

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

JONATHAN PEARSON,

Complainant,

v.

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION, FERRIES
DIVISION,

Respondent.

MEC CASE NO. 11-10

DECISION NO. 604 - MEC

DECISION DENYING WSF'S
MOTION TO DISMISS FOR
LACK OF TIMELINESS

APPEARANCES

Jonathan Pearson, complainant, appearing pro se.

Robert McKenna, Attorney General, by *Don Anderson*, Assistant Attorney General, appearing for the Washington State Department of Transportation, Ferries Division (WSF).

BACKGROUND

On February 12, 2010, Jonathan Pearson (Pearson) filed a Complaint Charging Unfair Labor Practices with the Marine Employees' Commission (MEC). Pearson's complaint, MEC 11-10, charged Washington State Ferries (WSF) with violating RCW 47.64.130(1) with regards to his termination from WSF.

Specifically, Pearson charged WSF with interfering with, restraining, or coercing employees in the exercise of rights; dominating or interfering with the formation or administration of an employee organization; encouraging or discouraging membership in an employee organization by discrimination in regard to: hiring, tenure, or any term or condition of employment; discharging or otherwise discriminating against an employee after the employee has filed charges or given testimony concerning subjects covered by chapter 47.64 RCW; and refusing to bargain collectively with representatives of employees.

On February 14, 2010, Pearson also filed a second complaint (MEC 12-10) against his Union, the Masters, Mates and Pilots (MM&P), in which he alleged the Union failed to fairly represent him in grieving his termination by WSF.

The Commission accepted Case 12-10 for processing, but held Case 11-10 (complaint against WSF) in abeyance pending resolution of the case against the Union. On May 12, 2010, Pearson and MM&P participated in a MEC settlement conference in an attempt to resolve Case 12-10. Shortly thereafter, they requested the two cases be consolidated, in the belief that any chance at settlement would depend upon inclusion of WSF in the discussions.

WSF objected to the cases being consolidated, but agreed to participate in a joint settlement conference on September 28, 2010. During that conference, MM&P agreed to represent Pearson in his complaint against WSF (Case 11-10); Pearson subsequently withdrew his complaint against MM&P (Case 12-10). No agreement was reached between WSF and Pearson during the September 28 conference. The parties agreed to participate in a second settlement conference; however, early in October Pearson informed the MEC and MM&P Counsel Rhonda Fenrich that he wished to proceed directly to hearing. On December 14, MM&P Counsel Rhonda Fenrich notified the MEC that her firm no longer represented Pearson. Thereafter, Pearson, representing himself, requested a hearing be scheduled.

The MEC scheduled Case 11-10 for hearing on February 7, 2011. WSF filed its answer to the complaint on January 24. Examiner John Cox convened the hearing on February 7, at which time WSF moved to dismiss the matter for lack of timeliness. The Examiner agreed to limit the hearing to testimony and evidence on the timeliness issue. Thereafter, the parties were to file briefs on April 1.

RECORD BEFORE THE MARINE EMPLOYEES' COMMISSION

1. Pearson's complaint charging WSF with unfair labor practices, filed February 12, 2010 (MEC Case 11-10).
2. Pearson's complaint charging MM&P with unfair labor practices, filed February 16, 2010 (MEC Case 12-10).
3. Notice of Scheduled Hearing for Case 11-10 (set for February 7, 2011).
4. WSF's Answer to the Complaint 11-10, dated January 24, 2011.
5. Transcript and Exhibits from the February 7, 2011 hearing.

6. Complainant Pearson's post-hearing brief, dated March 30, 2011.
7. Respondent WSF's post-hearing brief, dated April 8, 2011.

ISSUE

Did Jonathan Pearson file MEC Case 11-10, an unfair labor practice complaint, within the time limitation of WAC 316-45-020?

FINDINGS OF FACT

On the basis of the evidence and the record of proceedings, the Hearing Examiner hereby makes the following findings of fact.

1. On May 19, 2009, WSF terminated Pearson's employment as a Master with WSF. WSF Brief, Att. 1.
2. In June of 2009, Pearson filed a grievance with MM&P to contest his termination from WSF.
3. MM&P processed Pearson's grievance through Step III of the contractual grievance procedure. Tr. 28. On August 20, 2009, MM&P sent a letter to Pearson stating the Union would not move his grievance forward to arbitration. WSF Brief, Att. 5.
4. On February 12, 2010, Pearson filed an unfair labor practice charge against WSF. The MEC docketed the complaint as MEC Case 11-10.

CONCLUSIONS OF LAW

On the basis of the record before him, the findings of fact and analysis, the Hearing Examiner makes the following conclusions of law.

1. The Marine Employees' Commission has jurisdiction in this matter under chapter 47.64 RCW and chapter 316-45 WAC.
2. The parties' Collective Bargaining Agreement was in full force and effect during the time of the alleged violation. The case is properly before the Marine Employees' Commission.
3. Pearson's complaint against WSF was a sister complaint to the complaint he filed against MM&P. Both were related to the handling of the grievance he filed contesting his termination from WSF.

4. WSF was notified and had understood that Case 11-10 was held in abeyance while Pearson's charge against MM&P was being adjudicated with the hope that resolution of the MM&P charge would also resolve the ULP against WSF. It is also undisputed that WSF was a participant in the settlement conference when Pearson withdrew his ULP against MM&P.

