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ALASKA LABOR RELATIONS AGENCY
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ALASKA PUBLIC EMPLOYEES)
ASSOCIATION (APEA),)
)
Petitioner,)
)
vs.)
)
ALASKA STATE HOUSING AUTHORITY,)
)
Respondent.)
_____)
Case No. SLA 4292.0001

DECISION AND ORDER NO. 133

Heard on the briefs before the Alaska Labor Relations Board, Chairman H. O. Williams, B. Gil Johnson, and Darrell Smith, with Hearing Examiner Jan Hart DeYoung. The record closed on November 9, 1990.

Appearances:

Clarence Bolden for petitioner Alaska Public Employees Association; and Julia Tucker for respondent Alaska State Housing Authority.

Digest:

Before this Agency will enforce a collective bargaining agreement under AS 23.40.210, it will require the parties to exhaust the procedures in the grievance arbitration clause in the parties' collective bargaining agreement if applicable.

DECISION

On May 24, 1990, the Alaska Public Employees Association (APEA) and the Alaska State Housing Authority (ASHA, also called "Alaska State Building Authority" or "ASBA") settled a grievance concerning David Gildersleeve. The settlement included ASHA's agreement to pay Mr. Gildersleeve the sum of \$12,500. ASHA interpreted this sum to be back pay and withheld from it income taxes and other standard payroll deductions. APEA interpreted the sum to be the amount Mr. Gildersleeve would receive.

When ASHA paid Mr. Gildersleeve the net sum of \$8,140.51, APEA petitioned the State Labor Relations Agency to enforce the settlement agreement and to order ASHA to pay Gildersleeve the amounts withheld plus interest. ASHA opposes the petition on the basis that the settlement was for back pay and it is required by law to make payroll deductions. ASHA also raises the defenses that the Agency lacks jurisdiction, that the petition fails to state a claim on which relief can be granted, and that the settlement is an accord and satisfaction.

Findings of Fact

1. The Alaska Public Employees Association (APEA) is the exclusive bargaining representative of the maintenance and custodial unit of the Alaska State Housing Authority (ASHA). David Gildersleeve is a member of this unit.

2. On December 29, 1986, APEA filed a grievance on behalf of David Gildersleeve. The subject of the grievance was ASHA's discipline and demotion of Mr. Gildersleeve. The relief sought was "make whole. Including all lost wages and benefits, return to former position as lead mechanic." Pet. Ex. 1; Resp. Ex. 2, p. 2.
3. The grievance was twice scheduled before an arbitrator and twice canceled, once by each party, before the parties agreed to a settlement of the grievance on May 24, 1989. Pet. Ex. 15, p.5.
4. On August 7, 1987, by letter, APEA's representative Bruce Senkow informed ASHA that Mr. Gildersleeve's total back pay to that date was \$18,860.00. Pet. Ex. 4, p. 1; Resp. Ex. 2, p. 4.
5. The only financial claims APEA made against ASHA on Mr. Gildersleeve's behalf were for back wages and benefits.
6. The financial term of the settlement, in paragraph one, was that "Alaska State Building Authority agrees to pay the sum of \$12,500 to David Gildersleeve." In paragraph two the settlement document provided, "Mr. Gildersleeve will immediately be reclassified to a permanent maintenance mechanic I position and Mr. Gildersleeve will be offered the next vacant maintenance mechanic II position to be filled statewide." In paragraph three ASHA agreed to change Mr. Gildersleeve's personnel record. In paragraph 4 the parties agreed, "In exchange for the considerations provided in paragraphs 1, 2, and 3, David Gildersleeve and APEA fully and completely release Alaska State Building Authority from all claims arising from the disciplinary action giving rise to this grievance." Last, the parties agreed, "The parties agree that they will not refer to this settlement in any future complaint, grievance, arbitration, hearing, negotiations, or any other matter pertaining to the collective bargaining agreement between the parties." Pet. Ex. 11, p.3; Resp. Ex. 1.
7. The amount ASHA paid to Mr. Gildersleeve was \$8,140.51. This sum included his then current wages and resulted when payroll deductions of \$5,769.53 were subtracted from a total of \$13,191.04. Pet. Ex. 12; Resp. Ex. 4, pp. 2 & 4.
8. The understanding of APEA representative Dan Repasky was that he was negotiating settlement of the grievance and not specifically for back pay. Pet. Ex. 17, p.1. David Gildersleeve's understanding was "that the amount of money agreed to would be the amount of money [he] received." Pet. Ex. 18, p. 1.
9. The understanding of ASHA representative Rebecca Maier was that APEA did not abandon the claim for back pay and at all times she understood that the claim was for back pay. The parties did not discuss making ASHA absorb mandatory payroll deductions. Resp. Ex. 4.
10. On August 3, 1989, APEA filed with the State Labor Relations Agency a Petition to Enforce Grievance Settlement. That Agency established a schedule for the petition to be considered on written briefs, with briefing to conclude on January 20, 1990. The parties extended briefing deadlines by mutual agreement.
11. On July 1, 1990, this case was transferred to the Alaska Labor Relations Agency, which became the labor relations agency for the state and state employees on that date under Executive Order No. 77.
12. On November 7, 1990, briefing concluded and the record closed.

