DIGEST OF DECISIONS
MARINE EMPLOYEES' COMMISSION

1. JURISDICTION AND AUTHORITY OF MEC

1) ***IBU v. Russell's at Orcas, Inc.*, 219-MEC (1999)**
MEC Case No. 15-99
Complaint of refusal to bargain dismissed and deference accorded to NLRB in response to employer's representation petition to that agency.

2) ***Downing v. WSF*, 4-MEC, 4A-MEC (1984), 4B-MEC (1985)**
MEC Case 2-83
Re limitations on MEC's authority to hear petitions for reconsideration citing *Hall v. Seattle*, 24 Wn. App. 357 (1977). Reversed by Superior Court for Kitsap County. Rehearing, case dismissed, Decision 4-D MEC, (1987).

3) ***Arroyo v. WSF*, 161-MEC (1987), affirmed 164-MEC**
MEC Case No. 9-96
MEC has no authority to hear "Whistleblower Protection Case" not reported timely to the State Auditor. (RCW 42.20, 42.21)

a. Additionally, MEC is not authorized to conduct a hearing with respect to an allegation of a departure from "public policy" which is assigned expressly by statute to a special administrative law judge. (RCW 42.41)

b. MEC, as an arbitrator, is authorized to hear and decide a grievance alleging wrongful discharge. (See Case No. 9-96, 172-MEC)

4) ***Caspers v. MEBA & WSF*, 173-MEC (1997)**

MEC Case No. 3-97 and 7-97

Failure to supply "additional information" regarding complaint of unfair labor practice, as requested by MEC with a "show cause" order, is grounds for and authorizes dismissal of that complaint.

a. MEC may issue summary judgment, "if the pleadings and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that one of the parties is entitled to judgment as a matter of law."

b. Motions for summary judgment made in advance of a hearing, shall be filed with the MEC and served on all other parties to the proceeding.

5) ***Petition of WSF for Declaratory Ruling*, 177-MEC (1997)**

MEC Case No. 24-97

Upon agreed petition for declaratory judgment, involving interpretation and application of statutes, MEC has jurisdiction in accord with RCW 47.64.280 and 35.05.240 and WAC 316-02-500 through 520.

6) ***Langvold v. WSF*, 210-MEC (1999)**

MEC Case No. 3-99

Time limit, as to filing charge of unfair labor practice, i.e., "not later than 180 days after party filing such complaint knew or should have known of" the violations under RCW 47.64.130, enforced. Case dismissed by Chairman's order.

7) ***Irish v. MEBA & WSF*, 112-MEC (1994)**

MEC Case No. 10-93

Employee failed to comply with contractual grievance procedure per RCW 47.64.150, thus no "good cause" under WAC 316-65-020. MEC lacks jurisdiction accordingly. Petition for Reconsideration denied, 116-MEC (1994).

8) ***Greenwood v. District 1, MEBA*, 237-MEC (2000)**

MEC Case No. 6-00

MEC has no jurisdiction relative to union elections or appointments. Case dismissed. Affirming Chairman's Decision 234-MEC (2000).

9) ***Petition of IBU for Declaratory Ruling*, 89-MEC (1993)**

MEC Case No. 3-92
MEC has no jurisdiction over Marriot employees on WSF vessels.

10) ***Twitty v. WSF*, 232-MEC (2000)**

MEC Case No. 1-00
MEC declined to assert jurisdiction in this matter where grievant had not followed the procedures set forth in collective bargaining agreement and labor organization (MEBA) had not given individual permission to pursue grievance on his own.

11) ***Twitty v. MEBA*, 255-MEC (2001)**

MEC Case No. 47-00
MEBA dues referendum alleged to be violation of MEC Decision in Case 7-93. Internal union matter does not fall within the jurisdiction of the Marine Employees' Commission. No violation of RCW 47.64.130 or WAC 316-45-003.

12) ***Ed Caspers v. WSF*, 316-MEC (2002)**

MEC Case No. 24-02
Mr. Caspers filed a request for arbitration with the MEC after his union, MEBA, advised him it would not pursue his grievance any further under the MEBA/WSF contractual dispute procedures. The employee organization, MEBA in this case, must approve a request for arbitration of a grievance in order for the MEC to have legal authority to hear and arbitrate the matter, pursuant to RCW 47.64.280 and 47.64.150. The union did not give its approval; grievance dismissed.

13) ***Dan Gage v. WSF*, 362-MEC (2003)**

MEC Case No. 30-02
The MEC has jurisdiction of a grievance pursued by an employee labeled a "temporary employee" where that employee is procedurally barred from the contract's grievance and arbitration procedure. The time limit for filing the grievance with the MEC runs from the time the employee is denied access to the contract's grievance procedure.

14) ***Schlief, et al. v. IBU et al*., 381-MEC (2003)**

MEC Consolidated Cases 32-03, 33-03, 35-03, 36-03, 38-03
The MEC does not have jurisdiction to decide if a union violated its internal rules in the way it agreed with the employer to create a new bargaining unit.

15) *IBU v. WSF*, 392-MEC (2003)

MEC Case No. 52-03

Threshold issue of jurisdiction is presented in that the MEC acknowledges that it does not have jurisdiction over the food galley operator, but claims jurisdiction over the dispute presented herein. MEC's general jurisdiction extends to resolving those issues which could bring labor dispute to WSF direct employees.

Unfair labor practice violation found where WSF altered longstanding practice in which RFPs for food service concessionaire required a proponent to give hiring preference to employees of predecessor food service employer and apply the terms and conditions of the collective bargaining agreement. WSF directed to rescind its RFP issued to secure concessionaire food service on WSF vessels. Any change in the past practice for issuing RFPs may only be made after bargaining in good faith with the IBU.

(On 12/19/03, WSF filed a Petition for Judicial Review of Decision No. 392-MEC in Thurston Co. Superior Court. On 8/20/04, Sup. Court denied WSF's Petition for Review. On 9/17/04, WSF filed a Notice of Appeal with the Court of Appeals, Div. II.)

16) *IBU v. WSF*, 423-MEC (2004)

MEC Case No. 33-04

WSF's failure to impose employment conditions for on-shore concession workers in its request for proposals is not a violation of RCW 47.64. WSF neither claimed nor exercised the right to control wages or any working conditions of on-shore concession workers. No consistent past practice exists concerning entities that have operated the on-shore concessions. Conditions that brought the on-vessel concession employees within the scope of RCW 47.64 (Decision No. 392-MEC) do not exist with respect to the on-shore concessions.

17) ***Michael Zuvela v. WSF*****, 534-MEC (2008)**

MEC Case 25-07

Commission does not have jurisdiction to hear the Zuvela grievance, filed over lump sum payment of retirement benefits. MM&P/WSF collective bargaining agreement reserves to the Union, the decision whether or not to bring a grievance to arbitration, and the subject matter of this dispute is not excluded from the parties' grievance and arbitration provisions. Grievance dismissed.

- On 1/3/08, grievant filed a Request for Review of Decision 534-MEC.

- On 1/25/08, the Commission's Order on Request for Review, Decision No. 534-A-MEC, affirmed the decision that it lacks jurisdiction over Mr. Zuvela's request for arbitration. (Commission allowed grievant 14 days to convert grievance to unfair labor practice alleging breach of the union's duty of fair representation, arising from the facts given in his arbitration request.)

2. REPRESENTATION CASES

A. Clarification of Existing Bargaining Unit

1) ***WSF's Petition*, 230-MEC (2000)**
MEC Case No. 14-99
Affirming Chairman's Dismissal, Decision No. 220 (2000).
Petition by employer to "carve out" "terminal agents" from the historical IBU unit on ground that they were "supervisors." Denied on ground that nothing in the underlying statute required removal of supervisors from unit including non-supervisors.

2) ***WSF's Petition*, 208-MEC (1998)**
MEC Case No. 15-98
Question as to proper unit for particular employee, raised by Petition for Clarification, dismissed as premature by Chairman.

3) ***Schlief, et al. v. IBU et al.*, 381-MEC (2003)**
MEC Consolidated Cases 32-03, 33-03, 35-03, 36-03, 38-03
The creation of a bargaining unit cannot be a ULP where the unit is appropriate for bargaining and does not create any unlawful conditions.

4) ***OPEIU's Petition for Clarification of WSF Bid Administrator* ***
Position, 540-MEC (2008)
Hearing Officer concluded that the Bid Administrator classification is appropriately a classification covered by the OPEIU/WSF Collective Bargaining Agreement. The classification and its duties do not meet any definition or statutory criteria which would exclude it from coverage under the Agreement (Article 1.1).

On April 7, 2008, WSF filed a Petition for Reconsideration of Decision 540-MEC. Commission denied the Petition, Decision 540-A-MEC (5/8/08).

B. Petitions for Investigation of Questions of Representation

1) *MEBA v. IBU*, 35-MEC (1987)

MEC Case No. 3-87

MEBA filed petition seeking representation of Oilers and Wipers then in IBU unit. MEC has authority to entertain such a petition. RCW 47.64.280 (3) and 47.64.280, along with other elements of the underlying statute and regulations, cited. Representation elections ordered by Decision 38-MEC (1988), on the basis of fundamental "freedom of choice" principles advanced by the statute.

