

ALASKA LABOR RELATIONS AGENCY
1016 WEST 6TH AVENUE, SUITE 403
P.O. BOX 107026
ANCHORAGE, ALASKA 99510-7026
(907) 269-4895
FAX (907) 269-4898

FAIRBANKS FIRE FIGHTERS ASS'N,)
LOCAL 1324, IAFF,)
Complainant,)
vs.)
CITY OF FAIRBANKS,)
Respondent.)
_____)

Case No. 04-1275-ULP

DECISION AND ORDER NO. 282

The ALRA Board (Chair Gary Bader and Member Dennis Niedermeyer.¹) heard this remand from the Alaska Superior Court on June 23, 2006, in Fairbanks. Attorney Michael MacDonald represented Complainant Fairbanks Fire Fighters Association. City Attorney Herbert Kuss represented Respondent City of Fairbanks. Hearing Examiner Mark Torgerson presided. The record closed on June 23, 2006, when the Board concluded its deliberations. On June 30, 2006, the Board issued a Bench Order notifying the parties of its decision and that a decision and order would follow.

Digest: The City of Fairbanks did not violate the parties' ground rules for negotiating a collective bargaining agreement. The lead negotiator for the City, Mayor Steve Thompson, did seek and did obtain ratification of the parties' tentative agreement. The Fire Fighters failed to prove by a preponderance of the evidence that the City committed either a per se unfair labor practice or an unfair labor practice based on the totality of the circumstances.

¹ "Two members of a panel constitute a quorum for hearing cases. Action taken by a quorum of a panel in a case is considered the action of the full board." AS 23.05.370(b).

DECISION

Statement of the Case

The Fairbanks Fire Fighters Association filed a complaint charging the City of Fairbanks with an unfair labor practice for bargaining in bad faith. The Fire Fighters alleged that the City failed to submit the complete monetary terms of the parties' ratified collective bargaining agreement to the Fairbanks City Council. The City of Fairbanks denied the charge, alleging that it submitted what the law requires. We reviewed the written record and the parties' briefing, we deliberated, and we issued a Decision and Order. (*Fairbanks Fire Fighters Ass'n vs. City of Fairbanks*, Decision and Order No. 273 (March 11, 2005). We concluded that the City did not commit an unfair labor practice because Mayor Steve Thompson presented the monetary terms of the collective bargaining agreement to the Fairbanks City Council for review, as required by AS 23.40.215. The City Council had the authority, as the legislative body for the City, to approve or reject those terms.

The Fire Fighters appealed D&O 273 to the Alaska Superior Court on March 29, 2005. On February 22, 2006,² the Court remanded the case to this Agency for determination of the following issue: "It is hereby ordered that the issue of whether the ground rules constitute an unfair labor practice be remanded to the ALRA for determination."³

Procedure in this case is governed by 8 AAC 97.340.⁴

Issues⁵

1. Did the City of Fairbanks violate the parties' ground rules for negotiating a collective bargaining agreement?
2. If the City of Fairbanks violated the ground rules, did the violation constitute either a per se unfair labor practice or an unfair labor practice based on a totality of the circumstances?

² The court did not provide this Agency with notice of the remand, and the parties did not provide the Agency with a copy of the Order until April 4, 2006.

³ We will assume that this order intended that we determine whether there was a violation of the ground rules and whether this violation constitutes an unfair labor practice. The parties established and agreed to the negotiating ground rules, and the rules themselves could not constitute an unfair labor practice.

⁴ Under 8 AAC 97.480, we are waiving the requirements of the unfair labor practice procedures contained in 8 AAC 97.220 to 8 AAC 97.250 in order to address the Alaska Superior Court's remand as expeditiously as possible. We would prefer the Agency staff investigate this issue and make a probable cause determination, but we will waive this requirement because the appeal of D&O 273 has been stayed pending issuance of this Decision and Order.

⁵ The parties agreed at hearing that the two above issues covered the court's remand.

