

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES' COMMISSION

EDWARD CASPERS,	)	
	)	MEC Case No. 3-97
Grievant,	)	MEC Case No. 7-97
	)	
v.	)	Decision No. 173-MEC
	)	
DIST. NO. 1, MARINE	)	
ENGINEERS BENEFICIAL ASSOCIATION	)	
and WASHINGTON STATE FERRIES,	)	ORDER GRANTING SUMMARY
	)	JUDGMENT
Respondent.	)	
_____	)	

Edward Caspers, appearing on behalf of himself.

Davies, Roberts & Reid, attorneys, Michael R. McCarthy, attorney at law, appearing for an on behalf of District No. 1 Marine Engineers Beneficial Association.

Christine Gregoire, Attorney General, by Gretchen D. Gale, Assistant Attorney General, appearing for an on behalf of Washington State Ferries.

On February 12, 1997, Edward Caspers filed unfair labor practice charges against the Washington State Ferries, to-wit: interfering with, restraining or coercing employees in exercise of rights and refusing to bargain collectively with representatives of employees, and Dist. No. 1 Marine Engineers Beneficial Association (MEBA), to-wit: refusing to bargain collectively with an employer, when it is the representative of its employees subject to RCW 47.64.170.

By letter dated February 24, 1997, the Commission requested that Mr. Caspers provide additional information concerning the facts in his case. On March 5, 1997, the MEC received an amended complaint from Mr. Caspers. Thereafter, MEC determined that the facts alleged may constitute a ULP charges if later found to be true and provable at hearing. Chairman Henry L. Chiles, Jr. was assigned to act as Hearing Examiner.

Also on March 5, 1997 Edward Caspers filed a request for grievance arbitration, alleging that he was not awarded a big on the "B" watch of the YAKIMA, in violation of the contract. A notice of prehearing conference and hearing was sent to the parties on April 4, 1997. A prehearing conference was scheduled for May 19, 1997 and a hearing date was scheduled for June 3, 1997. The notice stated that upon review, Chairman Chiles determined that the grievance was to be heard first. The notice further stated that if the MEC later determined that the grievance arbitration procedures do not satisfactorily resolve the unfair labor practice charges, the MEC would resume processing of the remaining issues.

On May 5, 1997, MEC received MEBA's Motion to Dismiss and for Summary Judgment, Memorandum in Support Thereof and Declaration of Louie Jacque.

At the prehearing/settlement conference on May 19, the facts in the pleadings filed to date in both cases were discussed along with MEBA's Motion for Summary Judgment. As a result of the matters discussed at the prehearing conference, an Order to Show Cause was issued on June 18, 1997. On June 24, 1997, Mr. Caspers informed the MEC by letter that he did not intend to respond to the Show Cause Order.

## FACTUAL BACKGROUND

The factual bases set forth in the pleadings in this matter to date, which were enumerated in the Order to Show Cause, are as follows:

1. Edward Caspers is employed by the Washington State Ferries as a Chief Engineer Officer.
2. Mr. Caspers is a member of the Licensed Engineer Officer unit of District No. 1, MEBA.
3. On September 24, 1993, District No. 1 MEBA, filed a request for grievance arbitration with the MEC on behalf of Ed Caspers. As a result of the hearing held in MEC Case No. 8-93, discipline given to Mr. Caspers by WSF was reduced. In his grievance arbitration request, Mr. Caspers requested that he be returned to his regular watch, the "B" Watch of "A" week on the MV YAKIMA. This portion of his discipline was not changed by the Commission in its Decision, MEC Dec. No. 122 (Amending Decision No. 119), which issued on August 11, 1994.
4. On April 26, 1995, District No. 1 MEBA filed a second grievance arbitration request on behalf of Ed Caspers, docketed as MEC Case No. 4-95. The Decision and Order issued in that matter on August 12, 1995, again made no change in Mr. Caspers' watch.
5. On August 18, 1995, pursuant to Section 20 - Seniority of the MEBA/WSF Collective Bargaining Agreement, Mr. Caspers submitted a bid to be kept on file for a Chief Engineer's position on the "B" Watch of "A" Week on the MV YAKIMA.
6. On December 1, 1995, the Washington State Ferries filled the position for which, Mr. Caspers believed, he had filed a bid.
7. On December 18, 1995, Caspers wrote to Port Engineer Ben Davis to inquire why he had not been awarded the position pursuant to Section 20 of the WSF/MEBA contract. Mr. Caspers believed that the position had been filled with a less senior engineer.
8. On December 20, 1995, Mr. Caspers filed a grievance with MEBA pursuant to Section 23 - Disputes of the WSF/MEBA

Contract. Thereafter, on December 22, 1995, also pursuant to Section 23, MEBA requested a conference with WSF Human Resources Director Jim Yearby. The record is silent as to whether the grievance was presented in writing to WSF, pursuant to Section 23 - Disputes. No conference was held between MEBA and WSF management.

