

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

MATTHEW GRUBER,)	
)	MEC CASE NO. 10-90
Grievant,)	
)	
v.)	DECISION NO. 54 - MEC
)	
WASHINGTON STATE FERRIES)	ORDER OF DISMISSAL
and DISTRICT NO. 1 -)	
PACIFIC COAST DISTRICT,)	
NATIONAL MARINE ENGINEERS)	
BENEFICIAL ASSOCIATION,)	
)	
Respondents.)	
)	

Matthew A. Gruber, pro se, appeared for and on behalf of himself.

Allan Brotsky, Attorney, by Elton Eilert, Employee Relations Director, appearing for and on behalf of Washington State Ferries, and by Mario White, Branch Agent, appearing for and on behalf of National Marine Engineers Beneficial Association.

THIS MATTER came on before the Marine Employees' Commission (MEC) on July 3, 1990 when Matthew A. Gruber filed a request for grievance arbitration in accordance with chapter 316-65 WAC and an unfair labor practice complaint (ULP) in accordance with chapter 316-45 WAC against the respondents, both documents based upon the same alleged factual situation.

Grievant Gruber alleged that he is medically insured through his employment in Washington State Ferries and by the MEBA health care trust plan, but that plan has refused to cover his treatment for HIV infection. He asserted he has exhausted all his "appeals to the MEBA and am currently without medical coverage for my HIV condition."

On July 9, 1990 MEC served acknowledgement of both filings, and notified all parties that MEC would discuss the unfair labor

Practice complaint, pursuant to WAC 316-45-110, to determine whether the facts as alleged may constitute an unfair labor practice, at its next regular meeting on July 19, 1990. The parties were advised by that notice that the discussion would not be an evidentiary hearing, and the participants would not be under oath.

Even though the statements made during that discussion were not recorded and admitted as evidence in a regular hearing, it became clear that Mr. Gruber had not filed a grievance in accordance with the collective bargaining agreement between Washington State Ferries and the Marine Engineers Beneficial Association (WSF/MEBA).

Perceiving that MEC would be compelled later to dismiss the grievance on procedural grounds without any consideration of its merits, MEC voted to dismiss, without prejudice, the request for grievance arbitration in order to enable Mr. Gruber to avail himself of the possible remedies in the WSF/MEBA Agreement.

Having read the available record, the Commission now enters the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Grievant Gruber is employed by WSF as an Oiler.
2. MEBA is recognized as the exclusive representative of WSF Oilers.
3. Grievance procedures for ferry employees are governed by RCW 47.64.150 and by WAC 316-65-050(5), as follows in pertinent parts:

47.64.150 Grievance Procedures. An agreement with a ferry employee organization that is the exclusive representative of ferry employees in an appropriate unit may provide procedures for the consideration of ferry employee grievances and of disputes over the interpretation and application of agreements. Negotiated procedures may provide for binding arbitration of ferry employee grievances and of disputes over the interpretation and application of existing 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 grievances to the marine employees' commission as provided in RCW 47.64.280.

WAC 316-65-050 GRIEVANCE ARBITRATION—CONTENTS OF REQUEST. Each grievance arbitration request shall contain:

. . .

(5) A statement that the remedial processes of the pertinent collective bargaining agreement have been utilized and exhausted, or a statement of cause as to the reason(s) why such processes were not utilized.

. . .

4. The Request for Grievance Arbitration form supplied by MEC contains the following statement:

6. The grievance processes in the pertinent collective bargaining agreement have been utilized and exhausted. (If said processes were not utilized and exhausted, provide a statement of cause as to why they were not.)

5. Grievant Gruber signed the foregoing statement as part of his request.

6. Grievant Gruber did not file any grievance in accordance with the WSF/MEBA Agreement; therefore, aforesaid contractual grievance procedures were not utilized.
7. MEC did not formally "admit" as evidence any facts relating to the merits of this grievance.

Having entered the foregoing findings of fact, the Commission now enters the following conclusions of law.

CONCLUSIONS OF LAW

1. The Marine Employees' Commission (MEC) has general jurisdiction over this matter. (Chapter 47.64 RCW; particularly RCW 47.64.280)
2. RCW 47.64.280 provides that MEC shall adjust grievances "as provided in RCW 47.64.150." The provision in RCW 47.64.150 that Mr. Gruber must follow the grievance procedure in the WSF/MEBA Agreement precludes MEC from adjudicating his grievance if that Agreement is not utilized. Consequently MEC would be compelled to dismiss Mr. Gruber's request for grievance arbitration, and precious time would be lost by prolonging the case in following the regular hearing procedures.
3. Dismissal without prejudice would not preclude further consideration if Grievant Gruber chooses to utilize the contractual procedures available to him.

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

DECISION AND ORDER

The request for grievance arbitration, filed by Matthew A. Gruber on July 3, 1990 is hereby dismissed without prejudice.

Dated this 3rd day of August, 1990.

MARINE EMPLOYEES' COMMISSION

/s/ DAN E. BOYD, Chairman

/s/ DONALD E. KOKJER, Commissioner

/s/ LOUIS O. STEWART, Commissioner