

STATE OF WASHINGTON

BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION OF)	MEC Case No. 12-99
THE PACIFIC and DISTRICT NO. 1,)	
MARINE ENGINEERS)	
BENEFICIAL ASSOCIATION,)	DECISION NO. 223-MEC
)	
Complainants,)	DECISION AND ORDER
)	
v.)	
)	
WASHINGTON STATE FERRIES,)	
)	
Respondent)	
)	

Schwerin, Campbell and Barnard, attorneys, by Elizabeth Ford and Stephanie Cogen, appearing for and on behalf of the Inlandboatmen's Union of the Pacific and District No. 1, Marine Engineers Beneficial Association.

Christine Gregoire, Attorney General, by David Slown, Assistant Attorney General, appearing for and on behalf of the Washington State Ferries

THIS MATTER came on regularly before the MARINE Employees' Commission (MEC) on August 25, 1999, when the Inlandboatmen's Union of the Pacific (IBU) and District No. 1, Marine Engineers Beneficial Association (MEBA) filed an unfair labor practice against the Washington State Ferries (WSF).

The complaint of IBU and MEBA charged WSF with engaging in unfair labor practices within the meaning of RCW 47.64.130(1) by refusing to bargain with the unions. Specifically, the unions alleged that WSF unilaterally changed the contractually agreed-upon sick leave policy without prior notice or bargaining with the unions. On August 5, 1999, WSF issued a memo to WSF deck, engine and terminal employees that required them to provide a doctor's verifying statement to support their claims for sick leave on weekends during August and September 1999.

As a remedy, IBU sought an order requiring WSF to: 1) immediately rescind the policy and make whole any employee disciplined as the result of the policy; 2) reimburse the union for attorneys' fees and costs associated with bringing this complaint.

Pursuant to WAC 316-45-110, the Commission reviewed the complaint and determined that the facts alleged may constitute an unfair labor practice, if later found to be true and provable. Chairman Henry L. Chiles, Jr. was assigned to act as Hearing Examiner. Commissioner John P. Sullivan was appointed to conduct a settlement conference.

Settlement conferences were held by Commissioner Sullivan on September 20, and October 15, 1999. A hearing was convened on November 24, 1999. All parties had an opportunity to be heard. Post-hearing briefs were timely filed by the parties.

POSITIONS OF THE PARTIES

Position of IBU and District No. 1 MEBA

The IBU and MEBA allege that WSF violated its duty to collectively bargain by unilaterally changing the terms of the sick leave policy contained in their contracts. The language of both contracts is essentially the same.

Past history will show that WSF has used section 23.10 in individualized situations to address employees who it felt were abusing the sick leave policy.

In August 1999, WSF imposed a policy without bargaining which was a complete break from past practice. WSF instituted a temporary policy for part of the summer of 1999 that required all employees calling in sick on the weekend to provide a note from a doctor to verify the illness.

WSF made the change in sick leave policy without bargaining with either IBU or MEBA about the implementation or the effects of the new policy.

IBU and MEBA seek to have the MEC order that WSF may not implement a similar policy in succeeding summers without negotiating the policy with both unions. In addition, the WSF has sent letters to some employees requesting notes for their absences. These letters have been made a part of their personnel files. The letters should be removed from the employees' files.

Position of WSF

WSF was having a problem in manning vessels on summer weekends. A temporary policy change was announced to the fleet in early August 1999 requiring employees to supply a doctor's note if they were absent on a weekend.

The language in the contract says, "The employer may request, at its option . . ." and means that management has the right to request employees to provide doctor's notes for absences of less than five days. The change was made for valid business reasons and was not motivated by anti-union animus or discrimination.

The change in policy was made to reduce sick leave on weekends. The policy was just for the weekends; the days WSF had the most problem with staffing and was of limited duration. The new policy was carefully decided and implemented. It solved the problem. Absences were far less on subsequent weekends and the policy terminated on September 30, 1999. All of the employees that filed for sick leave on weekends were fully paid.

STATEMENT OF THE ISSUE

1. Did WSF commit an unfair labor practice within the meaning of RCW 47.64.130(1)(e) by unilaterally changing the sick leave excuse policy of the existing collective bargaining agreements with IBU and MEBA?
2. If the answer is yes, what is/are the remedy/remedies?

Having read and carefully considered the entire record, including the initial unfair labor practice complaint, the hearing transcript and exhibits and the post-hearing briefs, this Commission now hereby enters the following findings of fact.

FINDINGS OF FACT

1. The WSF is a party to separate collective bargaining agreements with IBU and MEBA. Those agreements include sick leave clauses.

