

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

DISTRICT NO. 1, MARINE
ENGINEERS' BENEFICIAL
ASSOCIATION,

Grievant,

v.

WASHINGTON STATE FERRIES,

Respondent.

DISTRICT NO. 1, MARINE
ENGINEERS' BENEFICIAL
ASSOCIATION,

Complainant,

v.

WASHINGTON STATE FERRIES,

Respondent.

CONSOLIDATED CASES
MEC CASE NO. 22-03

MEC CASE NO. 23-03

DECISION NO. 382 - MEC

DECISION AND ORDER

APPEARANCES

Davies, Roberts and Reid, by *Todd Lyon*, Attorney, appearing for the Marine Engineers' Beneficial Association.

Christine Gregoire, Attorney General, by *David Slown*, Assistant Attorney General, appearing for the Washington State Ferries.

NATURE OF THE PROCEEDING

The Marine Engineers' Beneficial Association (MEBA) brought this matter before the Marine Employees' Commission by filing a Request for Grievance Arbitration and a Complaint

Charging Unfair Labor Practice. Both matters arose from the decision of Washington State Ferries not to comply with those portions of its two contracts with MEBA that allow workers in the two bargaining units to request deduction of a portion of their earnings to be sent to a political fund.

The Marine Employees' Commission consolidated the two cases for the purposes of holding a hearing. The parties then determined that they could fully submit the matter to the Marine Employees' Commission through the filing of declarations and written arguments. The Marine Employees' Commission agreed to the parties' joint request to cancel the scheduled hearing and to accept the matter on declarations and arguments.

In due course, the parties submitted declarations, arguments, responses and a case copy that the Marine Employees Commission accepted into the record. The Marine Employees' Commission determined that a sufficient record had been created to allow it to decide both cases. This decision and order decides each of the cases.

ISSUE BEFORE THE MARINE EMPLOYEES COMMISSION

Have those provisions of the two 1999-2001 MEBA – Washington State Ferries contracts which entitle employees to have the employer deduct portions of their earnings for transmittal to a political fund been rendered invalid by operation of law so as to relieve the employer of its obligation to make the requested deductions and so as to relieve the employer of its obligation to bargain before altering a term and condition of employment?

RECORD BEFORE THE MARINE EMPLOYEES' COMMISSION

The parties developed the following record upon which this decision is based:

1. Request for Grievance Arbitration docketed as MEC Case No. 22-03.

2. Amended Complaint Charging Unfair Labor Practice docketed as MEC Case No. 23-03.
3. Notice of Consolidation and Notice of Scheduled Settlement Conference and Hearing issued by the Marine Employees' Commission on December 20, 2002.
4. Washington State Ferries' Answer to Amended Complaint.
5. Joint Motion to Cancel Hearing Date and Establish Dispositive Motion Schedule.
6. Declarations of the following individuals and the documents identified in those declarations and submitted with them:
 - a. Cathy Tarricone
 - b. Michael Manning
 - c. Mario Micomonaco
7. Memoranda filed by both parties to the proceeding in support of their cross motions for summary judgment.
8. MEBA's Combined Response Memorandum.
9. Washington State Ferries' Reply Brief.
10. MEBA's Motion to Strike Portions of Tarricone Declaration and Memorandum in Support of that Motion.
11. Marine Employees' Commission's June 27, 2003 letter to the parties concerning a portion of the Declaration of Tarricone.
12. Letter and case copy forwarded by Assistant Attorney General David Slown on July 11, 2003.
13. Marine Employees' Commission's July 21, 2003 Order Allowing Additional Argument and Denying MEBA's Motion to Strike Portions of Tarricone Declaration.

NOTE REGARDING THE RECORD: Although the Marine Employees' Commission denied the Motion to Strike Portions of Tarricone Declaration, this decision does not rest upon any portion of the contested portions of that declaration except for that portion of Paragraph 5 which states that Washington State Ferries ceased making the requested deductions in late 1992.

FINDINGS OF FACT

On the basis of the record identified above, the Marine Employees' Commission hereby makes the following Findings of Fact:

1. Washington State Ferries and the Marine Engineers' Beneficial Association District No. 1 are parties to two collective bargaining agreements that are dated 1999-2001.

2. Those two agreements remain in full force and effect by operation of law (RCW 47.64.170) pending the negotiation of replacement agreements.

3. One of the two contracts is for the licensed engineer officers and the other is for the unlicensed engine room employees.

