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ALASKA LABOR RELATIONS AGENCY
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Fairbanks Fire Fighters)
Association, Local 1324,)
International Association of)
Fire Fighters,)
)
Petitioner,)
)
vs.)
)
City of Fairbanks,)
)
Respondent.)
_____)
Case No. 91-006-CBA

DECISION AND ORDER NO. 142

This matter was heard on January 30, 1991, in Fairbanks, Alaska, and on February 12, 1991, in Anchorage, Alaska, with Hearing Examiner Jan Hart DeYoung presiding. The record closed on February 12, 1991. In issuing this decision and order, the Alaska Labor Relations Board Members considered the record and transcript of this hearing.

Appearances:

Brett M. Wood, attorney, for petitioner Fairbanks Fire Fighters Ass'n; and Charlane Bigelow Stead, Deputy City Attorney, for respondent City of Fairbanks.

Digest: When enforcing a collective bargaining agreement under AS 23.40.210, the Alaska Labor Relations Agency will not substitute for the arbitrator under the agreement's grievance arbitration clause. Instead, it will enforce the agreement by compelling arbitration under the grievance arbitration clause in the agreement.

DECISION

FINDINGS OF FACT

1. Fairbanks Fire Fighters Association is the exclusive bargaining representative of the City of Fairbanks Fire Fighters bargaining unit.
2. The Fire Fighters and the City entered into a collective bargaining agreement on September 1, 1987. Exhibit 1, p. 36.
3. Section 4 of the parties' collective bargaining agreement includes a grievance procedure, which provides for arbitration as its final step:

GRIEVANCE PROCEDURE

4.1 It is the mutual desire of the City and the Union to provide for the prompt adjustment of grievances in a fair and reasonable manner, with a minimum amount of interruption of the work schedules. Every reasonable effort shall be made by both the City and the Union to effect the resolution of grievances at the

earliest step possible. In the furtherance of this objective, the City and the Union have adopted the following procedure as the exclusive method of resolving grievances arising under this Agreement, not including unfair labor practices under PERA.

4.2 A grievance is defined as any dispute involving the interpretation, application or alleged violation of any provision of this Agreement or the rules and regulations and the standing operating procedures of the Fairbanks Fire Department, including separation and disciplinary action. However, any dispute involving the commencement date or termination date of this contract shall not be considered a grievance, and shall not be submitted to the grievance-arbitration procedure set forth herein, but any such questions concerning commencement or termination of this Agreement shall be specifically reserved for judicial review. By mutual agreement of the City and the Union, the grievance procedure set forth below may be used in other matters.

....

4.6 ARBITRATION. If efforts to resolve the dispute through conciliation at the end of the third step are unsuccessful and if the written answer of the City Manager as given in the third step of the grievance procedure is not satisfactory, then the Business Agent shall notify the City Manager in writing within fourteen (14) calendar days after the written answer of the City Manager, that the grievance is to be submitted to binding arbitration. Such notice shall include the nature of the matter to be arbitrated and the contract provision(s) or rules and regulations or the standing operating procedure(s) of the fire department that has been allegedly violated. When a grievance is submitted to binding arbitration the Business Agent and the City Manager shall meet at a date and time mutually agreeable within fourteen (14) calendar days from the time the Union has notified the City of its desire to arbitrate to select an arbitrator. Upon the failure of the two parties to agree upon an arbitrator, both parties agree to request the American Arbitration Association to submit a list of seven (7) names of persons who are available for services as arbitrators. Within five (5) calendar days of receipt of the list, the City and Union representatives shall alternately strike one (1) name from the list until one (1) name remains. The side to strike the first name shall be chosen by lot. Unless mutually agreed otherwise, arbitration shall commence within thirty (30) calendar days after first notification that the grievance is to be submitted to binding arbitration.