Findings of Fact

The panel, by a preponderance of the evidence, finds the facts as follows:

1. The Fairbanks Fire Fighters Association Local 1324, IAFF (Fire Fighters), is recognized as the exclusive collective bargaining representative of the fire fighting employees of the City of Fairbanks (City).
2. When the parties' collective bargaining agreement expired, they met several times in order to establish a set of ground rules for negotiating a new agreement. The parties met four to six times for approximately three hours per session to agree upon a set of ground rules.
3. The ground rules contain two relevant provisions for purposes of this decision. The first is ground rule number five, which provides: "It is recognized by the parties that any contract negotiated cannot bind either party without City Council and Fairbanks Fire Fighters Association membership ratification. Lead negotiators agree to seek ratification of the Tentative Agreement by their constituents." The second is ground rule number 6, which provides: "Those sections or subsections which have been tentatively agreed to by both parties (and not withdrawn) shall be presented to their respective constituents for ratification. Those sections or subsections upon which a tentative agreement cannot be reached or which have not been ratified, after a further 30 consecutive day effort at negotiations, shall be subject to binding arbitration in accordance with Section 1.5 of the Working Agreement and applicable State laws."
4. The parties signed the ground rules agreement on June 16, 1996. John Eberhart signed on the City's behalf, and Mark Drygas signed for the Fire Fighters. (Jt. Exh. I, at 2).
5. The parties negotiated for a substantial period of time, meeting 109 times over a six-year period. When they initially began negotiations, James Hayes was the City's Mayor and lead negotiator. Steve Thompson succeeded Hayes as Mayor and took over as lead negotiator for the City. Thompson never read the negotiating ground rules.
6. The parties reached impasse on several proposals and eventually went through mediation and arbitration. They ultimately reached tentative agreement for a new contract. Drygas recommended that the Fire Fighters ratify the tentative agreement. The Fire Fighters voted in favor of ratification. Mayor Thompson presented the monetary terms of the agreement to the Fairbanks City Council. After debating whether to approve or reject the agreement, the Council voted and ended in a 3-3 tie. Under the City's law, Mayor Thompson voted in the event of a tie by city council members. Mayor Thompson broke the tie by voting to approve the tentative agreement.
7. The parties subsequently signed a three-year collective bargaining agreement on January 21, 2002, effective February 1, 2002, through January 31, 2005.

8. Article 3.6 of the parties' collective bargaining agreement states: "this agreement is intended to be the complete agreement between the parties. All previous written or oral agreements or letters of understanding unless incorporated into this agreement are hereby deleted. (Exhibit A, at 6, from D&O 273).

9. The City Council voted to approve the monetary terms of the parties' agreement during both the first and second years of the three-year contract.

10. Before voting on the monetary terms of the third year of the agreement, the City became aware of unexpected fiscal events that included loss of state municipal revenue sharing, larger than anticipated costs owed the State of Alaska's Public Employees Retirement System, and under-realization of real property tax revenues. (Affidavit of City Chief Financial Officer Ronald E. Woolf, from D&O 273).

11. On October 27, 2003, Mayor Thompson forwarded his budget transmittal letter for fiscal year 2004. His budget recommendations included 1) not fully funding employee contractual pay rates to offset health care plan costs beyond \$750 per month per employee, and 2) non-funding of all so-called "bonus leave." (Jt. Exh. H, from D&O 273). Thompson wrote: "I am taking the drastic step of recommending that the council not fully fund all of the monetary terms of our four labor agreements."

12. On November 1, 2003, Mayor Thompson presented his annual budget estimate to the City Council. (Thompson Affidavit, ¶ 23, from D&O 273). On November 17, 2003, Mayor Thompson introduced Ordinance No. 5554 (as substituted and amended) to adopt the fiscal year 2004 budget. (Jt. Exh. I from D&O 273). This Ordinance did not include complete funding for the Fire Fighters' contract.

13. Mayor Thompson testified he "hated" proposing less funding than the parties had agreed, but he felt compelled to do so in light of a "very scary" budget crunch in 2004.⁶ Thompson said the City laid off six people but Thompson then concluded he could not lay off anyone else, and the City would have to find other areas of the budget to cut in order to balance the budget, as required by City law. He and his staff concluded the reductions would need to come from monetary terms of collective bargaining agreements.