3. UNFAIR LABOR PRACTICES

A. Unilateral Action by Employer Relative to Bargainable Conditions of Employment

1) *IBU & MEBA v. WSF*, 223-MEC (2000)

MEC Case No. 12-99
Alleged unilateral change in sick leave policy whereby employer required doctor's note to verify reason for such leave was statutory refusal to bargain. Employer directed to restore *status quo ante*, so advise affected employees and make them whole for any loss sustained in the premises.

a. WSF directed also to offer to bargain about the matter before future changes, if any.

2) *IBU v. WSF*, 207-MEC

MEC Case No. 13-98
Earlier negotiated settlement of issues, as to number of unit personnel to be allowed Christmas vacations, could not be altered unilaterally citing RCW 47.64.130 and WAC 316-02-005.

a. Such settlement was not avoidable because of its impact on overtime for unit personnel.

b. However, such settlement should not supersede the requirement that WSF have sufficient manning to allow its vessels to sail.

3) *IBU v. WSF*, 200-MEC (1998)

MEC Case No. 1-98
WSF refusal to accord full hour's pay to employees who worked a portion of an hour on a contractual holiday did not constitute a refusal to bargain under the statute, alleged past practice to the contrary not proven. Complaint dismissed.

Union's request for attorney's fees and costs denied.

4) *IBU v. WSF*, 194-MEC (1998)

MEC Case No. 31-97

WSF's misassignment of bargaining work and its unilateral alteration of the borders of the bargaining unit represented by the union on the TACOMA, were found present and violative in that Marriot employees were assigned to historical "deck department" functions of IBU on certain emergencies and emergency drills.

- Reversed by Superior Court for Thurston County 4/20/99.

- Union appealed. Court of Appeals, Division II affirmed MEC Decision No. 194 on 12/1/00.

5) *IBU v. WSF*, 187-MEC (1997)

MEC Case No. 22-97

Union's complaint, that a valid collective bargain as to a condition of employment as negotiated by the parties was not subject to unilateral modification by WSF, was upheld, but such modification, although it was unlawful and was to be withdrawn, did no demonstrable harm to the unit employees concerned.

6) *IBU v. WSF*, 183-MEC (1997)

MEC Case No. 21-97

Claimed "past practice," allowing unilateral imposition by employer of rule that unit employees must be at least 18 years of age, denied on basis that to be accorded the status of a recognized and binding condition of employment, the alleged practice must be unequivocal, clearly enunciated, followed, and readily ascertainable over reasonable period of time as a fixed and mutually acceptable policy.

7) *IBU v. WSF*, 185-MEC (1997)

MEC Case No. 20-97

Agreement between union and employer's counsel constituted "objective manifestation" as to coverage of a representative of the union, under provisions of the Public Employment Retirement Act, was not subject to unilateral disclaimer by the employer.

a. WSF ordered to formalize the agreement established by objective manifestation.

b. WSF to make the union representative whole financially for losses generated by failure to timely fulfill the said objective manifestation.

8) *IBU, MEBA, MM&P, Shipwrights, Sheet Metal Workers and Plumbers and Pipefitters v. WSF*, 197-MEC (1998)

MEC Case Nos. 10-97, 11-97, 12-97, 15-97, 18-97, 19-97 (consolidated)

Enforcement of "no beard" rule embodied in Washington Administrative Code, by WSF, after an extensive period when there was no such enforcement, required collective bargaining as to the "impact" of that change on unit members.

Unions' request for attorney's fees denied.

9) *IBU v. WSF*, 193-MEC

MEC Case No. 17-97

Unilateral change by WSF in its policy relating to safe parking on WSF property constituted refusal to bargain regarding a bargainable subject complementary to the result of a balancing of the respective interests of the employer and the unit personnel in the circumstances.

a. WSF directed to restore parking privileges as they were before unilateral change.

b. WSF ordered to make whole any person who suffered a loss because of the illegal charge.

c. WSF ordered to renew bargaining with the union on the issues as to parking privileges concerned.

10) ***Separovich v. WSF*****, 180-MEC (1997)**

MEC Case No. 14-97

Employer's unilateral cessation of injured employee's maintenance and cure when he declined repeatedly to undergo an independent medical examination, requested reasonably by the WSF, did not constitute a violation of RCW 47.64.130 and WAC 316-45-003. (Order Denying Petition For Rehearing - solitary employee could not invoke the underlying statute in instant circumstances, 11/21/97.)

11) ***IBU v. WSF*****, 182-MEC (1997)**

MEC Case No. 9-97

Issuance of a prehearing denial of grievance and thereafter refusing to meet with the union for purposes of resolving the same under the parties' contract and the procedure specified therein constituted an unfair labor practice under RCW 47.64.130 and 47. 64.280, especially when, after agreeing, in a MEC settlement conference, to cease and desist with respect to such conduct, the employer repeats the same deliberately. (Petition for Reconsideration denied, 12/20/97.)

12) ***IBU v. WSF*****, 163-MEC (1997)**

MEC Case No. 12-96

Employer's unilateral departure from contractual agreement reached with union, as to payment of "AB" wage rate to handicapped unit employee, found to be violation of the duty to bargain as established by RCW 47.64.130.

a. Directed that employee concerned be made whole as to wages lost by reason of departure.

13) ***IBU v. WSF*****, 131-MEC (1995)**

MEC Case No. 10-94

Allegation upheld that employer failed to pay overtime to eligible unit members as agreed for a grievant in grievance answer thereby effecting change unilaterally and disparaging union and its representative. Ordered to pay overtime to all as agreed for the one with such answer.

14) *IBU v. WSF*, 253-MEC (2000)

MEC Case No. 18-00

Case involved a charge of unilateral change when WSF implemented a new practice of conducting pre-disciplinary interviews of employees aboard the vessel to which the employee was assigned. MEC found WSF unlawfully changed a long established practice without prior bargaining with IBU.

15) *IBU v. WSF*, 310-MEC (2002)

MEC Case No. 33-00

The issue presented was whether WSF unilaterally changed a longstanding policy of allowing IBU represented employees to substitute leave without pay (LWOP) for days taken, that would otherwise be some form of paid leave, such as annual leave or sick leave. MEC found that the practice was longstanding and that WSF unlawfully changed the practice without bargaining with IBU. Remedy was to permit employees to "buy back" leave they had been required to use by new policy.

16) *IBU v. WSF*, 282-MEC (2001)

MEC Case No. 24-00

When mandated by US Coast Guard to eliminate triple-back watches, WSF made changes to schedules, which affected some on-all employees. James Russell, grievant in Case 37-00, lost work opportunity because of schedule change. IBU claimed change was unilateral and violative (Case 24-00). Final elimination of triple-back watches occurred after full discussion opportunity with IBU over impact. MEC found no ULP violation and no contract violation.

17) *IBU v. WSF*, 321-MEC (2002)

MEC Case No. 18-01

The employer must give the union proper notice and a real opportunity to bargain before a decision to shift duties from one classification to another within a bargaining unit is made and announced. The employer's decision to install machines to sell a new surcharge ticket that did not affect regular ticket sales is not a mandatory subject of bargaining. The employer's post-decision offer to bargain about effects and impacts was legally sufficient. Request for Reconsideration denied, Decision 329-MEC.

18) ***District No. 1 MEBA v. WSF*, 358-MEC (2003)**

MEC Case No. 32-02

Refusal to bargain violation found where employer failed to bargain collectively with union, the impact and implementation of the policy of requiring repayment of travel time and mileage in circumstances where an employee submits an econogram, seeking to transfer to a different home terminal vessel, after the assigned vessel has been permanently transferred.

19) ***IBU v. WSF*, 392-MEC (2003)**

MEC Case No. 52-03

Threshold issue of jurisdiction is presented in that the MEC acknowledges that it does not have jurisdiction over the food galley operator, but claims jurisdiction over the dispute presented herein. MEC's general jurisdiction extends to resolving those issues which could bring labor dispute to WSF direct employees.

Unfair labor practice violation found where WSF altered longstanding practice in which RFPs for food service concessionaire required a proponent to give hiring preference to employees of predecessor food service employer and apply the terms and conditions of the collective bargaining agreement. WSF directed to rescind its RFP issued to secure concessionaire food service on WSF vessels. Any change in the past practice for issuing RFPs may only be made after bargaining in good faith with the IBU.

On 12/19/03, WSF filed a Petition for Judicial Review of Decision No. 392-MEC in Thurston Co. Superior Court; *petition denied* on 8/20/04. (See MEC Case 28-04.)

WSF appealed to Court of Appeals, Div. II on 9/17/04. Court *reversed and remanded* to MEC to dismiss complaint, holding that "MEC lacked statutory authority to intervene in contract negotiations between WSF and a private concessionaire." (11/22/05)

In December of 2005, the IBU filed a petition for review to the State Supreme Court. *Review denied* (9/06).

On 2/23/07, MEC entered Order Vacating Decision and Dismissing Complaint, Dec. No 392-A-MEC.

20) *John Pelland v. WSF*, Examiner's Decision 403-MEC (2004)

MEC Case No. 26-03

Complainant Pelland alleged that WSF engaged in a unilateral change refusal to bargain when it utilized MM&P retirees to fill relief licensed positions before giving IBU members with appropriate licenses the opportunity to fill such positions. MEC determined that WSF had not engaged in the unilateral changes alleged, but even if it had, Pelland lacked standing to raise the issue in the absence of a complaint from MMM&P.

Examiner's Decision affirmed by full Commission's Decision on Appeal, Dec. 403-MEC Supplement (5/17/04).

