

STATE OF WASHINGTON

BEFORE THE MARINE EMPLOYEES' COMMISSION

ROBERT SEPAROVICH,)	MEC Case No. 14-97
)	
Complainant,)	DECISION NO. 184 - MEC
)	
v.)	
)	ORDER DENYING PETITION
WASHINGTON STATE FERRIES,)	FOR RECONSIDERATION
)	
Respondent.)	
_____)	

THIS MATTER came before the Marine Employees' Commission on November 4, 1997, when Robert Separovich filed a Petition for Reconsideration of MEC's Decision and Order, No. 180, (entered on October 27, 1997) which dismissed unfair labor practice charges filed against Washington State Ferries by Separovich. Mr. Separovich petitioned the Commission to review Decision No. 180 for completeness. He asserted that in his unfair labor practice complaint, he sought two separate and distinct rulings from the MEC: 1) resolution of the maintenance and cure issue, and 2) a cease and desist order against WSF for the alleged dishonest and deceitful tactics practiced against him, to wit: 1) WSF management's leaking his private medical information to co-workers in the fleet, in violation of WSF's Code of Conduct, as well as other state and federal statutes; and 2) failure of WSF Human Resources Director, Jim Yearby, to investigate charges of discrimination and harassment brought to his attention by Mr. Separovich.

Having received and duly considered the Petition for Reconsideration filed timely by complainant above-named in this matter, that Petition is denied on the grounds and for the reasons set forth below:

1. The Commission’s Decision and Order, No. 180-MEC, for which reconsideration is sought reads, in part, as follows: “[T]here is no foundation in the established and material facts, the statutory scheme or the MM&P collective bargaining contract to sustain the amended complaint of unfair labor practices.” (Emphasis added.) That quoted component of the Commission’s determination is repeated here.
2. Fundamentally, as a matter of legislated policy, the Commission is concerned with promotion of and protection for collective bargaining. Conceivably, questions raised as to alleged ill will, between an individual and officials of the ferry system and contention as to resultant “deceit and dishonesty”, may be resolved appropriately by means of the grievance processes established by the applicable collective bargaining contract. However, ordinarily and here, posing issues of that variety does not describe a basis for finding that there is sufficient grounding in the premises for a claim of unfair labor practice.
3. In sum, in deliberating with respect to an alleged unfair labor practice, the Commission is not permitted to enlarge its jurisdiction beyond that accorded by the governing statutory prescriptions. Here the complainant invoked RCW 47.64.130(1)(a) and (3), which read respectively, as follows:

(1) it is an unfair labor practice for ferry system management or its representatives:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this chapter;

...

(e) To refuse to bargain collectively with the representatives of its employees.

(Emphasis added.)

In this case, there is no evidence of record that complainant's rights under chapter 47.64 RCW, were inhibited, threatened or denied in any way whatsoever. Indeed, the evidence is that, complementary to his own choice, complainant, as an individual, exercised his ability to advance and defend his own stance, fearlessly and vigorously, under the labor contract and otherwise, without interference, restraint, or hindrance from any source.

4. Actually, as enacted succinctly therein, the relevant public policy underlying RCW 47.64 is promotion of "harmonious and cooperation relations between the ferry system and its employees by permitting ferry employees to organize and bargain collectively." (Emphasis added.) That essential purpose was expressed and modeled earlier as a basic principle of the American system for "balanced" labor relations. Thus, in the federal Norris LaGuardia Act (29 USC § 102) enacted many years, ago, the fundamental concerns were recited as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . .

(Emphasis added.)

The notions pronounced by Norris La Guardia, regarding sound public policy, became and endured steadfastly as basic foundations with the passage of the Wagner Act and its subsequent amendments and imitations. They are embodied plainly in

our chapter 47.64. All of this is to say that, under the facts here, the Commission is obliged to note that, while the ambit of the protection erected for ferry workers by RCW 47.64 is broad, “to be protected the activity must be ‘concerted’ that is undertaken together by two or more employees or by one on behalf of others” The Developing Labor Law 73 (3d ed.1992).

ORDER

NOW, THEREFORE, having duly received the said Petition of Reconsideration lodged in this case and good cause appearing for its rejection:

1. It is ordered that such Petition should be and hereby is denied.
2. It is further ordered that the Decision and Order heretofore entered in the case captioned above should be and hereby is affirmed definitively.

DATED this 21st day of November 1997.

MARINE EMPLOYEES’ COMMISSION

/s/ John P. Sullivan, Commissioner

/s/ David E. Williams, Commissioner