14. On December 22, 2003, Mayor Thompson notified the Fire Fighters and other unions that the City Council's appropriated budget did not fully fund the monetary terms of the collective bargaining agreements. "More than one of you has indicated the willingness to continue meeting to explore alternatives. Leslie Miller will be calling you for an agreeable meeting schedule: I suggest we meet at least every week." (Jt. Exh. P from D&O 273).

⁶ Thompson said he did not like doing what he did regarding reductions to agreed contracts because he ran on a platform of getting agreements with City unions and funding those agreements.

15. The parties met but could not come to any permanent agreement. The City made reductions to the monetary terms of the collective bargaining agreement with the Fire Fighters and other City unions. The Fire Fighters filed an unfair labor practice with this Agency, which heard the dispute on the written record on January 21, 2005. The Agency concluded that the Mayor did present the monetary terms of the agreement to the City Council, which is the legislative body that approves monetary terms. (Decision and Order No. 273, issued March 11, 2005).

16. The Fire Fighters appealed the Agency's decision to the Alaska Superior Court on March 29, 2005. The Court remanded the case to the Agency on February 22, 2006, to determine if the City committed an unfair labor practice related to the parties' negotiating ground rules.

ANALYSIS

The Fire Fighters contend that the City violated the parties' ground rules when the Mayor failed to present the monetary terms of the collective bargaining agreement to the City Council in the third year of the contract. The Fire Fighters contend that City's violation was either a per se unfair labor practice, or unfair labor practice based on the totality of the circumstances.⁷ The Fire Fighters argue that the ground rules required the City's lead negotiator to submit the monetary terms of the agreement to the City Council and advocate for approval.

1. Did the City of Fairbanks violate the parties' ground rules for negotiating a collective bargaining agreement?

The first question for decision is whether the City violated the parties' ground rules. The Fire Fighters argue that those ground rules require that the Mayor, on behalf of the City, submit the complete monetary terms of the parties' agreement to the City Council. The Fire Fighters argue that Mayor had a "specific contractual obligation . . . to submit and recommend ratification of the complete monetary terms of the . . . Agreement to the Council for approval. They contend that the "mutual obligations" of recommending approval and seeking ratification are "conditions precedent to the execution of a final CBA." (Fire Fighters Brief Upon Remand, at 3).

We conclude there was no violation of the ground rules. Ground Rule number five provides: "It is recognized by the parties that any contract negotiated cannot bind either party without City Council and Fairbanks Fire Fighters Association membership ratification. Lead negotiators agree to seek ratification of the Tentative Agreement by their constituents." This rule "recognized" that neither party was bound by a negotiated agreement unless both the Fire Fighters membership and the City Council ratified the terms of the tentative agreement. The City's mayor did in fact submit the parties' tentative agreement to the City Council for approval. Mayor Thompson recommended approval of the three-year contract. When the City Council deadlocked on whether to approve the contract and its monetary terms, Mayor Thompson exercised his

⁷ There was no evidence or documentation submitted on the ground rules for the initial determination that culminated in Decision and Order Number 273.

authority under city law and broke the deadlock, voting in favor of ratification and of approval of the monetary terms for the first year.

We have previously concluded: “When the power of approval is reserved, we have found that the obligation to bargain in good faith in AS 23.40.110(a)(5) requires public employers to present an agreement for ratification or approval to the governing body that has the authority to approve or ratify it.” *International Brotherhood of Electrical Workers, Local Union 1547 vs. Kodiak Island Borough*, Decision and Order No. 190, at 36 (July 21, 1995). In this case, both parties sought and received approval from their constituents.

However, the Fire Fighters focus on the second sentence above and assert the City violated this ground rule. Specifically, the Fire Fighters contend the Mayor did not seek approval of the contract’s monetary terms in the third year of the contract: “In direct and intentional breach of this agreement (to seek ratification) the Mayor chose not to recommend the negotiated agreement for approval and ratification. The Mayor failed to submit the complete CBA⁸ terms to the Council for ratification. Instead, the Mayor . . . submitted a budget ordinance calling for unilateral cutbacks to the agreement and specifically recommended the terms of the negotiated agreement not be ratified by budget ordinance.” (Fire Fighters Brief Upon Remand, at 5).

