

STATE OF WASHINGTON

BEFORE THE MARINE EMPLOYEES' COMMISSION

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|---------------------------|---|------------------------|
| HAROLD FOSTER, |) | MEC Case No. 27-97 |
| |) | |
| Grievant, |) | DECISION NO. 178 - MEC |
| |) | |
| v. |) | |
| |) | ORDER OF DISMISSAL |
| WASHINGTON STATE FERRIES, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

THIS MATTER came before the Marine Employees' Commission (MEC) on August 21, 1997, when Harold J. Foster filed a request for grievance arbitration with the Marine Employees' Commission. The matter was docketed as MEC Case No. 27-97. (On the same date, Mr. Foster also filed an unfair labor practice complaint against the Inlandboatmen's Union of the Pacific (IBU), that matter was docketed as MEC Case No. 28-97.)

In his grievance arbitration request, Mr. Foster, an IBU member, asserted that he had filed several grievances with his union to correct his seniority date. Those grievances were, allegedly, never resolved.

INITIAL REVIEW BY COMMISSIONER

Upon receipt of Harold Foster's grievance arbitration request, Chairman Henry L. Chiles, Jr. reviewed the documents for completeness of the request and attached documents. Chairman Chiles noted that Mr. Foster is a member of the bargaining unit represented by the Inlandboatmen's Union of the Pacific.

The WSF and the IBU have negotiated dispute resolution processes in a contract between the parties which apply to Mr. Foster's case. Those procedures are found in the WSF/IBU 1995-1997 Contract, Rule 16 – Disputes. The procedures provide, at Step III – Arbitration, that if a dispute has not been resolved by informal dispute steps, the parties will select an arbitrator from a list provided by the Federal Mediation and Conciliation Service; the arbitrator selected conducts the arbitration hearing.

Grievant Foster certified in his grievance arbitration request to MEC that the grievance processes in the pertinent collective bargaining agreement had been utilized and exhausted; however, the remainder of his filing indicating otherwise. He provided no explanation as to why he had not exhausted the dispute procedures of the WSF/IBU contract.

RCW 47.64.150 **Grievance procedures**, states as follows:

An agreement with a ferry employee organization that is the exclusive representative of ferry employees in any appropriate unit may provide procedures for the consideration of ferry employee grievances and of disputes over the interpretation and application of agreements ...

Ferry system employees shall follow either the grievance procedures provided in a collective bargaining agreement, or if no such procedures are so provided, shall submit the grievance to the marine employees' commission...

Mr. Foster is a member of a bargaining unit which does have a contract which provides negotiated grievance procedures. The law is clear that if such procedures exist, he is bound to follow those procedures.

Further, WAC 316-65-020 provides that only if no such grievance procedures are contained in a collective bargaining agreement, or upon a showing of good cause why arbitration remedies have not been exhausted, may an employee file a grievance

arbitration request with the MEC. Here, Mr. Foster has neither exhausted his contractual remedies, nor shown good cause why he has not.

ORDER

For the foregoing reasons, pursuant to WAC 316-02-620 and RCW 34.0.416, Chairman Henry Chiles has determined that the MEC does not have jurisdiction to hear Mr. Foster's grievance. Therefore, MEC will not conduct an adjudicative proceeding in MEC Case No. 27-97, Foster v.. Washington State Ferries. Chairman Chiles hereby orders that the matter be dismissed.

PETITION FOR REVIEW OF COMMISSIONER DECISION

Mr. Foster has the right to appeal this Commissioner's decision to the entire Commission, pursuant to WAC 316-65-550, by filing a Petition for Review with the Commission at its Olympia office within twenty days following the date of this dismissal. Such a petition shall be served on all other parties to the proceeding and shall contain a statement of the specific ruling on which Mr. Foster seeks review. Any written argument to be considered by the Commission should be attached to the Petition. Other parties to the proceeding have ten days following the date on which they are served a copy of the Petition for Review to file a response. If no Petition is filed, and no action taken by the Commission within thirty days following the date of this order, the decision will become final and binding.

DATED this 19th day of September, 1997.

MARINE EMPLOYEES' COMMISSION

/s/ HENRY L. CHILES, CHAIRMAN