21) *IBU v. WSF*, 423-MEC (2004)

MEC Case No. 33-04

WSF's failure to impose employment conditions for on-shore concession workers in its request for proposals is not a violation of RCW 47.64. WSF neither claimed nor exercised the right to control wages or any working conditions of on-shore concession workers. No consistent past practice exists concerning entities that have operated the on-shore concessions. Conditions that brought the on-vessel concession employees within the scope of RCW 47.64 (Decision No. 392-MEC) do not exist with respect to the on-shore concessions.

22) *IBU v. WSF*, 429-MEC (2004)

MEC Case No. 36-04

The party asserting that there has been a unilateral change in terms and conditions of employment must show that there was a clear, consistent practice that was altered without notice and bargaining. In this case, the union proved that the employer unilaterally altered certain aspects of medical leaves of absence. The union did not prove that there was a consistent practice regarding medical benefits for those on personal leaves or for part time and on-call workers that was unilaterally altered.

IBU filed a Request for Reconsideration on 12/7/04. On 12/30/04, MEC entered Supplement to Decision No. 429, which denies IBU's request that Finding of Fact 22 be eliminated, and a request for mandatory Notice posting.

The MEC Supplement to Decision 429 amends the Order to include a remedy for persons who substituted personal medical benefits when terminated from medical leave in the manner found to be a violation in Decision 429.

23) ***IBU v. WSF*****, 437-MEC (2005)**

MEC Case 9-05

No unilateral change to investigative and discipline process found where WSF was obligated to report suspected theft of state funds and cooperated with Washington State Patrol's investigation of a possible crime. Washington State Patrol did not participate in WSF's disciplinary process.

No unfair labor practice found where WSF followed Washington State Patrol ordered installation of video surveillance cameras. No bargaining required due to reduced privacy interest of ticket seller tollbooths (public visibility), combined with fiduciary nature of ticket sellers' work and WSF's obligation to safeguard state funds.

24) ***MM&P v. WSF*****, 484-MEC (2006)**

MEC Case 34-04

MM&P charged WSF with committing an unfair labor practice by unilaterally changing the practice of MM&P members parking on the Clinton dock, prior to new construction, and refusing to bargain the issue with the union following completion of construction (at least six years later).

a. The Commission found no evidence of a current, binding past practice that would require WSF to provide parking on the dock to MM&P-represented employees.

b. The Commission found WSF did commit an unfair labor practice by failing to respond to MM&P's repeated written requests to bargain over the issue.

WSF ordered, upon request from the union, to meet and discuss the issue of parking at Clinton dock.

*Order on Reconsideration, Supplement to Decision 484-MEC, issued 9/5/06. Request to expand the remedy denied.

25) ***IBU v. WSF*****, 465-MEC (2006)**

MEC Case 45-05

No unfair labor practice found where WSF required master or mate to preapprove and verify every sewage spillage, observe the cleanup and prepare documentation to authorize penalty pay pursuant to the collective bargaining agreement. The basis for work procedures is the "Management Rights" section of the contract, Rule 4.01. Such action does not require bargaining.

26) ***IBU v. WSF*****, 511-MEC (2007)**
MEC Case 23-06
No evidence found to support allegations that WSF made a unilateral change in 1) the manner in which the AB Bos'n is selected, 2) the manner in which duties are assigned to the Bos'n, 3) the manner in which duties are assigned to ordinary seamen (OS). Charge dismissed.

B. Time Limit Re: Complaint of Unfair Labor Practice

1) ***Schlief, et al. v. IBU*****, 156-MEC (1996)**
MEC Case No. 5-96
Allegation of refusal to bargain dismissed because not timely per WAC 316-45-020 (3), i.e., filed more than 180 days after alleged violation; principle of "constructive knowledge" of violation described, accepted and adhered to by MEC Decision No. 151-MEC affirmed.

2) ***Schlief, et al. v. IBU et al*****., 381-MEC (2003)**
MEC Consolidated Cases 32-03, 33-03, 35-03, 36-03, 38-03
Absent any official act and absent any change of conditions, employees concerned about the creation of a new bargaining unit are held not to have had constructive notice of the unit's creation.

C. Refusal to Adhere to Bargained Settlement

1) ***IBU v. WSF*****, 87-MEC (1992)**
MEC Case No. 1-92
Claim of refusal to bargain against employer for its alleged refusal to adhere to settlement of grievance involving holiday-overtime pay. Such agreement verified on the evidence adduced. Charge of unfair labor practice upheld. Agreement enforced.

2) ***IBU v. WSF*****, 380-MEC (2003)**
MEC Case No. 37-03
IBU contended that WSF agreed to new procedures for scheduling on-call deck employees. MEC found no agreement was reached, but ordered parties to resume bargaining; designate a scribe for negotiation sessions; and empower an authoritative representative for collective bargaining.

3) ***IBU v. WSF*, 560-MEC (2009)**

MEC Case No. 1-09

WSF charged with refusing to honor settlement agreement reached in MEC Case 14-06 (Dec. 481-MEC) when it failed to issue a Loudermill notice to an employee within the four-week time frame agreed to in that settlement agreement.

The Hearing Examiner found that WSF's action did not rise to the level of an unfair labor practice. A single instance of failure to adhere to a procedural term of a settlement agreement does not amount to repudiation of the agreement.

D. Union's Duty of Fair Representation

1) ***Saxton v. WSF*, 192-MEC (1998)**

MEC Case No. 23-97

Union has a duty to investigate grievance lodged against WSF by a represented employee or group of such personnel.

a. When employees are represented fairly by their union regarding a grievance, such employees cannot by-pass the contractual procedure for the processing thereof.

2) ***Myers v. Machinists and WSF*, 169-MEC (1997)**

MEC Case No. 17-96

Mere negligence alone is not a basis for finding a breach of the duty of fair representation by the union concerned.

a. Breach of that duty involves action that is arbitrary, capricious, discriminatory, bad faith.

3) ***Separovich v. Masters, Mates, and Pilots*, 227-MEC (2000)**

MEC Case No. 19-99

Complaint not timely; in any case, mere negligence of bargaining agency not basis for charge of unfair representation. (Affirming Decision 221, per Chairman Chiles, 12/10/99.)

4) ***Twitty v. MEBA and WSF*, 191-MEC (1998)**

MEC Case No. 11-96

Union conduct, not arbitrary, discriminatory, or in bad faith, and done with honesty of purpose was not breach of its duty of fair representation.

5) ***Hodges v. WSF and IBU*, 94-MEC (1993)**

MEC Case No. 9-92

Elements of proof, as to union departure from duty of fair representation, are: arbitrary or bad faith conduct, substantial evidence of fraud, deceitful action or dishonest conduct. Request for arbitration dismissed.

6) ***Greenwood, Galle and Weythman v. District No. 1, MEBA*, 114-** MEC (1994)

MEC Case No. 7-93

Allegations of failure to represent directed against union, due essentially to internal disagreements in the process and procedures of union government; denied and dismissed. Allegations of fears of represented, as to ratification of contract by proper element of membership generated by union officials, did violate WAC 316-45-003 (2)(e); remedial order entered in this particular only.

7) ***Maringer v. WSF and IBU*, 49-MEC (1990)**

MEC Case 3-89

Union and WSF found in violation, with respect to proper concern for interests of "on call" employee as to his effective hiring date and preservation of earned credits for hours worked. Directed such parties to negotiate correction or arbitrate the questions involved.

8) ***Shaw and Hamiter v. IBU*, 42-MEC (1989)**

MEC Cases 4-88 and 5-88

"De-certified" union not responsible for enforcement of its old contract with employer.

9) ***O'Hara v. WSF, IBU*, 53-MEC (1990)**

MEC Case 2-90

Employee, as a "single parent," sought transfer to a 32 hour job from his 40 hour status, determined by IBU and WSF ultimately that the single parent aspect did not amount to an "extreme hardship" within the meaning of the applicable rule of its collective bargaining agreement concerned. Neither the union nor the employer acted in bad faith or on the basis of a sinister or unacceptable motive. Case dismissed. Initially, grievant had been transferred by WSF in response to his request for a shorter workweek and changed position accordingly. WSF, thereafter changed its position in accord with the IBU assessment. This scenario and timing of the effectiveness of the governing contract, became the fundamental basis for a re-opening and re-hearing of the case (Decisions No. 58, 65-MEC). It was found that IBU position as to contractual contract was erroneous, original decision reversed (Decision No. 65-MEC). *Status quo ante* ordered, in effect. Decision No 66-MEC, union's "exceptions" heard, Decision 65 "corrected," not reversed.

10) ***Reynolds v. WSF*, 79-MEC (1992)**

MEC Case 8-91

Extensive discussion of "fair representation" concept and the relative rights and duties of the parties concerned. The elements to establish breach of the duty of fair representation are: Arbitrary or bad faith conduct on union's part; substantial evidence of fraud, deceitful action or dishonest conduct.

11) ***Schlief, et al. v. IBU et al.*, 381-MEC (2003)**

MEC Consolidated Cases 32-03, 33-03, 35-03, 36-03, 38-03

A union did not violate its duties to its members when it refused to submit a tentative agreement to ratification even though the decision was wrong because the decision was made after a good faith effort to secure and weigh the facts.

