

What You Should Know About the
Marine Employees'
Commission

Chapter 47.64 RCW
Title 316 WAC



State of Washington
Marine Employees' Commission
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John R. Swanson—Chairman
Patricia A. Warren—Commissioner
John M. Cox—Commissioner

The Washington State Marine Employees' Commission

Purpose

The *purpose* of the Marine Employees' Commission (MEC) is to:

- ◆ Adjust all complaints, grievances and disputes between labor and management arising from ferry system operations
- ◆ Determine bargaining units
- ◆ Certify fair representation organizations
- ◆ Provide impasse mediation
- ◆ Certify issues for interest arbitration
- ◆ Provide a biennial salary survey

Goal

The *goal* is to provide the specialized attention required to resolve the unique and complex labor relations questions that arise in the operation of Washington State Ferries (WSF).

Objective

The Commission's *objective* is to ensure that the operation of the ferry system is not disrupted by labor disputes. WSF is very important to transportation, tourism and the overall economy of the Puget Sound area.

Background

Washington State Ferries is the nation's largest ferry fleet. WSF carries more than 25 million passengers each year (more than Amtrak railroad carries nationwide) and operates 24 hours a day, seven days a week, so labor disputes need to be resolved quickly. There has been labor peace within the system since 1982.

The MEC has had a long history of working with ferry employees. All of the Commissioners are trained administrative law judges. The three Commissioners and two staff members work part-time.

Questions?

Please call (360) 586-6354 and we will be glad to assist you.

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CONTENTS

Page

Marine Employees Commission

Who is covered by Chapter 47.64 RCW?.....	1
Disputes handled by the Marine Employees' Commission.....	1

Grievance Arbitration 2

Unfair Labor Practice Charges..... 2

Determining the Appropriate Dispute Process 3

The Act does not cover all management-labor problems	3
--	---

Resolving a Dispute 3

Who may file a case?	3
----------------------------	---

Forms	3
-------------	---

Filing request for grievance arbitration or unfair labor practice complaint with the MEC....	4
--	---

A copy of the charge must be sent to each party	4
---	---

What happens when you file a dispute with the MEC?.....	4
---	---

Resolving Your Case Without A Formal Proceeding 4

Settlement conference, withdrawal, dismissal.....	4
---	---

Formal Proceedings Before the MEC..... 5

Hearing Notice.....	5
---------------------	---

The Hearing	5
-------------------	---

Hearing Procedures	5
--------------------------	---

Decisions.....	6
----------------	---

Appeals from Decisions and Orders.....	6
--	---

MEC's Additional Responsibilities 6

Representation Proceedings under the MEC.....	6
---	---

Petitions before the MEC for Clarification of Existing Bargaining Units	6
---	---

Proceedings before the MEC Regarding Union Security Disputes	6
--	---

Other Miscellaneous Duties Performed by the MEC	6
---	---

How Do I Get More Information About the MEC? 7

Chapter 47.64 Revised Code of Washington (RCW)

Chapter 47.64 RCW is the state law, which sets forth labor relations policy between the Washington State Ferries and labor organizations representing Washington state ferry employees. The law's declared purpose is to provide efficient, safe, reliable and reasonably priced ferry service, uninterrupted by strikes or work stoppages and to protect the rights of state ferry employees to organize and bargain collectively. The Marine Employees'—Public Employment Relations Act declares that sound labor relations are essential to the development of a ferry system which will best serve the interests of the people of the State of Washington.

Title 316 Washington Administrative Code (WAC)

Title 316 WAC is the Rules of Procedure which govern the Marine Employees' Commission.

The Marine Employees' Commission

In 1983, the Washington State Legislature established the Marine Employees' Commission (MEC) to protect the rights prescribed by Chapter 47.64 RCW—rights of employers, employees, labor organizations, and the public as well. The three-member Commission resolves grievance disputes, investigates and decides unfair labor practices cases, determines questions concerning representation, and provides a biennial salary survey to the parties to collective bargaining. The MEC staff is located in Olympia.

Who is covered by Chapter 47.64 RCW?

Chapter 47.64 covers disputes between employees of the Washington State Ferries (WSF) and their bargaining representatives and WSF management.