4. Section 2(c) of the Licensed Engineer Officers creates a right to have payroll deductions for a political action with the following language:

The Employer shall deduct from the wages of Engineers Officers all voluntary contributions to the Union's political action fund and remit the same to the fund. Employees wishing that such deductions be made shall submit a written request therefore in a form agreed on by the Employer and the Union.

5. Section 3.02 of the contract covering Unlicensed Engine Room Employees contains functionally identical language.

6. The parties had included similar language in the contracts in effect for the ten year period prior to the effective date of the two 1999-2001 contracts.

7. Prior to 1993, Washington State Ferries made deductions for a political action fund at the request of certain employees represented by MEBA.

8. Washington State Ferries stopped making the deductions in late 1992.
9. There is no evidence that the parties met and bargained about the matter either before or after Washington State Ferries ceased making the requested withholdings.
10. There is no evidence that MEBA concurred in the decision to stop making the requested deductions.
11. MEBA does not claim that the requests upon which pre-1993 deductions were made are still effective.
12. After 1992, the parties continued to place the language at issue into their contracts.
13. This same language was last placed into the 1999-2001 contracts.
14. The record is silent as to when the 1999-2001 contracts were negotiated. There is, however, no evidence that either of those contracts were in existence or in effect in 1993 when the Fair Campaign Practices Act was adopted.
15. In July 2002, MEBA sent to Washington State Ferries 34 properly filled-out and signed Political Contribution Withholding Authorizations from members of the two bargaining units. The Union asked that Washington State Ferries honor the requests under the terms of the contracts.
16. The requests matched the parties' requirements for such authorization forms. Washington State Ferries does not contend that the requests were in any way improper in form or content.
17. Washington State Ferries refused to honor the request for withholding on the basis that "the State has been restricted from deducting money from employees' payroll for political committee deductions, since 1992."
18. These cases were filed in response to that response from Washington State Ferries.

19. The Licensed Engineer Officers agreement dated 1999-2001 contains the following “Savings Clause” in Section 31:

If any Section of this Agreement or any addenda thereto shall be rendered invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with, or enforcement of any section should be restrained by such tribunal, the remainder of this Agreement and any addenda shall not be affected thereby, and the parties shall enter into immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement of such Section.

20. The Agreement for Unlicensed Engine Room Employees contains substantially similar language in Rule 34.01.

21. There is no evidence that any tribunal of competent jurisdiction has stricken any portion of either of the MEBA contracts, nor any relevant portion of any previous contract.

22. There is no evidence that any tribunal of competent jurisdiction has restrained the enforcement of the contract clauses at issue in these cases.

23. Of necessity, the position of the Washington State Ferries must rest upon the argument that the language at issue has been “rendered invalid by operation of law.”

DISCUSSION OF THE CONTROLLING LAW

The issue currently before the Marine Employees’ Commission ultimately goes back to a 1981 Washington Supreme Court decision which held that the State could not withhold money from the wages of state employees for political funds or groups unless there was a law that specifically authorized such withholding. *Washington Education Association v. Smith*, 96 Wn.2d 601, 606-607 (1981). The Court ended the cited decision with the following statement, “The legislature is the proper body to determine the practicalities of expanding the list of payroll deductions.” (96 Wn.2d at 611).

The Washington legislature then adopted a statute which specifically expanded the list of authorized payroll deductions to include “voluntary deductions for political committees duly

registered with the public disclosure commission [of the state] and/or the federal election commission” RCW 41.04.230 (7).

(This law applied to **state** employees. There are a number of court cases regarding political contributions which affect school district employees or other public employees who are not **state** employees. Judges are not always careful to point out that there are different considerations affecting the different levels of employees. The matter before the Marine Employees Commission arises solely out of the law and cases affecting **state** employees.)

The law regarding political contributions was then amended by the Fair Campaign Practices Act, Initiative 134, Chapter 2 of the Laws of 1993. That initiative specifically struck down the above-quoted section 7 of RCW 41.04.230 which had added political contributions to the list of allowed payroll deductions from state employee wages.

The question before the Marine Employees’ Commission ultimately becomes whether or not that legislative act eliminating the authority for the payroll deduction at issue here is an “operation of law” that renders the political contribution language in the two contracts at issue invalid.

The MEBA rejects that notion, arguing that there is other, more general, law which can be construed to mean that the State can agree to the deductions regardless of whether or not the specific authorization survived the adoption of the Fair Campaign Practices Act.

Washington State Ferries argues that the repeal of the specific authorization reinstated that impact of the earlier *Washington Education Association v. Smith*, 96 Wn.2d 601 (1981) decision that no such deductions are allowed unless specifically authorized by law.