5. The MM&P/WSF Collective Bargaining Agreement contains grievance procedures, which Pearson utilized to grieve his termination.

6. Pursuit of Pearson's charge against WSF was delayed while Pearson reviewed the medical releases and doctors' reports in his personnel records; releases and records he claimed he had previously provided WSF at their request. In addition he was to research any other personnel records relevant to the ULP.

7. WSF did not raise the issue regarding Pearson's alleged failure to file his ULP within the mandated time limit at either the settlement conference where WSF participated as an observer or the settlement conference where both the ULP against MM&P and WSF were issues for potential settlement.

8. WAC 316-45-020 provides

A complaint charging an unfair labor practice may not be filed later than one hundred eighty calendar days after the party filing the complaint knew or should have known of the event, activity, or practice alleged to be a violation of RCW 47.64.130, or the regulations implementing that statute. . . .

9. Pearson could not have known that he had a basis for an unfair labor practice against either his Union or WSF until he had completed the grievance process and received notice from his Union that it would pursue his grievance no further.

10. Pearson filed Complaint 11-10 against WSF on February 12, 2010—176 days from MM&P's August 20, 2009 letter notifying him the Union would not move his grievance to arbitration.¹

11. The statute of limitations on this complaint, as defined in WAC 316-45-020(1) began running on August 20, 2009.

12. Pearson's complaint against WSF was filed within the 180 day time limitation specified in WAC 316-45-020(1) and is therefore timely.

¹ Although the record does not indicate the exact date Pearson received MM&P's letter, it could not have been earlier than August 20, 2009.

ORDER

1. WSF's Motion to Dismiss Pearson's ULP charge as being untimely is denied.
2. A hearing will be scheduled at the earliest convenient date to decide MEC Case 11-10 on the merits of the complaint.

PETITION FOR REVIEW OF EXAMINER DECISION

Any party may request review by the Commission of the examiner's (Commissioner's) findings of fact, conclusions of law and order. Such request must be made within twenty days following the date of the order issued by the examiner by filing the original petition with the Commission at its offices in Olympia and by serving a copy on each of the other parties to the proceedings. Additional requirements regarding the petition are set forth in WAC 316-45-350 (a copy of which is enclosed). In the event no timely petition for review is filed and no action is taken by the Commission on its own motion within thirty days following the examiner's final order, the findings of fact, conclusions of law and order of the examiner shall automatically become the findings of fact, conclusions of law and order of the Commission and shall have the same force and effect as if issued by the Commission.

DATED this 12th day of May 2011.

MARINE EMPLOYEES' COMMISSION



JOHN COX, Hearing Examiner



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[WACs](#) > [Title 316](#) > [Chapter 316-45](#) > [Section 316-45-350](#)

[316-45-330](#) << [316-45-350](#) >> [316-45-370](#)

WAC 316-45-350

[Agency filings affecting this section](#)

Petition for review of examiner decision.

The examiner's findings of fact, conclusions of law and order are open to review by the commission on its own motion, or at the request of any party made within twenty days after the order's date of issue by the examiner. The original petition for review is to be filed with the commission at its Olympia office, and the party filing the petition must serve a copy on each of the other parties to the proceeding. A petition for review must contain, in separate numbered paragraphs, statements of the specific findings, conclusions, orders or rulings on which the party filing the petition seeks review by the commission. A petition for review must have attached to it any appeal brief or written argument which the party filing the petition for review wants the commission to consider. Other parties to the proceeding will have fourteen days after the date on which they are served with a copy of the petition for review and accompanying brief or written argument to file a responsive brief or written argument. The commission or its appointee may, for good cause, grant any party an extension of the time for filing of its brief or written argument. If no timely petition for review is filed, and no action is taken by the commission on its own motion within thirty days following the examiner's final order, the findings of fact, conclusions of law and order of the examiner will automatically become the findings of fact, conclusions of law and order of the commission and will have the same force and effect as if issued by the commission.



[Statutory Authority: RCW [34.05.230](#). 03-12-074, § 316-45-350, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW [47.64.280](#) and [34.05.250](#). 90-01-118, § 316-45-350, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW [47.64.280](#). 84-07-037 (Resolution No. 84-01), § 316-45-350, filed 3/20/84.]

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CERTIFICATE OF SERVICE

I certify that I served a copy of DECISION DENYING WSF'S MOTION TO DISMISS FOR LACK OF TIMELINESS, DECISION NO. 604-MEC, on all parties or their counsel of record on May 12, 2011, as follows:

- 1. Facsimile and US Mail via Consolidated Mail Service
- 2. US Certified Mail, Return Receipt Requested via Consolidated Mail Service
- 3. Personal Delivery by _____

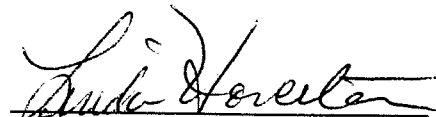
TO:

- 1. Don Anderson
Assistant Attorney General
Labor & Personnel
P.O. Box 40145
Olympia, WA 98504-0145
- 2. Jonathan Pearson
3315 NW 80th Street
Seattle, WA 98117

(Courtesy copy by e-mail to: Jerry Holder, OFM/LRO; Leah Maurseth, WSF; Capt. Tim Saffle, MM&P.)

I certify under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 12th day of May 2011 at Olympia, WA.



Linda Hoverter
Spec. Asst.