Disputes handled by the Marine Employees' Commission (MEC)

The MEC handles different kinds of cases. Most of the collective bargaining agreements between WSF and ferry employee organizations provide that by mutual agreement, the parties may refer unresolved grievances to the MEC for arbitration. A union (or the ferry system) may file a grievance with the MEC after exhausting all contractual dispute resolution steps. The MEC also investigates and resolves unfair labor practice complaints. A union or the ferry system may contend that the other is unlawfully refusing to bargain with it for a new contract. An individual ferry system employee may allege that the union is not representing him or her fairly.¹

¹ Other dispute resolution mechanisms provided in the law include: (1) questions concerning representation; (2) questions concerning unit clarification; and (3) union security disputes. MEC also provides a biennial salary survey, and may under certain circumstances, provide for impasse mediation during contract negotiations. These topics are discussed later in this document.

Grievance Arbitration

A **grievance** is a formal statement that alleges an injury, injustice or violation of rights granted by rule, statute or collective bargaining agreement.

The parties to the collective bargaining agreements must follow and exhaust grievance procedures provided in the appropriate collective bargaining agreement. If a contract does not provide for the resolution of grievances, Chapter 316-65 Washington Administrative Code (WAC) guides the proceedings. A grievance may be filed by the ferry system, a labor union representative or, under certain circumstances, by a state ferry system employee. An arbitrator's decision on a grievance cannot change or amend the terms, conditions, or applications of the collective bargaining agreement.

MEC encourages WSF employees to seek the assistance of their union representatives to utilize dispute resolution procedures provided in the appropriate collective bargaining agreements.

Unfair Labor Practice Charges

RCW 47.64.130(1) defines the following acts by the Washington State Ferries as constituting an **unfair labor practice**:

- (a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this chapter;
- (b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: Provided, That subject to rules made by the commission pursuant to RCW 47.64.280, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;
- (c) To encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure of employment, or any term or condition of employment, but nothing contained in this subsection prevents an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to RCW 47.64.160: Provided, That nothing prohibits ferry system management from agreeing to obtain employees by referral from a lawful hiring hall operated by or participated in by a labor organization;
- (d) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this chapter;
- (e) To refuse to bargain collectively with the representatives of its employees.

Under section 47.64.130(2) RCW, a union or its agent may commit an unfair labor practice if it:

- (a) Restrains or coerces employees (i) in the exercise of rights guaranteed by this chapter: Provided, That this paragraph does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or (ii) an employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances;
- (b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;
- (c) To refuse to bargain collectively with an employer, when it is the representative of its employees subject to RCW 47.64.170.

Determining the Appropriate Dispute Process

You must determine whether it will be necessary for you to file a complaint charging unfair labor practices or to resolve your dispute by use of grievance procedures provided in a union contract. Of course, the MEC is always available to you if you have questions about how to file a case.

MEC staff may not give you legal advice. Nor may the MEC give advisory opinions with respect to the legality of particular conduct or of clauses in a contract. If you have such questions, you should consult an attorney.

If you are in doubt as to whether your case is properly before the MEC, you should seek the assistance of MEC staff.

The Act Does Not Cover All Management-Labor Problems

It is important for you to understand that the MEC remedies only the grievances and unfair labor practice charges defined in Chapter 47.64 RCW. It does not cover every single dispute that you might have, nor is it applicable to all labor disputes in which you might be involved. Some of the disputes may be covered by other statutes.

Resolving a Dispute

Who may file a case?

A case may be filed by WSF, a union, or a WSF employee. It must be filed in writing with the MEC office in Olympia.

Forms

The MEC has forms to help you bring a dispute before the Commission. When requested, MEC staff will send you these forms, as well as a copy of Chapter 47.64 RCW and the applicable Washington Administrative Code (WAC) chapters to assist you in the completion of the appropriate form. The filing of the form with the MEC begins the process to aid you in the resolution of a dispute. (RCW and WACs are also available on the MEC website—www.marineempcom.org.)