E. Refusal to Reduce Bargained Agreement to Writing

1) ***IBU v. WSF*, 123-MEC (1994)**
   MEC Case No. 4-94
   Employer refused to bargain by failure to recognize and reduce bargained agreement, with the union, regarding bargainable subject (job bidding), to writing, under contractual exception to proposition that party to a collective bargaining agreement need not bargain with respect to matters already covered thereby during the agreed term thereof.

2) ***Schlief, et al. v. IBU et al*., 381-MEC (2003)**
   MEC Consolidated Cases 32-03, 33-03, 35-03, 36-03, 38-03
   A union must submit a tentative agreement to a ratification vote, even where the newly elected union head had good faith concerns about the agreement, because the parties did reach a tentative agreement and there had been no understanding that a tentative agreement was subject to the union head's veto.

F. Coercive Acts

1) ***Schlief, et al. v. IBU et al*., 381-MEC (2003)**
   MEC Consolidated Cases 32-03, 33-03, 35-03, 36-03, 38-03
   An employer is not responsible for a supervisor's alleged coercive acts regarding union activities where the supervisor is in the bargaining unit and there is no evidence that the employer encouraged, condoned or ratified the alleged improper acts.

G. Refusal to Bargain

1) *Schlief, et al. v. IBU et al.*, 381-MEC (2003)

MEC Consolidated Cases 32-03, 33-03, 35-03, 36-03, 38-03
Cases involved separation of terminal agents group from larger bargaining unit represented by IBU and subsequent bargaining affecting the separate terminal agents group:

a. An employer does not disrupt bargaining by including a bargaining unit member on its (the employer's) bargaining team where the act was done in good faith, there is a history of such action, the person was intended as a resource person rather than as a policy developer and the and the evidence shows that the bargaining was not, in fact, disrupted.

b. A union did not violate its duties to its members when it refused to submit a tentative agreement to ratification, even though the decision was wrong, because the decision was made after a good faith effort to secure and weigh the facts.

c. A legislative change that occurs after a tentative agreement is reached does not relieve a union of the duty to submit the agreement to a ratification vote where the change did not render the agreement illegal and where the affected members can determine for themselves whether or not the contract is still worthwhile.

2) *Dist. No. 1 MEBA v. WSF*, 382-MEC (2003)

MEC Case No. 23-03
Washington State law bars WSF from honoring employee political contribution deduction requests. No illegal refusal to bargain found; complaint dismissed.

3) *WSF v. Dist. No. 1 MEBA*, 410-MEC (2004)

MEC Case 53-03
Delay in actually bargaining for a new contract does not amount to waiver of the right to bargain for a new contract absent proof that the delaying party intended to waive the right to bargain. Although the nominal term of the contract for which bargaining is sought has technically expired, bargaining cannot be deemed futile because retroactivity is possible and because the "expired" contract would remain in effect past its term by operation of law. The expense of the negotiations is not a basis for refusing to bargain.

4) ***John Pelland v. WSF*****, Examiner's Decision 403-MEC (2004)**

MEC Case No. 26-03

Complainant Pelland alleged that WSF engaged in a unilateral change refusal to bargain when it utilized MM&P retirees to fill relief licensed positions before giving IBU members with appropriate licenses the opportunity to fill such positions. MEC determined that WSF had not engaged in the unilateral changes alleged, but even if it had, Pelland lacked standing to raise the issue in the absence of a complaint from MMM&P.

Examiner's Decision affirmed by full Commission's Decision on Appeal, Dec. 403-MEC Supplement (5/17/04).

5) ***IBU v. WSF*****, 429-MEC (2004)**

MEC Case No. 36-04

The party asserting that there has been a unilateral change in terms and conditions of employment must show that there was a clear, consistent practice that was altered without notice and bargaining. In this case, the union proved that the employer unilaterally altered certain aspects of medical leaves of absence. The union did not prove that there was a consistent practice regarding medical benefits for those on personal leaves or for part time and on-call workers that was unilaterally altered.

6) ***IBU v. WSF*****, 435-MEC (2005)**

MEC Case No. 46-04

When a ferry is moving to reposition at the same terminal, if there are any people aboard who are passengers, or could in any way be passengers, whether they paid for passage or not (even crewmembers who are not working or standing a watch could be considered passengers) there must be a full complement of deck crew aboard the vessel. The ferry would be "in service" and moving, even if it left the dock, went out in the stream and returned to the same dock or slip.

When tied up and secured while taking on fuel, the truck driver is considered a passenger, but a deck crew is not needed as long as the vessel is not underway/moving. No breach of contract found, or violation of MEC Decisions 347 and 391. Alleged unfair labor practice violations of interference and refusal to bargain dismissed.

7) ***IBU v. WSF*, 437-MEC (2005)**

MEC Case 9-05

No unilateral change to investigative and discipline process found where WSF was obligated to report suspected theft of state funds and cooperated with Washington State Patrol's investigation of a possible crime. Washington State Patrol did not participate in WSF's disciplinary process.

No unfair labor practice found where WSF followed Washington State Patrol ordered installation of video surveillance cameras. No bargaining required due to reduced privacy interest of ticket seller tollbooths (public visibility), combined with fiduciary nature of ticket sellers' work and WSF's obligation to safeguard state funds.

8) ***MEBA, MM&P & IBU v. WSF*, 471-MEC (2006)**

MEC Consolidated Cases 25-04, 35-04, 39-04, 59-04, 63-04

WSF found to have violated RCW 47.64.130 by refusing to bargain with IOMM&P, MEBA and IBU over a mandatory subject of negotiations--the impacts and effects of the galley closures, including the loss of meal discounts. Following concessionaire cancellation of galley service aboard the ferries, MEBA, IOMM&P and IBU requested, but were denied bargaining with WSF over the loss of meal discount and other related effects of the galley closures on their members. No evidence of the unions having waived right to bargain.

WSF ordered to bargain in good faith with MEBA, IOMM&P and IBU; make whole all bargaining unit members for economic loss suffered as the result of the galley closures; preserve and make available for examination all records regarding employee use of galleys, transactions and income from the vending machines that replaced the galleys and any other records necessary to analyze economic loss suffered by employees; and reimburse unions for attorney fees incurred in hearing this matter.

9) *IBU & MM&P v. WSF*, 468-MEC (2006)

MEC Consolidated Cases 40-04, 62-04 and 7-05

a. IBU and MM&P charged WSF with a unilateral change in working conditions without bargaining, concerning numerous policies contained in the new payroll manual implemented, April 2004. In determining whether the particular change was a mandatory subject of bargaining, the Commission balances the effect that an action has upon wages, hours and working conditions against the extent to which the subject lies at the core of entrepreneurial control. On this basis, the Commission found the following unilateral changes violated the Act:

- Subjecting an employee to discipline for the unintentionally inaccurate reporting of time.
- The change from "authorizing" the Licensed Deck Officer to "obligating" the Deck Officer to enforce the terms of the payroll manual.
- The collection and maintenance of employee residential address information.

b. The Commission found insufficient evidence to conclude that the recording of partial hours using a decimal affects the way in which employees are paid.

c. WSF ordered to return to the status quo in effect prior to implementation of these changes and bargain them with IBU and MM&P.

10) *MM&P v. WSF*, 484-MEC (2006)

MEC Case 34-04

MM&P charged WSF with committing an unfair labor practice by unilaterally changing the practice of MM&P members parking on the Clinton dock, prior to new construction, and refusing to bargain the issue with the union following completion of construction (at least six years later).

a. The Commission found no evidence of a current, binding past practice that would require WSF to provide parking on the dock to MM&P-represented employees.

b. The Commission found WSF did commit an unfair labor practice by failing to respond to MM&P's repeated written requests to bargain over the issue.

WSF ordered, upon request from the union, to meet and discuss the issue of parking at Clinton dock.

*Order on Reconsideration, Supplement to Decision 484-MEC, issued 9/5/06. Request to expand the remedy denied.

11) *MM&P v. WSF*, 550-MEC (2008)

MEC Case 19-08

WSF committed an unfair labor practice when it unilaterally returned Capt. Saffle to the fleet, permitting him to return to his previously held assignment without negotiating with the IBU.

Seniority is a mandatory subject of bargaining. In the absence of specific contractual language covering the situation, WSF failed to prove a current, binding past practice existed for implementing the voluntary return to the fleet of an individual who had been filling a management or union position.

WSF ordered to: 1) upon request, negotiate the issue with IBU; 2) restore individuals bumped by Capt. Saffle's return to the fleet to their previous positions; 3) make those individuals whole for any lost wages and/or benefits suffered as a result of WSF's unilateral action.

12) ***IBU v. WSF*****, 552-MEC (2008)**

MEC Case 15-08
Washington State Ferries (WSF) met its obligation to bargain over effects of implementation of the Electronic Fare System (EFS). The Inlandboatmen's Union (IBU) failed to respond to WSF's proposal during negotiations and did not request interest arbitration on the issue, waiving its right to bargain.

IBU filed Petition for Reconsideration of Decision 552-MEC on 11/24/08. The Commission entered Order Denying IBU's Petition on 12/30/08.

4. INJUNCTIONS

1) ***WSF v. IBU*, 226-MEC (2000)**
MEC Case No. 17-99
Premature complaint by WSF against union of refusal to bargain. Under and complementary to Commission policy set forth in WAC 316-02-005, parties ordered to resume bargaining and report back to MEC as to progress, Complaint dismissed, affirming Decision 217-MEC.

5. DECLARATORY AND SUMMARY JUDGMENTS

1) ***IBU v. WSF*, 225-MEC (2000)**
   MEC Case No. 16-98
   Interest not due on arbitrator's award relative to contract terms. Decision 218-MEC affirmed.