The arbitrator shall hear the case within twenty (20) calendar days after he/she has been selected unless mutually agreed otherwise. The arbitrator shall make a written report of his/her findings to the Union Business Agent and the City Manager within fifteen (15) calendar days after the hearing is concluded. Said arbitrator will be governed by voluntary labor arbitration rules of the American Arbitration Association as are in effect at the time of the arbitration. The decision of the arbitrator shall be final and binding on both parties to the dispute. The final decision of the arbitrator shall be implemented as soon as possible but no later than thirty (30) calendar days after the final decision is rendered.

The authority of the arbitrator shall be limited to the application and interpretation of this Agreement or the rules and regulations or the standing operating procedure of the fire department. The arbitrator shall have no authority to amend, alter, modify or otherwise change the terms or scope of this Agreement, or the rules and regulations, or the standing operating procedures of the fire department.

4.7 Each grievance or dispute will be submitted to a separately convened arbitration proceeding, except where the City and the Union mutually agree to have more than one grievance or dispute submitted to the same arbitrators.

....

4.11 In the event that the City fails to answer a grievance within the time required at any step of the grievance procedure, or the Union fails to appeal the answer given to the next step of the grievance procedure within the time allowed, then the grievance will be considered settled against the side which has defaulted. However, any of the time limits in the grievance-arbitration procedure may be extended by mutual Agreement. Any grievance settled by default cannot be the basis of establishing precedent for the

settlement of any other grievances.

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Working agreement/City & Fire Fighters, pp. 4-8, at exhibit 1.

4. On January 1, 1990, the City terminated seven members of the Fire Fighters bargaining unit (Ron Muir, fire fighter; Casey Koogler, fire fighter; Gary McMillan, fire fighter; Richard Meyer, paramedic; Nicki Adamson, secretary; Sally Hukari, clerk; and Kayle Schoenborn, fire inspector).
5. On January 2, 1990, the Fire Fighters filed an unfair labor practice charge against the City of Fairbanks under AS 23.40.110(a)(1), (2), (3), and (5), charging the City with interfering with the Fire Fighters' rights under PERA and refusing to engage in collective bargaining about the lay-offs. Fairbanks Fire Fighters Ass'n, Local 1324, v. City of Fairbanks, DOLLRA Decision and Order 90-4 (April 11, 1990).
6. The Fire Fighters grieved the termination on January 10, 1990. Grievance 90-1, at exhibit B.
7. On February 1, 1990, the Fire Fighters gave the City written notice of its intent to arbitrate three matters, one of which was grievance 90-1 regarding the seven member lay-off. Exhibit C.
8. The City responded to the Fire Fighters in writing on February 5, 1990, requesting that the Fire Fighters waive conciliation and stating that the City would agree only to arbitration through the American Arbitration Association. Exhibit D.
9. In a letter dated February 16, 1990, the Fire Fighters provided the City with a list of arbitrators' names "obtained by Bill Hao from the American Arbitration Association for grievance 90-1." Exhibit 20, p. 2.
10. The City responded in writing on February 20, 1990, that two of the arbitrators on the list were unacceptable and that it reserved judgment on the remaining five until the Fire Fighters provided information about their qualifications. Exhibit 22.
11. On February 21, 1990, the Fire Fighters demanded arbitration from the City within the time allowed in section 4.6 in the collective bargaining agreement. From the letter it can be inferred that the Fire Fighters would not provide information on the proposed arbitrators' qualifications. Exhibit 24.
12. On February 22, 1990, the City informed the Fire Fighters in a letter that it rejected all arbitrators because it had no information about qualifications. The City proposed that Jim Blair serve as the arbitrator and stated that, if the Fire Fighters failed to agree to Blair, it should contact the American Arbitration Association for a list of arbitrators. Exhibits 25 & 26.
13. On February 26, 1990, the Fire Fighters requested in writing that the American Arbitration Association provide a list of arbitrators for grievance 90-1. Exhibit 28.
14. On or around March 29, 1990, the American Arbitration Association sent a list of arbitrators, accompanied by resumes of the arbitrators, to the Fire Fighters and to the City. Exhibit 39.
15. On April 5, 1990, the Fire Fighters in a letter to the City states that it has the list of arbitrators and that it would insist on striking names before April 9, 1990, under the terms of the working agreement and the deadline time provided by the American Arbitration Association. Exhibit 40.
16. On April 11, 1990, the Department of Labor, Labor Relations Agency issued Decision and Order 90-4 dismissing the Fire Fighters' unfair labor practice charge and its petition to enforce the collective bargaining agreement pending the outcome of the grievance arbitration. The decision states that the City did not commit an unfair labor practice in terminating the Fire Fighters. On the petition to enforce the collective bargaining agreement, DOLLRA stated, "Agency declines to enforce the substantive terms of the collective bargaining agreement between the parties pending the