Conclusions of Law

Under the Public Employment Relations Act (PERA) every collective bargaining agreement must "include a grievance procedure which shall have binding arbitration as its final step. Either party to the agreement has a right of action to enforce the agreement by petition to the labor relations agency." AS 23.40.210. The APEA and ASHA were apparently following the grievance procedures in their contract when they settled the Gildersleeve grievance short of arbitration. The parties now disagree over the terms of that settlement and APEA brought the dispute to this Agency by filing a petition to enforce the settlement agreement.

The Alaska State Housing Authority raises three defenses to this petition: the Agency's lack of jurisdiction to hear this issue; the petition's failure to state a claim on which relief can be granted; and accord and satisfaction. Only the first defense merits discussion.

ASHA states that APEA failed to establish this Agency's jurisdiction to hear this issue and asserts without elaboration that APEA's asserted basis for jurisdiction, AS 23.40.210, is not relevant. AS 23.40.210, quoted *infra* p.5, provides that parties to a collective bargaining agreement can enforce that agreement by petitioning this Agency.

The APEA argues that the parties' collective bargaining agreement provides that a grievance settlement should be given the same effect as an arbitrator's decision. The collective bargaining agreement states, "In the event the matter is settled by written agreement between the APEA Field Representative and the Executive Director of ASBA, such written agreement shall have the same force and effect as a decision or award of the arbitrator and be final and binding on each of the parties and they will abide thereby." Agreement, Maintenance and Custodial Unit of APEA and ASBA, art. 9, § 2 (effective Jan. 20, 1987 -- Mar. 31, 1988, extended), quoted in Petitioner's Rebuttal Brief, p. 1. APEA's position appears to be that, because the agreement provides that settlement is the equivalent of an arbitrator's decision and the arbitrator's decision is an intrinsic part of the grievance procedures in the parties' contract, a party can petition the Agency to enforce the arbitrator's decision under the Agency's authority to enforce a contract under AS 23.40.210.

We agree with this analysis. Where a contractual grievance procedure culminates in a settlement agreement, breach of the settlement agreement should constitute a breach of the grievance provision in the contract. We therefore conclude that the Agency has statutory authority and thus jurisdiction to hear this dispute. However, the jurisdiction of this Agency often covers disputes that are also covered under the grievance arbitration clause in the parties' collective bargaining agreement. For example, a dispute may be arbitrable under the parties' grievance arbitration clause and be an unfair labor practice under PERA. When disputes fall under PERA's unfair labor practice provisions in AS 23.40.110 and the parties' grievance arbitration clause, the Agency has the discretion to either hear the dispute or defer it to arbitration. See Public Safety Employees Ass'n v. State of Alaska, 799 P.2d 315, 323 (1990).

The requirement in AS 23.40.210 that each collective bargaining agreement include "a grievance arbitration procedure which shall have binding arbitration as its final step" supports resolving disputes through grievance arbitration procedures. This Agency's policy is to promote arbitration by deferring to arbitration in appropriate cases. Anchorage Education Ass'n v. Anchorage School District, Decision & Order No. 128, (1991); Alaska Public Employees Association & Thompson v. Alaska, Order & Decision No. 69 (1981); Fairbanks Fire Fighters Ass'n, Local 1324 v. City of Fairbanks, DOLLRA Decision & Order No. 90-4 (1990). For example, in Anchorage Education Ass'n this Agency deferred an unfair labor practice charge to an arbitration pending in that case.