2) ***WSF's Petition for Declaratory Order*, 233-MEC (2000)**
   MEC Case No. 2-00
   MEC issued a Declaratory Ruling concerning the way that WSF would conduct layoffs if a funding shortfall, precipitated by the passage of I-695, mandated reductions in ferry service. The bargaining units represented by IBU were agreed to be the most likely to be impacted. Parties agreed to an expedited arbitration of the layoff procedures. MEC set the order of "bumping rights" to be exercised by employees threatened with layoff.

3) ***IBU v. WSF*, 271-MEC (2001)**
   MEC Case No. 10-01
   (IBU filed Petition for Declaratory Ruling on question of whether respiratory policy impacts and effects bargaining is subject to binding impasse arbitration.)

   - MEC Decision No. 271, entered 5/30/01:

   On May 28, 1998, MEC issued an order requiring WSF and IBU to bargain the impact and effect of a policy relative to the use of respirators. Affirmed by Superior Court, but not fulfilled at time of IBU's Petition on 4/16/01. Based on finding that the policy of the state of Washington relative to collective bargaining is being confounded and prejudiced, the Commission ordered, under these "limited and extraordinary circumstances": 1) the parties to meet and bargain during the following 30 days; and 2) if unable to reach an agreeable settlement, to submit the remaining dispute to interest arbitration, guided by RCW 47.64.240.

- MEC Decision No. 283, Order Clarifying Decision and Order No. 271, entered 7/31/01:

In response to IBU's Motion to Modify Decision and Order in Decision No. 271 and Request for Appointment of Mediator, the MEC ordered: 1) the parties to immediately engage in mediation with Commissioner John Byrne on any of four proposed dates; and 2) the parties to immediately prepare to submit the dispute to interest arbitration, by selecting an arbitrator from the list provided by MEC and requesting dates for arbitration.

6. GRIEVANCES AND ARBITRATIONS

A. Overtime Pay, Premium Pay

1) ***IBU and WSF (Hansen)*, 229-MEC (2000)**
MEC Case No. 13-99
Grievant worked the normal scheduled hours of his touring watch. He voluntarily took time off. Not entitled to overtime pay for hours worked in excess of eight on the "long day" of a scheduled tour watch under Rule 1.02. Appendix A, of governing contract. Grievance dismissed.

2) ***IBU v. WSF (Worthy, Desdier, Domke)*, 222-MEC (1999)**
MEC Case No. 9-99
Emergency afloat occasioned reasonable changes in the work schedule made in good faith by the employer, under serious emergent circumstances, which it did not anticipate. Claim of overtime due to changes denied.

3) ***MEBA v. WSF*, 127-MEC (1994)**
MEC Case No. 8-94
Claimed departure from settlement agreement bearing on need for overtime rejected, union's grievance denied.

4) ***MEBA v. WSF (Knowlton)*, 134-MEC (1995)**
MEC Case No. 11-94
Reading the collective bargaining agreement together with a special settlement agreement as required, claim for overtime pay denied. Grievance dismissed accordingly, since no substantial basis therefore in that body of agreement.

5) ***MEBA v. WSF*, 18-MEC (1986)**

MEC Case No. 8-85

Attendant upon employer's requirement that the union's represented personnel wear uniforms furnished by WSF, such personnel were directed to appear at specified times and places for fittings and pick ups of the same. Time used for such uniform measurements amounted typically to 15 to 45 minutes for each. Employer ordered to compensate employees for time spent in obtaining such measurements and pick ups outside of regular hours in accord with specifications set forth by the award. Bargaining history not controlling complementary to Elkouris, *How Arbitration Works* 315 (3d ed). (Award "clarified" by amendment per Decision No. 18-A-MEC, but essentials remained operative.)

6) ***MEBA v. WSF (Delaney)*, 247-MEC (2000)**

MEC Case No. 11-00

Grievant, on-call oiler, is not entitled to travel time and mileage for working less than seven days consecutively, pursuant to the 1997-1999 roll-over CBA, Appendix B, Rule 3.04 pertaining to ferries operating out of Anacortes and Port Townsend, when it has not been the practice to make such payments for at least eight years or more and several contract negotiations.

7) ***Shipwrights Local 1184 v. WSF*, 43-MEC (1989)**

MEC Case No. 6-88

Employer cancelled "premium pay" thereto fore paid, for work by employees, with asbestos, fiberglass and creosote. Contract did not call for such premium for that variety of work, change of the contract could not be based on "practice" of the variety here involved. Grievance denied. Petition for Review denied, MEC Decision 43R-MEC, 7/13/89.

8) ***District No. 1 MEBA v. WSF (Mueller),* 263-MEC (2001)**

MEC Case No. 12-00

Employer denied grievant's claim for chief engineer wages after working as relief for Staff Chief Engineer, paying him at assistant engineer wages instead. (Grievant was on the Relief Assistant Engineers' Roster and held a Chief Engineer's license.) Collective bargaining agreement, Section 2.1, requires that an assistant engineer successfully complete a break-in period and be signed-off by the proper authority. Grievant was never qualified pursuant to the contract. Thus, he could not work as a chief engineer, but only as an assistant engineer. Therefore, grievant could not be paid as a chief engineer. Grievance denied.

9) ***District No. 1 MEBA v. WSF (Ness)*, 273-MEC (2001)**

MEC Case No. 42-00

In face of conflicting provisions of contract, parties' intention, evidenced by long established past practice is controlling factor. Grievance denied.

10) ***IBU v. WSF (Chiswell)*, 350-MEC (2002)**

MEC Case No. 23-02

Grievant properly paid double-time under Contract Rule 11.02 for working extended shift—additional hour at end of shift. Grievance denied.

11) ***IBU v. WSF (Thomas)*, 366-MEC (2003)**

MEC Case No. 25-03

Grievant, AB relief employee, correctly paid 3 hours overtime, pursuant to IBU/WSF CBA Rule 11.02, for extended work on the PUYALLUP following the end of her shift on the SPOKANE. Grievant was NOT called back according to Rule 11.05 and was not entitled to minimum 8 hours overtime. Grievance denied.

12) ***IBU v. WSF*, 391-MEC (2003)**

MEC Case No. 49-03

"Early call-out"—deck watches called out early on March 1, 2, 8 and 9, 2003, claimed one hour of pay under the early call-out Rule 11.03. Each of the changes in starting time on those dates for the deck regular scheduled shift was less than one hour. Appendix A Deck Department Personnel, Rule 1.04 is applicable. Since the early call-out was less than three hours, no overtime is payable. Grievance denied.

13) ***IBU v. WSF (Calabrese)*, 396-MEC (2003)**

MEC Case No. 43-03

Contract between the parties does not mandate payment of AB overtime wages to Grievant AB Calabrese after he performed OS work. The practice of the parties does not alter the general contractual requirement that employees are paid according to the position occupied.

14) *IBU v. WSF (Hobbs)*, 398-MEC (2004)

MEC Case No. 45-02

MEC has jurisdiction over the case; the parties never finalized a settlement agreement dated June 10, 2002. There is no basis in contract or past practice that would require payment of overtime or early callout time to Grievant Hobbs or his crewmembers for attending WSF provided training on April 26, 2000. WSF did not require grievants to work on their day off.

15) *District No. 1 MEBA v. WSF (Williams)*, 149-MEC (1996)

MEC Case No. 23-95

On-call unlicensed engine room employees are entitled to overtime pay for hours worked between 80 and 84 in each two-week pay period, pursuant to Rule 12.02(1). The rule is clear and unambiguous. Grievance sustained.

16) *IBU v. WSF*, 424-MEC (2004)

MEC Case No. 54-04

At the end of a regular shift, the deck crew was ordered to make an extra run of two hours, for which they were paid overtime. There were too many cars on the dock for the remaining regular run of the day to carry. The crew requested not to work the overtime pursuant to Rule 11.04. WSF's decision not to attempt to obtain qualified replacement deck crew was justified as the time frame was 2½ hours and the boat was in Anacortes. This qualified as a "bona fide emergency," requiring deck crew to work two hours overtime on the extra run.

17) ***IBU v. WSF*****, 473-MEC (2006)**

MEC Case No. 57-04

The Anacortes E-watch schedule established in December 2003 required employees to work 9 hour days and 7 hour, 20 minute days in a two-week schedule. On certain days, employees were required to work more than 16 hours in a 27 hour period.

The arbitrator

a. Found that WSF did not properly communicate with IBU as contemplated by the contract regarding establishment of Anacortes E-watch scheduling.

b. Found that WSF cannot require an employee to be on duty or work more than 16 hours in a 27 hour period without incurring an overtime penalty. WSF ordered to pay affected employees overtime for work in excess of 16 hours in 27 hour period.

c. Denied IBU's claim that employees on duty 9 hours should be paid 1 hour overtime, and that employees on duty 7 hours, 20 minutes should be paid 8 hours straight time.

18) ***MEBA v. WSF*****, 491-MEC (2006)**

MEC Case 20-04

WSF's motion to dismiss, on grounds MEBA abandoned the case by failing to perform under the parties' settlement agreement, denied; both parties had equal obligation to pursue resolution of the scheduling matter.

The August 10, 2003 engine room schedule for B-week night shift on the Wenatchee and A-week night shift on the Tacoma was found to be in violation of the collective bargaining agreement—it resulted in the expectancy of excess hours beyond the regular 12-hour per day schedule.

