Jim Yearby violate the terms of the settlement agreement in MEC Case No. 10-96. The language of the Settlement agreement and the letters in question are clear.

With one exception, which WSF admits, the letters followed up the initial letter from the IBU. After the letters went out, there

Oftentimes would be another letter after an investigation. In certain cases, Mr. Yearby felt it appropriate to advise the IBU of WSF's position based on his assessment of the grievance. The assessment is to be distinguished from a denial of the grievance.

It is not wrong for WSF to announce its position on a grievance prior to a meeting. It does not compromise the grievances. Rather, it is an expression of a position.

The grievance process previously practiced by Mr. Yearby and IBU Patrolman Dennis Conklin was cumbersome and inefficient. It was therefore changed. The parties have worked out a system whereby the IBU submits a list of grievances they wish to discuss at the meeting. WSF is able to prepare for the meeting and grievances. The present grievance handling process works.

A new Labor Relations Director, Gary Baldwin, replaced Jim Yearby in the grievance handling process. The letters issued by Mr. Baldwin after the agreement was negotiated in MEC Case No. 10-96 were a mistake and they were withdrawn.

With the exception of one letter, the letters sent by Mr. Yearby after the 10-96 settlement was executed were not denials and do not violate the settlement agreement. The WSF requests that the charges be dismissed.

#### STATEMENT OF THE ISSUE

1. Did WSF commit an unfair labor practice within the meaning of RCW 47.64.130(1)(a) to wit: interfering with, restraining or coercing employees in exercise of rights, by sending letters to the Union denying the grievances prior to the Step II grievance meeting, in violation of its agreed upon grievance settlement in MEC Case No. 10-96?

2. If the answer is "yes," what is/are the remedy/remedies?

Having read and carefully considered the entire record, the Marine Employees' Commission now hereby enters the following findings of fact.

#### FINDINGS OF FACT

1. On or about September 1996, a dispute between the Inlandboatmen's Union and the Washington State Ferries arose concerning the terms of their collective bargaining agreement. Pursuant to Rule 16 - DISPUTES, IBU believed that after a grievance was filed with the ferry system, the contract directed the parties to meet. IBU objected to receiving letters from WSF prior to this meeting. IBU interpreted the letters to be a denial of the grievance before any meeting had taken place.
2. IBU/WSF Collective Bargaining Agreement RULE 16 - DISPUTES, sets out the procedures by which the parties are to resolve disputes. Step I sets forth the process by which the original notification of the grievance goes to the ferry system and the parties' attempts to resolve the matter at the "local level." If the grievance is not resolved within five days of notification, the union may proceed to Step II by filing a written statement of the grievance to the Director of Employee Relations (now the Director of Human Resources).

Step II, sections (1) and (2) read as follows:

STEP II - FORMAL

1. Within fifteen (15) days of original notification the Union and/or employee may file a written statement of the grievance to the Director of Employee Relations, or his designee. Said grievance statement will contain the following information: a detailed explanation of the grievance including all facts surrounding the grievance, the specific provisions of the Agreement alleged to be violated, and the specific remedy requested to resolve the dispute.
  
2. Within 15 working days of receipt of the grievance the Employer will meet with the Union for the purpose of resolving such grievance. Unless the grievance is resolved at the meeting, the Employer shall give the Union written notice of its decision concerning the grievance by hand delivery of such notice or by placing the notice in the mail within 15 calendar days after the date of the meeting. If such written notice is not directed to the Union in a timely manner, the grievance will be deemed to be granted by the Employer. [Emphasis added.]

\* \* \*

Thereafter, the union must request arbitration within 10 days of the ferry system's written Step II decision.