The last submission by Washington State Ferries to the record, the July 11, 2003 letter that enclosed the later case of *Washington Federation of State Employees v. State*, 127 Wn.2d 544 (1995), specifically addresses and controls this exact issue.

In the cited case, the Washington Federation of State Employees attacked the Fair Campaign Practices Act on the basis that that act's repeal of the deduction of political action violated the rights of the union and the employees whom it represents.

The Court specifically found that that portion of the Fair Campaign Practices Act which eliminated the right to political contribution deductions impaired the union's contracts which provided for such deductions. Such an impairment of contract, the court determined, was unconstitutional (127 Wn.2d at 548, 560, 561, 563).

In reaching that conclusion, the Court held that "absent statutory authorization, state employees' voluntary payroll deductions for political committees are unlawful." (127 Wn.2d at 563). As a consequence, the Court stated, that passage of the Fair Campaign Practices Act "nullifies a deduction provision ..." (127 Wn.2d at 563).

The Court ultimately concluded that while the new law impaired contracts that existed when the law was passed and therefore could not apply to them, the law did apply to all contracts negotiated after the passage of the law. The Court's determination can be found at pages 565-566 of the decision (127 Wn.2d 544):

Although we hold that section 26 [the section which struck down the authorization for the deduction] unconstitutionally impairs contracts in existence at the time of its adoption, this holding does not affect contracts negotiated after Initiative 134 [the Fair Campaign Practices Act] was adopted.

This decision is explicit in its statement that the passage of the Fair Campaign Practices Act nullified contract provisions, such as those at issue, which allow the State to deduct money from employees for political committees or funds. There is no room for the argument that

authorization for such deductions can be patched together from other portions of State law. State law, as it currently exists, bars the deduction.

According to the Supreme Court, the only contracts which escaped nullification were those in existence at the time when the law was passed. The Court specifically stated that contracts negotiated after the passage of the law at issue would be affected by it.

There is no evidence that the 1999-2001 contracts at issue here were either in existence or effect in 1993. As a consequence, there is no factual nor legal basis for arguing that these contracts escape the impact of the current status of the law.

CONCLUSIONS OF LAW

1. The Marine Employees' Commission has jurisdiction of these two cases.
2. The 1999-2001 contracts at the center of the issue in this case remain in full force and effect by operation of law although their stated expiration dates have gone past (RCW 47.64.170).
3. The political contributions deduction language contained in the two contracts at issue in these cases was rendered invalid by operation of law – the Fair Campaign Practices Act as interpreted and applied by the Washington State Supreme Court in *Washington Federation of State Employees v. State*, 127 Wn.2d 544 (1995).
4. Washington State Ferries is relieved of its contractual duty to honor the requests for deductions for political purposes by operation of law.
5. As a consequence, there is no violation of the contracts in this matter.
6. Additionally, there is no illegal refusal to bargain prior to the decision not to honor the deduction requests because the law bars Washington State Ferries from honoring the requests.

7. Washington State Ferries and the Marine Engineers Beneficial Association, District Number 1, have a statutory and contractual obligation to bargain for the purpose of attempting to reach a mutually acceptable replacement for the contract language that has been rendered invalid. However, it cannot, at this point in time, be assumed that either side will disregard its legal bargaining obligation.

8. There is no legal basis for the unfair labor practice charge nor for the claim of contract violation in this instance.

ORDER OF DISMISSAL

On the basis of the above Findings of Fact and Conclusions of Law, the Marine Employees' Commission hereby Orders that both the contract grievance and the unfair labor practice charge be dismissed in their entirety. Each party is to bear its own costs and attorneys fees in this matter.

RECONSIDERATION

Pursuant to the provisions of RCW 34.05.470, any party may file a petition for reconsideration of MEC's unfair labor practice ruling with the Commission within ten days from the date this final order is mailed. Any petition for reconsideration must state the specific grounds for the relief requested. Petitions that merely restate the party's previous arguments are

//

//

//

discouraged. A petition for reconsideration does not stay the effectiveness of the Commission's order. If no action is taken by the Commission on the petition for reconsideration, within twenty days from the date the petition is filed, the petition is deemed to be denied, without further notice by the Commission.

DATED this _____ day of October 2003.

MARINE EMPLOYEES' COMMISSION

JOHN NELSON, Hearing Examiner

Approved by:

JOHN SULLIVAN, Commissioner

JOHN BYRNE, Commissioner