outcome of grievance arbitration." It concluded that it would entertain a motion to compel arbitration by either of the parties.

17. The Fire Fighters notified the City in writing on April 16, 1990, that it was in default of the collective bargaining agreement's grievance procedure and demanded the remedy it had requested in the grievance. Exhibit 45; exhibit M. On April 16, 1990, the City wrote the American Arbitration Association (AAA) to hold the grievance in abeyance. Exhibit 48.

18. On May 7, 1990, the Fire Fighters wrote the AAA, requesting arbitration and a default award. Exhibit 53.

19. AAA wrote the parties on May 8, 1990, asking the City for its response to the Fire Fighters' May 7 letter. Exhibit 54. On May 10, 1990, the City advised AAA that it would not arbitrate the grievance. Exhibit 55.

20. On July 6, 1990, the City in a letter stated that it would only consider the grievance in 90-1 if it were combined with another grievance (the Cumming's grievance). Exhibit 63.

21. On July 16, 1990, the Fire Fighters filed this petition with this Agency to enforce the collective bargaining agreement by declaring the City in default and awarding the damages claimed in the grievance.

22. AAA is holding grievance 90-1 in abeyance.

23. On November 13, 1990, the City filed with its prehearing memorandum, a petition to compel arbitration in this matter.

DISCUSSION

The Fairbanks Fire Fighters Association, Local 1324, International Association of Fire Fighters (Fire Fighters), filed a petition under AS 23.40.210 of the Public Employment Relations Act for enforcement of its collective bargaining agreement with the City of Fairbanks (City). This petition resulted from the City's termination or lay-off of seven members of the Fire Fighters. After the lay-off the Fire Fighters initiated actions under their agreement's grievance arbitration clause and under the Public Employment Relations Act. The Fire Fighters' claim that the lay-off was the City's retaliation for their refusal to renegotiate their pay raise, thereby violating the agreement and constituting an unfair labor practice. The City, on the other hand, claims the lay-off was needed to respond to a shrinking budget. In Fairbanks Fire Fighters Ass'n v. City of Fairbanks, DOLLRA Decision and Order No. 90-4 (April 11, 1990), the Department of Labor, Labor Relations Agency determined that probable cause did not support the charge that the City had committed an unfair labor practice. It also determined that a remedy under the parties' grievance procedures was the appropriate remedy to pursue and that it would entertain a motion to compel arbitration. Approximately three months after DOLLRA's decision, having failed to agree to arbitration procedures with the City, the Fire Fighters filed this petition.

In the petition the Fire Fighters ask this Agency to enforce the agreement, find the City in default of the agreement's grievance arbitration clause, and award the Fire Fighters the remedy it seeks in its grievance. The City of Fairbanks opposes the Fire Fighters' petition. Its position is that the exclusive remedy is arbitration and, even if the Agency has jurisdiction to determine a default, it should defer that decision to arbitration. The City has filed a petition to compel this matter to arbitration.

Jurisdiction over the parties' dispute exists in both the grievance procedure and PERA. The grievance procedure in the parties' agreement defines grievance to cover any questions of interpretation of the bargaining agreement and of its application or violation. The procedure specifically includes the subject of separation in its coverage. See paragraph 3, supra. The issues of the seven members' termination and of the City's compliance with the grievance procedures could both be brought before an arbitrator under the grievance procedure in the parties' agreement.