3. Unfair labor practice charges were filed with the MEC and docketed as MEC Case No. 10-96. The union complained that WSF Human Resources Director Jim Yearby had refused to hold a meeting prior to making a decision on the Step II grievance. The union further complained that Yearby routinely sent letters to the union denying grievances in advance of the meeting, leaving the union in the position of having 10 days to move grievances, which might otherwise be settled, to arbitration without having the negotiated benefit of a Step II grievance meeting with the ferry system. The issue was fully discussed at a settlement



Conference on December 6, 1996. At the conference, the parties agreed that WSF would not issue any written denials of grievances submitted by IBU, in accordance with Step II of the contractual grievance procedure, until it had met with IBU and negotiated in good faith to resolve the grievance. WSF clearly knew at the settlement conference that IBU did not want denial letters prior to the first meeting. The settlement agreement was signed by Dennis Conklin on December 16, 1996; on January 3, 1997, Jim Yearby signed the settlement agreement. On January 14, 1997, IBU withdrew its unfair labor practice charges in MEC Case No. 10-96; on the basis of the withdrawal, MEC dismissed the matter on January 24, 1997.

4. The applicable section of the parties' settlement agreement in MEC Case No. 10-96 states:

1. WSF agrees not to issue any denial of grievances submitted by the Union in accordance with Step II of the contractual grievance procedure until it has met with the IBU and negotiated in good faith to resolve that grievance.

\* \* \*

5. Thirteen days after the parties executed the Case No. 10-96 settlement agreement, WSF Human Resources Director Jim Yearby resumed his practice of sending letters to the Union which expressed his opinion of the merits of the grievance prior to the Step II meeting. Between January 16, 1997 and March 12, 1997, Yearby sent 13 letters to IBU in which he expressed an opinion on the merits of the grievance, offered to arrange a meeting on the grievance, determined that if he had not heard from the union within 30 days of the date of the letter, he would consider the matter closed, etc. One of the letters requested additional information; one of the

letters contained a statement that WSF was denying the grievance. The letters were all issued before a Step II meeting had been held. The letters were once again perceived by IBU as forcing the union to move to the next step in the dispute resolution process without the benefit of the Step II meeting that was clearly called for in the contract, and obviously in violation of the spirit of the agreement which settled MEC Case No. 10-96.

6. On March 30, 1997, the IBU once again filed an unfair labor practice complaint against the WSF, charging that by its actions, WSF had violated RCW 47.64.130(1)(a), by interfering with, restraining or coercing employees in the exercise of rights guaranteed by ch. 47.64 RCW.

7. IBU specifically objected to the language in the following grievance reply letters sent by WSF:

96-173	- Beaumont, C
97-12	- McKenzie, David
97-13	- McKenzie, David
97-14	- Mares, Charles
97-21	- Newman-Oxford, C.
97-32	- Eaton
97-39	- Holt
97-43	- Jones, P.
97-45	- Jones, P.
97-46	- Jones, P.
97-49	- Clark
97-51	- Holscher
97-58	- Edge

8. At hearing, IBU additionally objected to a series of denial letters sent by then newly-appointed WSF Labor Relations Director, Gary Baldwin, shortly after the settlement agreement had been approved. When the IBU objected to the letters, WSF withdrew the letters indicating that Mr. Baldwin was not aware of the settlement. The grievances involved were:

97-84 - Waffle, Nicole  
97-104 - Nelson, Jordon  
97-74 - Omare, Ronald  
97-85 - Yager, Jeff

Except for the Nicole Waffle grievance, 97-84, all of these grievances have been discussed and settled.

9. Mr. Yearby believed his written responses to the union's filing of a grievance in which he stated the ferry system's position or that he considered the matter closed, were not letters of denial because they did not, for the most part, specifically deny the grievance. However, he was aware, by virtue of conversations with the IBU and settlement negotiations in MEC Case No. 10-96, that his actions were perceived by IBU as a violation of the contract and the agreement.

10. Since the filing of these charges, IBU Patrolman Dennis Conklin and WSF Labor Relations Manager Gary Baldwin have been meeting regularly pursuant to the agreement in MEC Case No. 10-96 to resolve grievances. The parties have negotiated a grievance process, pursuant to the contract and the settlement agreement in MEC Case No. 10-96, which now works efficiently.