The Fire Fighters essentially made this argument previously. (See D&O 273, at 4-7). There the Fire Fighters argued that the City failed to submit the complete monetary terms of the collective bargaining agreement in violation of AS 23.40.215. In D&O 273, we concluded that Mayor Thompson did what he was required to do under the law; he submitted the monetary terms of the collective bargaining agreement by providing the City’s legislative body – the City Council – with a copy of the collective bargaining agreement. (See D&O 273, at 7).

The Fire Fighters now add a twist to the argument presented in D&O 273. They now attempt to cast the argument in terms of a violation of the ground rules due to the Mayor’s alleged failure to seek ratification of the monetary terms in the third year of the collective bargaining agreement. This argument fails because there is a distinction between seeking ratification of a “tentative agreement” and submitting the monetary terms of a valid and enforceable collective bargaining agreement to a legislative body for approval. With respect to ground rule number five, Mayor Thompson did in fact seek ratification of the “tentative agreement.” There is no evidence to the contrary.

As noted, both parties’ negotiating teams reached a tentative agreement for a new three-year contract. By its very nature, the tentative agreement is preliminary and unenforceable. It is conditional until each party (in this case, the Fire Fighters membership and the City Council) ratifies and reduces it to a writing which, in the context of labor relations, is called a collective bargaining agreement. The tentatively agreed terms reached by the parties then become enforceable contractual terms. AS 23.40.210(a) requires that “[u]pon completion of negotiations . . . the employer shall reduce it to writing in the form of an agreement.” That is what happened here. After the parties ratified the tentative agreement reached in the negotiating process, the City reduced it to

⁸ CBA is collective bargaining agreement.

a written, enforceable, and final collective bargaining agreement. The parties signed the agreement. When this occurred, the tentative agreement was ratified and the ground rules expired.

The title of the ground rules document is “Ground Rules for *Negotiations . . .*” (emphasis added). These rules establish guidelines for the parties’ conduct during the negotiating process, and prior to the conclusion of the negotiations process. The rules do not guide the parties’ conduct after they ratify the tentative, conditional agreement. The written collective bargaining agreement controls the parties’ conduct during the term of the agreement. The ground rules expire because the parties have concluded negotiations for an enforceable agreement.

While the collective bargaining agreement is enforceable, appropriation of the monetary is still conditioned on AS 23.40.215(a) and AS 23.40.215(b), which require approval of monetary terms by the legislative body authorized to give such approval. As we already stated in D&O 273, the legislative body that must authorize the monetary terms for the Fire Fighters’ contract is the City Council. The City Council is required to approve monetary terms one year at a time. When the Mayor submitted his budget in the third year of the parties’ collective bargaining agreement, he submitted the agreement with its monetary terms but told the Council that there was not enough money in the budget to fund all the monetary terms. In doing so, the Mayor fulfilled his statutory obligation to “submit the monetary terms” to the legislative body, the City Council. It was then up to the Council to approve, reject, or modify those terms.

2. If the City of Fairbanks violated the ground rules, did the violation constitute either a per se unfair labor practice or an unfair labor practice based on a totality of the circumstances?

We have already concluded that the City did not violate the parties’ ground rules for negotiations. The Fire Fighters argue that the City violated the ground rules and this violation constitutes an unfair labor practice under AS 23.40.110(a)(5) and AS 23.40.110(a)(1). AS 23.40.110(a)(5) provides: “A public employer or an agent of a public employer may not refuse to bargain in good faith with an organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.” AS 23.40.110(a)(1) provides: “A public employer or an agent of a public employer may not interfere with, restrain, or coerce an employee in the exercise of the employee’s rights guaranteed in AS 23.40.080[.]”

The Fire Fighters contend that a violation of ground rules is either a per se unfair labor practice violation or a violation based on the totality of the circumstances. Even if we had found there was a ground rules violation, we reject both contentions. At the outset, we reject the Fire Fighters’ contention that a violation of the ground rules is a per se violation. We have previously concluded that “[v]iolation of a ground rule is not per se bad faith bargaining. However, it is some evidence of bad faith and may constitute a violation if the moving party shows other evidence of bad faith.” *Matanuska-Susitna Education Association, NEA-Alaska vs. Matanuska-Susitna Borough School District*, Decision and Order No. 268, at 7 (August 30, 2004).