9. In 1995, at the time of Ed Caspers' request for the transfer at issue in his grievance request, Bud Jacque further investigated the employment status of the two WSF oilers (also District No. 1 MEBA members) who were complainants in a prior case which resulted in the imposition of discipline against Mr. Caspers. He determined that if Caspers were to be reinstated to his original watch, these oilers would be supervised by Caspers. One of those oilers, Mr. Brazeau, is employed on that watch at present.
10. On January 8, 1996, WSF Port Engineer Ben Davis responded to Mr. Caspers' December 8 econogram. Davis indicated at that time that the position that was filled on the "B" Watch of "A" Week was that of a Staff Chief Engineer, which was exempt from the Seniority provisions of Section 20(a) (2).
11. Thereafter, Mr. Caspers met and discussed this matter with MEBA Branch Agent Bud Jacque on several occasions:
  - On January 11, 1996, Bud Jacque told MEBA members to feel to bring in grievances and he would take care of them.
  - On March 8, 1996, Ed Caspers asked Bud Jacque about the status of his grievance.
  - On April 4, 1996, Caspers met with Bud Jacque and MEBA's counsel, Ken Pedersen. At some point after their meeting, Mr. Jacque indicated to Caspers that he would leave the decision to proceed on the grievance to Mr. Pedersen, but that he would not spend money on a grievance that the Union could not win. Caspers told him that he would accept whatever decision the union made regarding pursuit of the grievance.
  - Mr. Caspers spoke to Mr. Jacque about his grievance on June 14, 1996. Jacque referred Caspers to Attorney Pedersen.
  - On October 11, 1996, Caspers contacted Jacque about the status of his grievance. Caspers told Jacque that he had

not been successful in reaching Mr. Pedersen. Jacque agreed to look into it.

- On December 13, 1996, Ed Caspers encountered Bud Jacque and inquired about the status of his grievance; he indicated he had still not heard from Mr. Pedersen. Jacque explained that while he was unsure of the status, he was under pressure from the National MEBA office to control grievance costs.

- On December 17, 1996, Caspers spoke to MEBA Shop Steward Dave Williams. Williams indicated that Bud Jacque said he had notified Caspers that MEBA had declined to pursue his grievance.

12. MEBA has declined to authorize the grievance arbitration request filed by Mr. Caspers in MEC Case No. 7-97.

Here, there are no contested issues of fact regarding the contractual violations alleged or the unfair labor practices charged. Mr. Casper's lack of response to the show cause order is taken as an abandonment of the grievance and the unfair labor practice charges herein. Based on Mr. Casper's abandonment of his cases, the MEC hereby grants summary judgment. The grievance and unfair labor practice complaint herein can be dismissed definitively.

#### CONCLUSIONS OF LAW

1. MEC has jurisdiction over the parties and subject matter of this case. Chapter 47.64 RCW, especially RCW 47.674.130, RCW 47.4.150 and 47.64.280.
2. The Marine Employees' Commission's rules provide for summary judgment at WAC 316-02-230, as follows:

WAC 316-02-230 **SUMMARY JUDGMENT.** A summary judgment may be issued if the pleadings and admission on file, together with affidavits, if any, show that there is no genuine

issue as to any material fact and that one of the parties is entitled to a judgment as a matter of law. Motions for summary judgment made in advance of a hearing shall be filed with the commission and served on all other parties to the proceeding.

No material issues of fact are contested in this matter, so that a summary judgment is appropriate under WAC 316-02-230.

ORDER

1. Pursuant to Mr. Caspers' expressed intention to not show good cause, MEC Case No. 3-97 and MEC Case No. 7-97, summary judgment is hereby granted.
2. MEC Case No. 3-97 and MEC Case No. 7-97 are hereby dismissed.

DATED this 6<sup>th</sup> day of August 1997.

MARINE EMPLOYEES' COMMISSION

/s/ HENRY L. CHILES, JR., Chairman

/s/ JOHN P. SULLIVAN, Commissioner