WSF was in violation of Section 9 of the collective bargaining agreement when it failed to pay appropriate overtime to engineers who worked the above night shifts. WSF ordered to pay engineers on the shifts in question overtime pay after 12 hours for each day such engineers were scheduled to work in excess of 12½ hours required by the August 10, 2003 schedule.

19) *IBU v. WSF*, 506-MEC (2007)

MEC Case 4-07

The Arbitrator sustained IBU's grievance alleging WSF failed to pay IBU deck crew the shoregang rate required by contract (App. A, Rules 4.01, 4.02) for work performed in Eagle Harbor or in shipyards. The Arbitrator's ruling is based on clear language of the contract, no established past practice, specific contract language noting exceptions to when shoregang rate is paid, and testimony as to nature of the work involved.

20) *MEBA v. WSF*, 563-MEC (2009)

MEC Case 16-08

MEBA's (Marine Engineers' Beneficial Association) wage claim for watch turnover duties is sustained. Washington State Ferries ordered to compensate engine room employees for lost wages for unpaid watch turnover from April 9, 2007 to date calculations completed. The Arbitrator also awarded MEBA the attorney's fees incurred in filing the grievance. Double damages were denied.

This matter began as a class action lawsuit, filed by some MEBA members. In the past, WSF has not paid employees for the few minutes spent updating the on-coming crew at the end of a shift. Superior Court ordered WSF to pay wages, double damages and attorney's fees. The Washington State Court of Appeals reversed, holding that the employees should have sought a remedy through procedures in the collective bargaining agreement. However, the Court of Appeals also held that "[W]atch changes are a regular, essential and required work activity for which the State must compensate under the CBA. And whether watch changes are work or whether watch changes must be compensated is not an issue for future grievance or arbitration." *Davis et al. v. Washington Dept. of Transportation*, No. 34352-5-II (2007).

NOTE: On 8/12/09, WSF filed a Petition for Reconsideration of Attorney's Fees. On 9/8/09, MEC entered Order Denying WSF's Petition for Reconsideration of Attorney's Fees, Dec. No. 563-A-MEC.

On 10/8/09, WSF filed a petition with Thurston Co. Superior Court for review of MEC's decision awarding attorney's fees.

B. Plain and Unambiguous Contract Language

1) ***IBU v. WSF (Linn)*, 224-MEC (2000)**
MEC Case No. 7-99
Grievance requesting re-bid for jobs denied on ground that plain, unambiguous and controlling language of collective bargaining agreement must be served and cannot be changed by an arbitrator with evasion, avoidance or disregard. The clear and usual meaning of the verbiage is followed, whether the consequences thereof were expected by the parties or not.

2) ***Boilermakers 104 v. WSF*, 159-MEC (1996)**
MEC Case No. 7-96
Union withdrew, employee appeared pro se, advanced contention as to cost of living raise per legislative provision, notwithstanding clear and unambiguous contract language to the contrary. Case dismissed, raise denied.

3) ***IBU v. WSF (Nisqually M-Watch)*, 270-MEC (2001)**
MEC Case No. 38-00
Departure from plain language of the contract concerned not appropriate in favor of a cited "rule" of construction, which is not the subject of agreement between the parties. Grievances upheld. Contractually specified remedy accorded to grievants.

4) ***IBU v. WSF (Moser)*, 327-MEC (2002)**
MEC Case No. 21-02
Issue was whether the practice of parties to IBU/WSF contract required WSF to pay time off at rate of last position assigned prior to time off. Holding: Supplemental rule negotiated for terminal/information department employees provides time off pay be calculated at pay rate assigned by WSF and not at last classification worked.

C. Hazardous Materials Work

1) ***IBU v. WSF (Allison & Steck)*, 216-MEC (1999)**
MEC Case No. 6-99
Plain language rule invoked to award penalty pay, under contract, to two unit employees for manually transferring gas cans and biohazardous containers aboard WSF vessels. Grievance sustained; employees to be paid accordingly.

D. Discipline - Discharge - Probation.

1) ***IBU v. WSF (Dunlap)*, 215-MEC (1999)**
MEC Case No. 5-99
Alleged "last chance agreement," in a discharge case, not definitive in the provisions, therefore not enforced. Just cause not proven by the circumstances overall. Reinstated, with benefits, wages restored in part.

2) ***District No. 1, MEBA v. WSF (Mitalas)*, 93-MEC (1993)**
MEC Case No. 8-92
Alleged insubordination of alternate staff chief engineer. Suspension of three days without pay for allegedly disobeying a direct order and unnecessarily delaying trouble shooting on HIYU reversed for lack of sufficient proof by employer in accord with its burden, citing Koven and Smith, Just *Cause, the Seven Tests.*

3) ***District No. 1, MEBA v. WSF (Warren)*, 97-MEC (1993)**
MEC Case No. 13-92
Discharge for alleged absenteeism, tardiness, loafing during work hours, "alcoholism" affirmed under just cause standard.

4) ***Mulcahy v. WSF*, 106-MEC (1994)**
MEC Case No. 5-93
Allegation of "discipline" in form of warning and delay and incomplete investigation by WSF of his complaint for violation of collective bargaining agreement with MEBA. Profanity in anger just cause for discipline. *Just Cause, the Seven Tests* cited. Charge that employer delayed investigation upheld, other aspects of complaint denied. Warning letter to be retained in file for two years conditionally.

5) ***Shipwrights and Joiners Local 1184 v. WSF (Nannery)*, 113-MEC (1994)**
MEC Case No. 9-93
Shop foreman discharged for alleged falsification of time records, misuse of public funds. Discharge reversed primarily on basis that there was lack of due process demonstrated by the proof in that grievant was not advised "in reasonable detail" of charges against him and accorded the chance to tell his side of the story and, also, failure of proof as to substance of charges. Reinstatement directed with restoration of benefits and earnings lost, less interim wages, if any.

6) ***MEBA, District No. 1 v. WSF (Little)*, 140-MEC (1995)**
MEC Case No. 2-95
Employee "demoted" (MEC Case 3-85 cited), without documentation of "just cause" or other significant evidence thereof from employer. Reversed, with restoration of benefits.

7) ***MEBA, District No. 1 v. WSF (Caspers & Gallagher)*, 119-MEC** (1994)
MEC Case No. 8-93
Suspensions without pay, reversed, or reduced but one suspension allowed as potential reference in any future disciplinary situation of the same or similar content. Award amended, MEC Case No. 8-93, Decision No. 122-MEC (1994); essentials thereof remained. Power disclaimed by MEC to rehear, interpret or amend earlier award in MEC Case 4-95, Decision No. 134 (1995).

8) ***MEBA v. WSF (Sullivan)*, 1-MEC (1983)**
MEC Case No. 1-82, 11-1-83 (Arbitration).
Member dispatched to HIYU in emergency situation to replace injured chief engineer but was not qualified. Emergent situation did not permit normal break in, therefore his return to union hall by employer allowed, but was awarded pay for the two hours on the job before so relieved.

9) ***Weythman v. WSF*, 5-MEC (1984)**
MEC Case No. 3-83
Discipline. Suspension by employer for 80 hours, alleged refusal to obey direct order. 80-hour suspension sustained. "Immediate" suspension of time on day before 80 hours commenced reversed.

10) ***Hansen v. WSF*, 7-MEC (1985)**
MEC Case No. 4-83
Discharge of electrician held to be for cause and sustained on the ground of extended period of documented job performance problems, communication of these problems to the grievant over a reasonable period of time, failure of grievant to improve performance and application of progressive discipline per employer published policy. Vigorous dissent by Commissioner Stewart.

11) *MEBA v. WSF (Harpham)*, 10-MEC (1986)

MEC Case No. 3-85, Decision No. 10-MEC, 3-7-86 (Arbitration). Alternate Staff Chief Engineer and MEBA challenged letter of reprimand and demotion served upon and assessed against him. Ruling: letter to be withdrawn and expunged but demotion allowed dependent upon employer's indicating "in any way" that employee was responsible "in any way" for damage to WSF deck.

12) *Brookens v. WSF*, 11-MEC (1986)

MEC Case No. 5-85

Allegation of unjust discharge barred by previous settlement of employer with grievant. Grievance dismissed on motion for summary judgment.

13) *Griffith v. WSF*, 24-MEC (1986)

MEC Case No. 12-85

Multiplicity of altercations with WSF passengers involving ticket taker at Colman Dock, along with numerous ineffective warnings to that employee, resulted in his discharge for cause, affirmed here.

14) *MEBA v. WSF (Fay)*, 26-MEC (1987)

MEC Case No. 6-86

Grievant discharged by employer <u>during his contractual probationary period</u> without evidence of an arbitrary or capricious decision on its part and was not violative of any material rule so as to be beyond management's prerogative. Grievance dismissed accordingly.

15) *MM&P v. WSF (Lee)*, 30-MEC (1987)

MEC Case No. 7-86

Captain of HYAK suspended by WSF for ten days because that boat ran aground during his watch. Captain, as holder of the ultimate authority held accountable, although he was not in wheelhouse when grounding took place. Length of suspension stood, insufficient evidence as to a more appropriate alternative.