Having entered the foregoing findings of fact, the Marine Employees' Commission now hereby enters the following conclusions of law.

#### CONCLUSIONS OF LAW

1. MEC has jurisdiction over the subject matter and the parties' involved in this case. Chapter 47.64 RCW, especially RCW 47.64.130, and 47.64.280.

2. Only a few days after executing an agreement in which he agreed not to send letters of denial to the IBU prior to a Step II grievance meeting, WSF Human Resources Director Jim Yearby began once again to send letters to the IBU using the same language which he knew, in light of the settlement negotiated between the parties in MEC Case No. 10-96 and conversations with IBU Patrolman Dennis Conklin, were not acceptable to the IBU and which had been previously perceived by the union as a unilateral change in the terms and conditions of the IBU/WSF contract. MEC must conclude that these attempts to unilaterally change the grievance process signified a rejection of the settlement agreement. By its actions, WSF repudiated its agreement arrived at through collective bargaining procedures, thereby undermining the collective bargaining process, in violation of RCW 47.64.130(1)(a). See Pratt v. Whitney Aircraft, 310 NLRB 1126.

Having read the record herein, the Marine Employees' Commission now enters the following order.

ORDER

1. The Inlandboatmen's Union's charge of unfair labor practice against Washington State Ferries filed on March 30, 1997 and docketed as MEC Case No. 9-97 has been proved by a preponderance of evidence and is hereby sustained.
2. WSF is ordered to cease and desist sending letters that discuss the merits of the grievance prior to the Step II meeting. Prior to the Step II grievance meeting between the state and the union, WSF may, in writing, acknowledge the filing of a grievance, advise the IBU of its intent to meet

within the terms prescribed by the contract, and may request information about the grievance.

4. In light of representations that the present grievance handling process is working well, the MEC defers the discussion of the unresolved grievances to WSF Labor Relations Manager Gary Baldwin and IBU Patrolman Dennis Conklin.
  
5. MEC orders that the following grievances be placed on the Tuesday grievance docket and discussed by the two parties within 21 days of service of this order.
  - 97-173 -Beaumont, C
  - 97-12 -McKenzie, David
  - 97-13 -McKenzie, David
  - 97-14 -Mares, Charles
  - 97-21 -Newman-Oxford, C.
  - 97-32 -Eaton
  - 97-39 -Holt
  - 97-43 -Jones, P.
  - 97-45 -Jones, P.
  - 97-46 -Jones, J.
  - 97-49 -Clark
  - 97-51 -Holscher

The parties are expected to bargain in good faith. If any of the grievances have been resolved and payment has been made, they need not be discussed further. If a grievance is resolved and payment has not be made, WSF must make payment within 21 days of the agreement. Unresolved grievances must be discussed by the parties; if resolved, payment must be made within 21 days of the agreement between the parties.

6. WSF admitted that its letter in grievance 97-58, P. Edge, was a denial letter. WSF had no objection to setting the denial aside and placing the grievance on the Tuesday docket. MEC so orders; grievance 97-58 must be discussed

within 21 days of this order. If payment is required, it must be promptly paid.

7. Although WSF withdrew its letter denying grievance 97-84, Nicole Waffle, at the time of the hearing, the matter had not yet been discussed by the parties. If grievance 97-84 remains unresolved, MEC orders that it be placed on the list of grievances to be discussed by the parties within 21 days of the service of this order. If payment is required, it must be promptly paid.
8. The MEC retains jurisdiction over this matter until both parties inform the Commission in writing that our order has been fully complied with.

DATED this 24<sup>th</sup> day of November 1997.

MARINE EMPLOYEES' COMMISSION

/s/ Henry L. Chiles, Jr., Chairman

/s/ John P. Sullivan, Commissioner

/s/ David E. Williams, Commissioner