These forms are: **Request for grievance arbitration**
 Unfair labor practice complaint

You must provide certain information on the filing forms. Please make every effort to supply accurate information. Describe as clearly and concisely as possible the facts which you believe constitute a violation of the contract, rule, or law. The information you must supply includes:

1. **Your name, address, and the name and address of each party** involved in the dispute.
2. A clear, concise **statement of the facts** which you believe form the basis for your unfair labor practice complaint or request for grievance arbitration.
3. A **listing** of the subsections of Chapter 47.64 **RCW** and/or Title 316 **WAC**, or sections of the pertinent **collective bargaining agreement** alleged to have been **violated**.
4. A statement of the **remedy sought**.
5. In a request for grievance arbitration, a **statement** that indicates that you **have used and exhausted the grievance procedures** of the appropriate collective bargaining agreement before filing this request, or alternatively, **a reason why you did not use and exhaust the dispute resolution procedures**.
6. The **signature of the person filing** the request for arbitration or the complaint.

Filing A Request for Grievance Arbitration or Unfair Labor Practice Complaint with the MEC

Filing a request for grievance arbitration or unfair labor practice complaint starts the process by which the MEC will resolve your dispute. You must file the signed form with the MEC office in Olympia within the time limits set forth in the collective bargaining agreement or by rule.

Grievance request forms and unfair labor practice complaint forms may be mailed, sent by facsimile or hand-delivered to the MEC's office in Olympia.

A Copy of the Complaint Form or Grievance Request Must Be Sent to Each Party

In addition to filing the appropriate form with the MEC office, you must serve a copy of the form on each party. *Proof of service of a copy of the appropriate form on the other parties is your exclusive responsibility.*

What Happens When You File a Dispute with the MEC?

Upon filing of a complaint charging an unfair labor practice, the MEC will review your complaint to determine whether the facts, if true and provable, would constitute an unfair labor practice under RCW 47.64.130. If the MEC determines that the facts presented by you, if true and provable, would constitute an unfair labor practice, a hearing examiner will be assigned to the case.

If you file a request for grievance arbitration, MEC staff will review the form for completeness, including your indication that you have utilized and exhausted dispute mechanisms provided in your contract. Thereafter, an arbitrator may be assigned to hear or otherwise resolve the dispute.

In either instance, MEC staff will contact you to schedule a settlement conference and/or hearing.

Resolving Your Case Without A Formal Proceeding

Settlement Conference, Withdrawal, Dismissal

The MEC schedules a settlement conference in most cases filed with the agency, assigning one of the Commissioners (other than the arbitrator or hearing examiner) to act as mediator. The parties meet in an informal, private setting with the mediator to attempt to resolve the dispute. Generally, if the issue is resolved, the parties produce and sign a written agreement. If you settle your dispute prior to hearing, notify the MEC, in writing, that you wish to withdraw your case. The MEC will then issue an order closing the case.

A settlement affords you, as well as the other parties and the MEC, a means of bringing about a resolution to the dispute. It is a voluntary and speedy substitute for prolonged formal action. You should always keep the possibility in mind; it may save you time, money and hard feelings. Settlements are as varied as the circumstances of cases.

You may withdraw your case at any time prior to the close of a hearing. You might wish to do this if you become convinced that you may not be able to prove your case, or if you choose not to pursue the matter. You may contact the MEC and ask to withdraw. Upon review, MEC will dismiss the case. A new request or complaint may be filed at a later date if additional evidence of a violation becomes available.

In the firm belief that the best resolution to labor-management disputes is for the disputing parties themselves to negotiate their differences and arrive at a fair settlement, it is the policy of the MEC to encourage the parties to work toward settlement of the dispute prior to hearing.

Formal Proceedings Before the MEC

Hearing Notice

The issuance of a notice of hearing by the MEC is the beginning of formal, public disposition of a case. A notice of hearing is served by the MEC upon all parties. Service, by certified mail or facsimile with copy via U.S. mail, is made as early as possible before the hearing, and, in any case, at least seven days before the date set for the hearing.

The notice of hearing includes the name of the case, the parties involved, the authority for MEC jurisdiction, and the facts relating to the alleged violations. It also lists those provisions of Chapter 47.64 RCW or Title 316 WAC, or sections of the applicable collective bargaining agreement alleged to have been violated. The notice of hearing sets forth the time and place of the hearing of the grievance or the unfair labor practice complaint.²

The Hearing

The hearing is the formal presentation of evidence. This takes place at the date and location set forth in the notice of hearing. The arbitrator or hearing examiner serves as judge in the proceedings and is responsible for the orderly conduct of the hearing and for preserving the rights of all parties. The hearing is open to the public. All parties have the right to appear at the hearing in person and to be represented by counsel or by some other representative. You or your attorney or union representative may call, examine, and cross-examine witnesses, and may introduce into the record documentary or other evidence.