16) *Olwell v. WSF*, 50-MEC (1990)

MEC Case No. 5-89

Termination of probationary employee, during her probation period, by the employer upheld in harmony with cited rule of *MEBA v. WSF (Fay)*, Case No. 6-86. Grievance of discharged employee dismissed. Concurring opinion records disagreement as to some components of the majority's decision but agrees with the dispositive conclusion that probationary grievant was terminated for " a bona-fide reason" and "therefore" has no "right to file a grievance" under the particular union (IBU) contract.

17) *Dahl, Ray v. WSF*, 69-MEC (1991)

MEC Case No. 14-90

Two captains were suspended, without pay, for five days for lack of cleaning and lack of alert crew members, on their respective ferries, while the vessels were in operation. Each filed grievances. Consolidation for hearing effected. Contractual requirement that there be "cause" for disciplinary action against an employee by employer equates with a necessity for "just cause," "justifiable cause" or "proper cause." Discipline for cause requires specific prior notice to the employee concerned of prospective penalties related to identified "faulty performance" on the job. Notice must be clear enough, "to let employees know how misconduct will be punished." These principles violated, suspensions reversed accordingly, with back pay and "all related monetary benefits." Reconsideration by agreement, Decision No 73-MEC, Decision No. 69 affirmed, 9-26-91.

18) *WSF v. Jacobsen*, 70-MEC (1991)

MEC Case No. 20-90

WSF's claim, for recovery of travel pay and mileage paid to employee erroneously, dismissed, on employee's motion, as untimely, under collective bargaining contract, but, holding denied attorney's fees to the employee, in accord with consistent policy, whereby such fees will not be awarded in absence of, "premeditated, malicious, or evil intention" on the party from whom the fees are sought. Affirmed by Superior Court, 11/7/94.

19) ***MEBA v. WSF (Herz),* 251-MEC (2000)**

MEC Case No. 10-00

Discipline of Relief Chief Engineer for intentionally touching, slapping or pushing two unlicensed crewmembers was sustained. Grievant suspended without pay for one week, directed to attend anger management class and given "Last Chance Warning" regarding any further violation of Rule 13 of WSF's Code of Conduct. Last Chance Warning does not preclude arbitration in future. Weingarten and Loudermill requirements met. "Just Cause" standards met.

20) ***IBU v. WSF (Gregory)*, 276-MEC (2001)**

MEC Case No. 29-00

Arbitrator reduced employer's three-year demotion of grievant from ticket seller to traffic attendant for Code of Conduct violation concerning money and safes. Grievant's discipline reduced to 15 months. Additional factor of health considered; unfit for duty for over one year at time of award.

21) ***Dist. No. 1 MEBA v. WSF (Daft)*, 415-MEC (2004)**

MEC Case No. 30-04

Assistant Engineer discharged for alleged poor performance and refusal to complete the vessel familiarization report. Discharge reversed on the basis that "just cause" did not exist. There was a lack of notice to employee, no evidence of insubordination, no meaningful investigation and a deliberate attempt to constructively discharge the employee. WSF found to have violated Collective Bargaining Agreement, WSF Code of Conduct, WSF Human Resource Handbook.

22) ***IBU v. WSF (Wells)*, 430-MEC (2004)**

MEC Case No. 67-04

Ticket seller was not discharged for just cause. Evidence provided was confusing and contradictory. No independent investigation of the facts by anyone who had not made up their mind. Employer did not establish "preponderance of evidence," clear and convincing" evidence, or "beyond a reasonable doubt" standard. Grievance sustained.

23) ***IBU v. WSF (Dezihan)*, 450-MEC (2005)**

MEC Case No. 22-05

Ticket seller with history of poor performance terminated for alleged failure to perform his duties by allowing situation to occur where passengers were instructed to board ferry without paying fares. Grievant found to have created chaotic situation, failed to collect fares and failed to secure assistance to regain control of situation. Termination affirmed under just cause, the collective bargaining agreement and WSF Policies and Procedures. Grievance denied.

24) ***Sue Moser v. WSF*, 492-MEC (2006)**

MEC Case 3-06

Probationary employee demoted, due to tardiness, from Terminal Supervisor position to former position as Terminal Attendant. Neither of the unions representing those job classifications (IBU and FASPAA) represented Ms. Moser in arbitration; each of the collective bargaining agreements exempted probationary separations from the contractual grievance process.

The Arbitrator found: 1) the Commission had jurisdiction to hear the matter; 2) Ms. Moser's removal from Terminal Supervisor position during her probationary period met the standard of being based on a "bona fide reason." Grievance denied.

25) ***IBU v. WSF (Jackson)*, 518-MEC (2007)**

MEC Case 37-05

The Arbitrator upheld WSF's discharge of Romaine Jackson for theft while working as a Ticket Seller. However, as a result of over zealous enforcement, the small amount of money at issue and the substantial passage of time, the Arbitrator ordered WSF to consider Mr. Jackson eligible to apply for a Traffic Attendant position. Remedy clarified 8/1/07 by Decision No. 518-A.

E. Seniority

1) ***Beres et al v. WSF (IBU, Intervenor)*, 2-MEC (1984)**
MEC Case No. 3-82 through 13-82
Arbitration award determined seniority consequences, under the applicable rules, of change in the status of then current employees, resultant from restoration of Hood Canal Bridge along with budgetary cuts. Seniority did not "transfer" between IBU, MM&P bargaining units. (Decision No. 2 reissued, as modified 6/29/84.)

2) ***Downing v. WSF*, 4-MEC (1984)**
MEC Case No. 2-83
WSF employee charged WSF with giving him incorrect information as to effect of seniority provisions in the applicable collective bargaining contract; however, complaint dismissed on basis that grievance procedure of that contract not invoked. (Employee's letter regarded as petition for rehearing, rehearing scheduled, employee did not appear, case dismissed in accord with WAC 316-65-535, Decision 4-A MEC, (1984); Employee's second request for reconsideration granted to comply with due process. Hearing held, case dismissed with (1985). Reversed by Superior Court. Rehearing case dismissed, Decision 4-D MEC, on the merits, (1987). Petition for Review denied, MEC Case 2-87 (1987).

3) ***IBU v. WSF (Skogen)*, 6-MEC (1985)**
MEC Case No. 6-83
Arbitration award determined that in accord with past practice, ambiguous language in the governing contract should be read to say that appointments to year-round positions are based on length of service within the department concerned, regardless of total length of service, citing *Steelworkers v. Warrior and Gulf*, 363 US 574.

Motion for Reconsideration from Skogen denied on the basis of and in accord with authority summarized by the Elkouris, *How Arbitration Works*, p 299 - "once an arbitrator has declared its decision, its authority and jurisdiction is terminated" save for correction of "clerical mistakes or arithmetic errors of computation." See *Hall v. Seattle*, 24 Wn. App. 357, also cited by arbitrator. (Decision No. 6A-MEC)

4) ***Wheeler v. WSF*, 8-MEC (1985)**

MEC Case No. 7-84

At time of this decision, represented employee did not need permission of the union (MM&P) to go to arbitration over the propriety of her "credited" seniority date. After granting MM&P motion to intervene, MEC granted also the union's request for summary judgment (supported by the employer) on basis that period for protest of listed seniority had run against the grievant requiring dismissal of her complaint. (Decision 8A-MEC, 12/3/85)

5) ***Teamsters Local Union 117 v. WSF (Stewart)*, 9-MEC (1985)**

MEC Case No. 9-84

Contentions for temporary storekeeper (1) that as most senior of temporaries, he was entitled to first call for temporary work, (2) that he was entitled to permanent status as replacement for two "temporaries" and that the permanent employee issue had been raised properly before the arbitration. Award returned for employer, grievance denied.

6) ***MEBA v. WSF (McLaughlin),* 123-MEC (2000)**

MEC Case No. 3-00

The case dealt with the impact of the U.S. Coast Guard's endorsement of the Engineer's license and seniority placement of employees on the Engineers' Seniority List. Such endorsements are required before employees are eligible to bid for higher-level positions with WSF. Petition for Reconsideration denied as 1) untimely and 2) unlikely to have prevailed in any event as information submitted in support did not constitute "new evidence." Decision No. 243-MEC, 9/11/00.

7) ***MEBA v. WSF (Schweyen),* 242-MEC (2000)**

MEC Case No. 7-00

The issue presented was whether the U.S. Coast Guard endorsement issued to Oiler Schweyen, permitted him to be placed on the Engineers' Seniority List/Oilers' Promotional Roster, established by the contract between the parties. Case held that grievance was presented untimely, but even if it had been properly filed, the merits would be controlled by holding in Decision No. 238-MEC, and case dismissed.

8) *IBU v. WSF*, 289-MEC (2001)

MEC Case No. 30-00

Seniority is based upon classification date and department date, which can be different, for on-call terminal employees. Seniority is spelled out in three different ways in the WSF/IBU CBA, Rule 21.04 to arrive at the employee's seniority date.

9) *IBU v. WSF*, 360-MEC (2003)

MEC Case No. 12-03

Travel time and mileage from Edmonds to Anacortes properly denied to on-call, part-time employee under Rule 10A.02. However, employee's seniority became effective when he was assigned to a terminal and accepted the assignment. Violation of seniority rights sustained.

F. Assignment of Work

1) *Machinists Local 79 v. WSF*, 51-MEC (1990)

MEC Case No. 7-89
Six grievances from machinists claimed misassignment of engine room work while vessels were in "lay-up" status at Eagle Harbor, citing a special memo recording agreement extra to the basic contract in support of their contention. Memo held to be silent on issue at hand, reference to "past practice" designated as dispositive by decision, grievance denied.