Again, we have found that the City did not violate the ground rules. Even assuming that the City did violate a ground rule, we do not find it committed an unfair labor practice based on a totality of the circumstances. We have already decided the City did not commit an unfair labor practice during the period that culminated in the City Council's reduction of monetary terms during the third year of the agreement. (See D& O 273, at 8).

We find the cases cited by the Fire Fighters to support its assertion of a ground rules violation are irrelevant to the issues in this remand. These cases all deal with issues related to tentative agreements and a party's failure to submit or recommend approval of a tentative agreement to the constituents charged with approving or rejecting the tentative agreement. We find that none of these cases directly addresses whether a ground rules violation constitutes an unfair labor practice after the parties ratify a tentative agreement and the parties have abided by the contract's terms in the first years of the contract.

The Fire Fighters assert that “[c]ase law unanimously acknowledges that the parties’ Ground Rule Agreement is a binding, enforceable agreement. By its plain language, it required the Mayor to seek ratification. It is a promise by the Mayor to bargain in good faith and bring the product of the bargaining to the Council.” (Fire Fighters Brief Upon Remand, at 5). First, we find no case law that provides that ground rules are a binding, enforceable agreement. Second, we find that, regardless, the Mayor did seek ratification of the parties’ tentative agreement. Third, we find that the Mayor did bargain in good faith and took the “product of bargaining to the Council.”

Finally, we address whether the parties’ zipper clause in the parties’ collective bargaining agreement superseded the ground rules agreement when the parties ratified the tentative agreement.⁹ Article 3.6 of the parties’ collective bargaining agreement states: “this agreement is intended to be the complete agreement between the parties. All previous written or oral agreements or letters of understanding unless incorporated into this agreement are hereby deleted. We find this article effectively deleted the parties’ ground rules when the parties ratified the collective bargaining agreement. There was no evidence that the Mayor violated the ground rules prior to the rules’ deletion or expiration. For this additional reason, we deny the Fire Fighters’ assertion of a violation of the ground rules.

CONCLUSIONS OF LAW

1. The Fairbanks Fire Fighters Association is an organization under AS 23.40.250(5).
2. The City of Fairbanks is a public employer under AS 23.40.250(7).
3. This Agency has jurisdiction to consider unfair labor practice complaints under AS 23.40.110.

⁹ We raised this issue at the June 23, 2006, hearing, and the parties addressed this issue.

4. The Fairbanks Fire Fighters failed to prove by a preponderance of the evidence that the City of Fairbanks violated the parties' negotiating ground rules or that the City committed an unfair labor practice by violating those ground rules.

5. Mayor Steve Thompson sought ratification of the parties' tentative agreement, in accordance with the ground rules.

6. Article 3.6 of the parties' collective bargaining agreement superseded the parties' ground rules for negotiations and deleted the ground rules after the parties ratified the tentative agreement.

ORDER

1. The Fairbanks Fire Fighters' unfair labor practice complaint regarding an alleged violation of ground rules is denied and dismissed.

2. The City of Fairbanks is ordered to post a notice of this decision and order at all work sites where members of the bargaining unit affected by the decision and order are employed or, alternatively, serve each employee affected personally. 8 AAC 97.460.

Date: September 25, 2006

ALASKA LABOR RELATIONS AGENCY

Gary Bader, Chair

Dennis Niedermeyer, Board Member

APPEAL PROCEDURES

This order is the final decision of this Agency. Judicial review may be obtained by filing an appeal under Appellate Rule 602(a)(2). Any appeal must be taken within 30 days from the date of filing or distribution of this decision.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of *Fairbanks Fire Fighters Association, Local 1324, IAFF vs. City of Fairbanks*, Case No. 04-1275-ULP, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 25th day of September, 2006.

Sherry Ruiz
Administrative Clerk III

This is to certify that on the ___th day of September, 2006,
a true and correct copy of the foregoing was mailed,
postage prepaid to:

Mike McDonald, FFFA, Local 1324, IAFF

Herbert Kuss, City Attorney

Steve Thompson, Mayor, City of Fairbanks

Signature