Hearing Procedures

The hearings are conducted much like a trial in a court of law. The hearing examiner or arbitrator presides over the hearing. Proceedings are recorded by a court reporter. Witnesses are called, sworn under oath, examined and cross-examined. Exhibits are introduced. If either party disagrees with the ruling of the presiding officer with respect to the conduct of the hearing, formal objection may be made to the ruling which may serve as the basis for a later appeal. If you are called as a witness, it is your duty to answer all questions properly asked of you in a forthright and clear manner without withholding pertinent facts. It is a specific violation of Chapter 47.64 RCW to discriminate against an employee who has given testimony in such a proceeding, in any way related to his/her employment.

The order of presentation of the case is determined by the presiding officer. Generally, the charging party is called upon to present its case first. A responding party will then come forward to present its defense either by contesting through its witnesses the facts presented by your witnesses, or by presenting other evidence to demonstrate that his or her action was legally justified.

² The hearing notice in an unfair labor practice also provides a date by which each respondent may answer the charges in writing. WAC 316-45-190 and 316-45-210.

Decisions

After all parties to the dispute have had the opportunity to present all pertinent evidence, the arbitrator or hearing examiner will set a date for the filing of closing briefs, unless waived, and order the hearing closed. An official hearing transcript will be prepared.³ Upon receipt of the official hearing transcript and the closing briefs of all parties, the arbitrator or hearing examiner will prepare a written decision. Thereafter, the MEC will issue a decision which sets forth its findings of facts and conclusions of law as to violations of the law or the pertinent collective bargaining agreement and which orders an appropriate remedy. A decision of the MEC is final and binding, pursuant to RCW 47.64.280(3).

Appeals from Decisions and Orders

A party who disagrees with any aspect of a decision, findings of fact, conclusions of law, or order entered by the Commission may petition for review within 30 days from the date of service of such order. To appeal a decision by the MEC, a petition must be filed in the state superior court, pursuant to Chapter 34.05 RCW, the Administrative Procedures Act, which is the exclusive means of judicial review of agency action. WAC 316-45-350 and 316-65-550 explain how to file for review of a decision by an individual hearing examiner or arbitrator.

MEC's Additional Responsibilities

Representation Proceedings Under the MEC

Chapter 316-25 WAC provides the rules by which a petition for investigation of a question concerning the representation of employees may be filed. If you have questions regarding representation proceedings, please contact the MEC office for information.

Petitions Before the MEC for Clarification of Existing Bargaining Units

Chapter 316-35 WAC governs proceedings before the MEC on petitions for clarification of existing bargaining units. If you have questions regarding the status of employees in existing WSF bargaining units, please contact the MEC office for information.

Proceedings Before the MEC Regarding Union Security Disputes

Chapter 316-75 WAC governs proceedings before the MEC relating to union security disputes arising between employees and employee organizations recognized as their bargaining representative.

Other Miscellaneous Duties Performed by the MEC

Under certain circumstances, either WSF or a union may request that the MEC appoint a mediator when the parties reach impasse while negotiating labor contracts. If the parties remain at impasse following mediation, the Commission is responsible for certifying the issues that are submitted for interest arbitration. Chapter 316-55 WAC sets forth the rules governing activities and proceedings before the MEC relative to impasse.

³ A copy of the official hearing transcript is available for referral by the parties in the MEC's office in Olympia. If you wish to purchase a copy of the transcript, you must make those arrangements with the court reporter. The MEC does not provide copies of hearing transcripts to the parties.

Finally, the MEC provides a survey of compensation, benefits and conditions of employment to the parties for their use in negotiating future collective bargaining agreements. The MEC Salary Survey Report is issued in March every even-numbered year, prior to the commencement of collective bargaining between the parties. Chapter 316-85 WAC governs proceedings before the MEC relating to the conduct of the survey and publication of its report.

How Do I Get More Information About the MEC?

Please contact the MEC staff if you have questions about how the MEC works to resolve disputes between WSF and ferry system employees. The MEC office is open Monday through Friday, from 8:00 a.m. until 5:00 p.m. The telephone number at the Olympia office is (360) 586-6354. If a staff member is not immediately available to assist you, please leave a recorded message and your call will be returned as quickly as possible.