2. The WSF/IBU relevant contract sections read as follows:

RULE 23 – SICK LEAVE

...

23.09 For claims of more than five (5) working days the employee must secure a verifying statement from the employee's doctor to support the claim, and such statements should be sent in as soon as possible after the period of absence is over.

23.10 The employer may request, at its option, a verifying statement from the employee's doctor to support claims of five (5) working days or less.

MEBA's contract is essentially the same.

3. Section 23.10 of the IBU contract has been used on an individual basis by WSF to correct or monitor an excessive sick leave situation.

4. WSF has had a problem in past years on some summer month weekends in staffing vessels. They have used various means to correct a sick leave situation.

5. In early August 1999, WSF had a higher number of persons off on sick leave on the weekend. Weather was good and Seafair was under way. WSF needed to do something to be sure that they had full crews during the remainder of summer weekends.

6. WSF decided to issue a WSF Quick Notice from the Director of Marine Operations to all terminals and vessels advising employees that effective August 5, 1999 to September 30, 1999, all employees seeking sick leave on weekends must secure a doctor's verifying

statement to support the sick leave request. The Quick Notice informed employees that there were not enough qualified on-call relief personnel available for dispatch.

7. The Quick Notice was reviewed by WSF Labor Relations Manager, Michael Manning on August 5, 1999. He informed IBU Business Agent, Dennis Conklin, of the letter. As a result, a change was made to the letter. Later that same day, Mr. Manning received a fax from Mr. Conklin. IBU informed WSF that the Quick Notice was making a unilateral change by changing the word “may” in section 23.10 to “must.” IBU requested negotiations on the effects of the change.
8. The Quick Notice in final form was issued to the fleet on August 5, 1999. It was effective. Sick leave requests on the next weekend and weekends thereafter were greatly reduced and manageable.
9. Approximately 10 individuals have received letters from WSF requesting a doctor’s note to verify the illness. It is assumed that copies of the letters have been placed in the employee’s file. All employees were paid for their sick leave and no employee has been disciplined.
10. The Quick Notice expired on September 30, 1999.

CONCLUSIONS OF LAW

1. MEC has jurisdiction over the subject matter and the parties involved in this case. Chapter 47.64 RCW, especially 47.64.130 and 47.64.280.
2. WSF has been faced with the same problem in the past and has resolved it without complaint from the IBU and MEBA. They could have done so in the instant matter if they had taken the time to do so.

3. WSF presented the Quick Notice to the IBU on August 5, 1999 and put it into effect without time for the IBU to bargain about the effects of the notice. Making the change in the sick leave policy without time to bargain is in itself a violation of RCW 47.64.130. See Womac Industries, Inc., 238 NLRB 290.
4. WSF unilaterally changed the terms and conditions of the collective bargaining agreement with IBU and MEBA, in violation of RCW 47.64.130(1)(e) by making changes in the sick leave policy without bargaining with its employee bargaining representatives.

Unilateral changes by an employer during the course of a collective bargaining relationship concerning matters that are mandatory subjects of bargaining, which the sick leave policy is, constitute a per se refusal to bargain. See Developing Labor Law 596-97 (Patrick Hardin et al eds.) (3d ed. 1992), citing NLRB v. Katz, 369 U.S. 736, 50 LRRM 2177 (1962) and IBU v. WSF, Decision 187 MEC (1997). See also Luther Manor Nursing Home 270 NLRB 949.

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

ORDER

1. The unfair labor practice complaint, filed by IBU and MEBA against the WSF on August 25, 1999 is hereby sustained.
2. Washington State Ferries is hereby found to be in violation of RCW 47.64.130(1)(e)
3. WSF is ordered to cease sending letters to employees that were on sick leave while the unlawful policy was in effect, requiring those employees to submit doctor's excuses; expunge from its files copies of any letters sent to employees while the unlawful sick leave policy was in effect; and notify any employee so affected, in writing, that this has

been done and that evidence of these absences will not be used as the basis for future personnel actions against them.

4. Make any employee whole who may have suffered loss because of the employer's unlawful action.
5. WSF will maintain the sick leave policy that was in effect prior to August 5, 1999 and before making any change in sick leave policy, offer to meet and bargain with the employees' representatives and allow time for meaningful bargaining.
6. The MEC has considered the request for attorney's fees and declines to award them in this matter.

DATED this _____ day of January 2000.

MARINE EMPLOYEES' COMMISSION

_____/s/_____
HENRY L. CHILES, JR., Hearing Examiner

APPROVED BY:

_____/s/_____
JOHN P. SULLIVAN, Commissioner

_____/s/_____
DAVID E. WILLIAMS, Commissioner