In addition, PERA provides jurisdiction to this Agency to enforce a collective bargaining agreement. AS 23.40.210 provides in part, "Either party to the agreement has a right of action to enforce the agreement by petition to the labor relations agency." This authority, however, should not be used as a substitute for the authority of the arbitrator under

the grievance procedure. Those procedures, required in AS 23.40.210 to be a part of every agreement bargained under PERA, are a core element of PERA's labor relations scheme to provide a rational method for the parties to resolve their disputes. The United States Supreme Court has stated under the national labor relations scheme:

[T]he grievance machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government. Arbitration is the means of solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for all their solution in a way which will generally accord with the variant needs and desires of the parties. The processing of disputes through the grievance machinery is actually a vehicle by which meaning and content is given to the collective bargaining agreement. . . . The grievance procedure is, in other words, a part of the continuous collective bargaining process.

United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 581, 46 L.R.R.M.(BNA) 2416, 2419 (1960), quoted in 1 Charles J. Morris, *The Developing Labor Law* 914-915 (2d ed. 1983).

The appropriate exercise of the Agency's authority to enforce the agreement in most cases will be to give full effect to the grievance procedures by compelling a reluctant party to arbitration.

The Agency's authority to enforce the agreement under AS 23.40.210 can be analogized to the courts' authority under Section 301 of the Labor Management Relations Act. Under Section 301 the United States Supreme Court defined a relationship that recognizes arbitration as the principal mechanism to resolve disputes arising under the bargaining agreement. See Steelworkers trilogy, Steelworkers v. American Mfg. Co., 363 U.S. 564, 46 L.R.R.M.(BNA) 2414 (1960); Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 46 L.R.R.M.(BNA) 2416; Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 46 L.R.R.M.(BNA) 2423 (1960), discussed in 1 Charles J. Morris, *supra* 917; see also, AT&T Technologies v. Communications Workers of America, 475 U.S. 643, 121 L.R.R.M.(BNA) 3329 (1984).

This view is consistent with that of our predecessor in this case, DOLLRA. When DOLLRA considered the Fire Fighters' earlier petition to enforce the collective bargaining agreement, it stated that it would not substitute itself for the parties' dispute resolution procedures in their agreement. Instead, it would give effect to the agreement by compelling the parties to arbitration.

Like DOLLRA, this Agency will not substitute itself for the parties' dispute resolution process. This Agency will order the parties to arbitration for the interpretation and application of the agreement. We leave to the arbitrator whether the grievance procedure has been breached under the prevailing norms in labor agreements and whether loss of the grievance on the merits is an appropriate remedy for the breach.

The parties have been referred to arbitration in this case in the past. The parties have been unable to agree on a method of selecting an arbitrator and on the requirements of their grievance procedure. In recognition of the parties' past difficulties, we retain jurisdiction to police the process of proceeding to arbitration.

Conclusions of Law

1. This Agency has jurisdiction to consider the Fire Fighters' petition to enforce its collective bargaining agreement with the City of Fairbanks under AS 23.40.210.
2. The parties' agreement provides a grievance procedure in Section 4. That grievance procedure culminates in binding arbitration.
3. The parties' dispute is covered under the parties' grievance procedure.
4. As a general rule to promote self-governance, this Agency will enforce a bargaining agreement by compelling the parties to follow their grievance arbitration procedure for disputes covered under it.

ORDER

1. The Fire Fighters' petition to enforce the bargaining agreement and the City's motion to compel arbitration are GRANTED.
2. The parties are compelled to arbitrate the dispute in grievance 90-1.
3. Thirty days from the clerk's date of distribution of this decision, the Fire Fighters and the City must each file with the American Arbitration Association a request to arbitrate grievance 90-1.
4. Fourteen days after receipt of a decision by the arbitrator in grievance 90-1, the City shall file a copy of the decision with this Agency.
5. This Agency will retain jurisdiction in this matter to entertain motions by either party to compel arbitration if the parties encounter additional difficulties in the arbitrator selection process.

THE ALASKA LABOR RELATIONS AGENCY

B. Gil Johnson, Board Chairman

James W. Elliott, Board Member

Darrell Smith, Board Member