2) *IBU v. WSF (Berryman)*, 535-MEC (2007

MEC Cases 7-07 (GRV) and 20-07 (ULP)
WSF found to have violated the parties' negotiated language in the Respiratory Protection Program (RPP) when it required Quentin Berryman to shave off his mustache on April 29, 2006 or be denied work as an Able Bodied Seaman (AB). WSF refused to even fit test grievant unless he shaved. Due to a medical condition, grievant had been working as an exempt Ordinary Seaman (OS) and was not required to shave. Prior to this event, grievant had qualified for the respirator program and AB work with the same facial hair that excluded him after that date.

a. Grievance sustained. Mr. Berryman is to be fit tested by WSF safety personnel (without shaving) with a union representative present. If he does not pass, he is to be compensated in accordance with the parties' Agreement at the AB rate of pay from the date of this violation.

b. WSF directed to delay action on Medical Evaluation Questionnaire issues until the parties meet to discuss changes to the RPP.

c. Arbitrator/Hearing Examiner found no unfair labor practice.

*Decision on Petition for Reconsideration, Affirming Dec. 535-MEC, Decision No. 535-A-MEC, entered 3/20/08. (Arbitrator's decision related to medical evaluation questionnaire issues affirmed.)

3) IBU v. WSF, 537-MEC (2008)

MEC Case 39-05

WSF found to have violated Rule 29.01 of the IBU/WSF collective bargaining agreement when it directed the ILLAHEE to tie-up each night in Anacortes instead of Friday Harbor, without paying continuous time to IBU members on K, L and M touring watches until they returned to Friday Harbor.

Grievance sustained. Affected employees to be compensated for 8-hour rest period at straight time rate for each night the ILLAHEE was at tie-up in Anacortes.

On 2/2/08, IBU filed Petition for Reconsideration seeking interest on pay award. Petition denied.

G. Past Practice

1) ***IBU v. WSF*, 282-MEC (2001)**
   MEC Case No. 37-00
   When mandated by US Coast Guard to eliminate triple-back watches, WSF made changes to schedules, which affected some on-call employees. James Russell, grievant in Case 37-00, lost work opportunity because of schedule change. IBU claimed change was unilateral and violative (Case 24-00). Final elimination of triple-back watches occurred after full discussion opportunity with IBU over impact. MEC found no ULP violation and no contract violation.

2) ***IBU v. WSF (Bennett, Lodell, Numanap)*, 340-MEC (2002)**
   MEC Case No. 41-02
   Past practice not established for travel time/mileage claim by North Sound Relief Crew. WSF corrected error in payment when discovered. Contract does not define North Sound Relief Crew as relief employees. Grievance denied.

3) ***IBU v. WSF (Williams & Dickson)*, 401-MEC (2004)**
   MEC Case No. 8-04
   Pursuant to 20-plus years of past practice, deck watch crewmembers are not entitled to penalty pay for normal routine weekly clean-up of bird droppings/excrement from the weather decks. Rule 30 contract language, "when required to clean up excrement" applies to occasions when the Master or Chief Mate orders crew to clean up an unusually large amount of bird droppings. Grievance sustained.

H. When Position Open For Bid?

1) ***Mulcahy v. WSF*, 105-MEC (1994)**
   MEC Case No. 4-93
   With respect to competing job bids, dependant on seniority for the award, under MEBA contract, job remained "open" until it was filled, without dispositive reference to which bid was filed when.

2) ***IBU v. WSF*, 130-MEC (1995)**
   MEC Case No. 12-93
   Grievances, 12 in number, submitted for arbitration in situation resultant from vessels collision with dock. None "deemed granted" under contract. Job bidding not required on temporary jobs of less than 30 days, agreement as to pay to crew on one vessel affirmed, no interest, no attorneys' fees allowed as requested by union.

I. Health Care

1) ***District No.1 MEBA v. WSF*, 137-MEC (1995)**
   MEC Case No. 15-94
   Agreement with union, as to WSF's monthly monetary contribution to health care plan enforced under RCW 47.64.270, although amount larger than the legislature specified for such purposes. RCW 47.64.120 cited as germane and dispositive.

2) ***District No. 1 MEBA v. WSF (Williams)*, 305-MEC (2002)**
   MEC Case No. 13-00
   Case presented an interpretation of parties' settlement of a grievance involving the payment of back health care insurance. Grievant claimed WSF agreed to pay back coverage. WSF maintained Grievant was solely responsible. MEC found WSF fulfilled its obligations under settlement of grievance. Attorney fees were rejected.

J. Bargaining Unit Work

1) ***Teamsters Local 117 v. WSF*, 148-MEC (1996)**
MEC Case 20-95
Employer violated Recognition clause of collective bargaining contract by including storekeeper work, in duties of new and unilaterally established material coordinator position, without bargaining with the union. *Status quo ante* directed.

K. Time Limits - Grievance Procedure

1) ***MEBA, District No. 1 v. WSF (Williams)*, 149-MEC (1996)**
MEC Case No. 23-95
Decided, in this arbitration case regarding award of negotiated compensation to specified members, that contractual limitation of time for filing an effective grievance can be and was waived by employer by withholding reference thereto until post-hearing brief; held also, in this respect, that failure to compensate per the labor contract, renewed itself, as a valid basis for a grievance every pay period.

L. Minimum Manning

1) ***MEBA v. WSF*, 34-MEC (1987)**
MEC Case No. 8-86
In grievance arbitration where issue was what its manning scale and working schedule ought to be on M/V EXPRESS, MEC need not defer to PERC nor regard itself as preempted by the Coast Guard in determining the minimum manning level established by collective bargaining agreement concerned. When contract language is not clear and unambiguous, MEC, as an arbitrator, must turn to past practice to ascertain intentions of such agreement. Award returned accordingly.

2) ***IBU v. WSF (Loser),* 347-MEC (2002)**
MEC Case No. 38-02
Proper manning of ferry, when operated after its regular schedule, with fuel truck and driver aboard, governed by minimum manning language of contract. Truck driver had legal status as passenger. The event at issue does not fall under exceptions to manning requirements because fueling scheduled in advance (not emergency) and movement of vessel did not occur in vicinity of Eagle Harbor. Grievance sustained; pay awarded.

3) ***IBU v. WSF*, 391-MEC (2003)**

MEC Case No. 48-03

"Short crew pay"—vessel moved with a Master and 2 ABs. Vessel "in service" and should have had a full crew per Rule 7.03. Remedy—minimum deck crew is six; two ABs were used instead. An hour of straight time pay for the four deck crewmembers not called out to be divided between the two ABs who did the work, per Rule 7.04.

4) ***IBU v. WSF*, 435-MEC (2005)**

35MEC Case No. 46-04

When a ferry is moving to reposition at the same terminal, if there are any people aboard who are passengers, or could in any way be passengers, whether they paid for passage or not (even crewmembers who are not working or standing a watch could be considered passengers) there must be a full complement of deck crew aboard the vessel. The ferry would be "in service" and moving, even if it left the dock, went out in the stream and returned to the same dock or slip.

When tied up and secured while taking on fuel, the truck driver is considered a passenger, but a deck crew is not needed as long as the vessel is not underway/moving. No breach of contract found, or violation of MEC Decisions 347 and 391.

M. Enforcement of Contract Language—Impact of State Law

1) ***Dist. No. 1 MEBA v. WSF*, 382-MEC (2003)**

MEC Case No. 22-03

Political contribution deduction contract language rendered invalid by operation of law (Fair Campaign Practices Act). No contractual violation found; grievance dismissed.

N. Leave of Absence—Return to Work

1) **IBU v. WSF (Pamela Gill), 536-MEC (2008)**
MEC Case 16-07
WSF found to have violated the collective bargaining agreement when it failed to return grievant to work as an Ordinary Seaman following recovery from on-the-job injury. Grievant's doctor had certified to WSF that she met and could perform essential job functions of an OS. (Jones Act settlement following Grievant's injury did not limit her contractual rights.)

Grievance sustained. Grievant returned to work as an OS to be made whole from November 2006, when she was certified fit for full-time duty.

7. REQUEST FOR REVIEW OF FERRY EMPLOYEE CONTRACTS UNDER RCW 47.64.190

1) *Dept. of Transportation's Request for Review under RCW 47.64.190*, 466-MEC (2005)

MEC Case No. 13-06

The Dept. of Transportation requested review of ferry employee contracts under RCW 47.64.190, seeking to have wages reduced for all marine employees represented by unions. The Commission dismissed Dept. of Transportation's request for review of ferry employee contracts for the following reasons:

a. The process was not properly initiated. DOT's assertion that the agreements *may* exceed the budgetary allocation was insufficient to demonstrate that the Secretary had "ascertained" that the agreements violated RCW 47.64.180.

b. The request for review was not properly made two and one-half years after the close of the relevant biennium.

c. The Department did not make a good faith effort to obtain funding to implement the terms of the 2001-2003 agreements as required by RCW 47.64.180.

d. The Department did not demonstrate that implementation of the 2001-2003 agreements and awards would exceed the statutory limitations on Dept. of Transportation funds, pursuant to RCW 47.64.180.

NOTE: On 1/9/06, DOT Marine Division filed a petition for judicial review of Decision No. 466-MEC in Thurston County Superior Court. On or about 4/21/06, the DOT Marine Division withdrew its petition.