We believe that the dispute between APEA and ASHA provides an even stronger case for deferral to arbitration. Unlike the Anchorage Education Association in Anchorage Education Ass'n v. Anchorage School District, the APEA has not charged the respondent with an unfair labor practice or provided any independent jurisdictional basis to establish this Agency's authority to hear the dispute. The sole basis for jurisdiction is the authority to enforce the parties' grievance arbitration clause in the collective bargaining agreement. We believe that taking jurisdiction in this case would undercut the grievance arbitration clause in the parties' contract and encourage cases before this Agency that more properly belong before an arbitrator.

The facts of this case illustrate why this Agency should not substitute its judgement for an arbitrator's. The APEA has asked this Agency to find that, because the settlement sum was not specifically stated to be back wages, the employer should not have withheld taxes, social security, or other payroll deductions. ASHA refers this Agency to tax regulations and states that taxes are indeed owed on this compromise over back wages, regardless of the language of the settlement agreement. If taxes are owed, the question becomes who is responsible for them. ASHA's position is that, in the absence of a specific agreement to the contrary, standard payroll practices should prevail.

Even if the parties did not specifically provide that the settlement was "back pay," however, we note that the only money claim APEA ever asserted against ASHA was for lost wages or "back pay." Some elements of back pay are subject to withholding and some are not. See 3 NLRB Casehandling Manual, Compliance Proceedings § 10648.1 (1989). Determining withholding would take this Agency beyond its expertise in labor relations and into questions of tax law that it is ill-equipped to handle.

The parties did not refer to cases from other jurisdictions to support their positions and National Labor Relations Board decisions are not instructive on this issue. While this Agency frequently looks for guidance to the decisions of the

National Labor Relations Board, it is unable to in this case. Unlike this Agency the NLRB does not have authority to enforce collective bargaining agreements. Enforcement of collective bargaining agreements and enforcement of arbitrator awards are not handled by the board but instead are handled by federal district court. E.g., National Labor Relations Board v. CNC Plywood Corp., 351 F. 2d 224 (9th Cir. 1965).

Another state's public sector labor relations law, however, does authorize its board to enforce collective bargaining agreements. The Oregon Public Employee Collective Bargaining Act provides that violating a collective bargaining agreement, including an agreement to arbitrate or refusal to comply with an arbitration award, is an unfair labor practice. ORS 243.672 (1)(g) & (2)(d). The Oregon Employee Relations Board requires the parties to exhaust their rights under the grievance arbitration clause before they may make a complaint to enforce the contract. West Linn Education Association v. West Linn School District No. 3JT, 3 P.E.C.B.R. 1864, 1868-1871 (1978), relied upon in AFSCME, Local 626 v. Lane County, 607 P.2d 1212, 105 L.R.R.M. (B.N.A.) 2029 (Or. Ap. 1980). Furthermore, disputes over an employer's implementation of an award are not exceptions to the exhaustion doctrine. They must be resolved if possible through the contract grievance arbitration procedure. International Association of Fire Fighters, Local 1062 v., City of Gresham, 6 P.E.C.B.R. 4740 (1981), aff'd without opinion, 57 Or. App. 428 (1982).

We believe that the position of the Oregon Employment Relations Board is sound and conclude that the parties must first exhaust the grievance arbitration clause in their collective bargaining agreement before this Agency will consider a dispute under its authority to enforce an agreement in AS 23.40.210. In this case, APEA and ASHA must first attempt to arbitrate their dispute over the terms of the settlement agreement they made in lieu of arbitration.

ORDER

The Alaska Public Employees Association's petition to enforce the settlement is **DISMISSED** and the parties are **ORDERED** to arbitrate any disputes remaining over the Gildersleeve grievance.

THE ALASKA LABOR RELATIONS AGENCY

H. O. Williams, Board Chairman

B. Gil Johnson, Board Member

Darrell Smith, Board Member