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TOTEM ASSOCIATION OF EDUCATIONAL SUPPORT PERSONNEL,

Petitioner,

vs.

ANCHORAGE SCHOOL DISTRICT,

Respondent.

CASE NO. 93-143-ULP

DECISION AND ORDER NO. 150

This matter was heard on November 3, 1992, in Anchorage, Alaska, before the Alaska Labor Relations Agency, Chairman Gil Johnson and board member James W. Elliott, and with Jan Hart DeYoung, presiding. Member Darrell Smith did not participate. The record closed on November 3, 1992.

Appearances:

Helene Antel Brooks, Counsel, for petitioner Totem Association of Educational Support Personnel; and Bradley D. Owens, Jermain, Dunnagan and Owens, for respondent Anchorage School District.

Digest:

A party's vague, contradictory, and confusing statements about its position constitute a refusal to bargain in good faith under the Public Employment Relations Act, AS 23.40.110(a)(5).

DECISION

Totem Association of Educational Support Personnel argues that it has a binding agreement on wages with the Anchorage School District because it accepted a District offer that was never expressly withdrawn. It argues that the District's refusal to honor its offer is an unfair labor practice and that this Agency should order the District to execute an agreement. The District, on the other hand, denies the charge, arguing that the parties did not reach agreement, that the District did not bargain in bad faith, nor did it commit an unfair labor practice.

Findings of Fact

1. Totem Association of Educational Support Personnel is the bargaining representative of certain nonexempt, noncertified employees of the Anchorage School District. Collective Bargaining Agreement (July 1, 1989 -- June 30, 1992) (extended by agreement). Exh. 1.

2. Negotiations for a new agreement opened on March 19, 1992. Exh. 2. The spokesperson for the district was John L. Alexander, Director Contract Compliance, and at first, Jacqueline Steeves was the spokesperson for Totem. The parties agreed to ground rules for the negotiations on March 27, 1992. Exh. 3.

3. On May 26, 1992, Totem informed the District that it intended to resume negotiations and introduced a new bargaining team and co-spokespersons Helene Antel Brooks and Ellen Gamel. The negotiating teams were John Alexander and Sharon Schoonmaker for the District and Ellen Gamel, Shirley Fredrickson and Helene Antel Brooks for Totem. On May 29, 1992, the negotiating teams confirmed the March 27 ground rules.

4. Rule 13 of the ground rules provides:

> No statement shall be considered a valid proposal unless presented in written form by the appropriate spokesperson. Subjects of negotiations may be considered and discussed individually or in conjunction with other subjects. TA'd items shall be signed and dated by each spokesperson and shall be binding on the parties through the conclusion of the negotiations.

Exh. 5.

5. After negotiations resumed in May, they proceeded amicably. An idea would be proposed, worked out, and reduced to writing. Unwritten proposals were common. The parties reached agreement on all items except two -- a wage schedule and reclassification.

6. The parties complied with ground rule 13 for the noneconomic terms of the agreement that they had tentatively reached. Each of the noneconomic terms was in writing and signed and dated by the parties' spokespersons. Exh. 6.

7. Negotiations for wages began on June 25, 1992. A Totem spokesperson stated a proposal to open discussion. On July 1, 1992, the parties again met. Totem provided a written statement comparing wages paid at various school districts in the state. Exh. 7. Alexander spoke about two wage schedule options. Option B, which provided for "steps" and a bonus equivalent for step E members, interested Totem team members. Gamel responded by asking if the District could sweeten the bonus. Gamel stated that, if Alexander could not get the bonus, Totem would accept option B.

8. The parties next met to discuss the wage schedule on July 2, 1992. Alexander presented a copy of the 1989 -- 1992 collective bargaining agreement's wage schedule, adding the costs of the option B step increases. The schedule did not include costs for new steps to allow step E employees to advance on the schedule or a bonus "sweetener." Exh. 9, p.5. At the next meeting on July 7, 1992, Alexander presented three new proposals: (1) $.40 across the board increase, freezing steps; (2) $.40 on years one and three and a step increase on year two; and (3) $.40 on year one, bonus on year two, and a step increase on year three. Alexander did not present option B. Gamel, however, obtained assurances from Alexander that option B was still available. Gamel asked Alexander what the need was to discuss other options if B were still available. The next meeting was July 9, 1992, when Gamel presented Alexander with a written proposal. It was the District's option B with two changes: it added new steps after E step, which would have the effect of compounding the wage increase to E step employees, and a $200.00 bonus. Neither had been part of the District's July 1 option B. Totem representatives Ellen Gamel and Shirley Fredrickson signed the proposal and dated it July 9, 1992. Gamel thought the parties had an agreement. However, Alexander did not sign the proposal. Exh. 8.

9. Negotiations resumed on August 5, 1992. Alexander stated a new proposal: year one, $.50 on schedule; year two, steps and $200.00 bonus for members on step E; year three, no steps and $800.00 bonus for all members. Exh. 9, p. 9. Brooks obtained assurances from Alexander that option B remained available.

10. At the next meeting on August 10, Alexander told Totem that the persons who had authorized option B now said there was no more money for it. Totem provided Alexander with its reconstruction of the parties' wage negotiations to date. The reconstruction included representations that Totem had accepted the District's offer of option B, restating the option to add steps after step E and a bonus. Exh. 9. Alexander did not take issue with Totem's reconstruction. Gamel offered to help Alexander rework the wage schedule to meet his negotiating parameters. The parties agreed to work to replace the wage schedule during the next contract period, which they reduced to writing and signed as tentatively agreed. Exh. 6, last page.

11. On August 13, 1992, Alexander presented to Totem team members a written wage proposal. Exh. 10. The proposal was for two years' duration and provided a $.75 increase for all steps except E step and provided a $.50 increase for E

step. Totem rejected the proposal. Gamel told Alexander that she was willing to work with him to restructure option B to meet his negotiating parameters but she thought the parties had an agreement on option B. Alexander told Gamel at this meeting that he did not believe he had accepted Totem's offer.

12. The negotiation teams next met on August 18, 1992, for a work session. Totem presented a "performance" option. The option provided an increase of $.50 across the board and a $.25 across the board bonus tied to performance. It did not include a $200 bonus. It would provide all employees with a step increase ($.75) if the performance bonus were earned. Gamel met with the superintendent and Alexander to sell the performance proposal. Ultimately the District, through the superintendent, rejected the proposal.

13. In the negotiations, the District failed to communicate clearly a wage offer, sending conflicting and inconsistent signals to Totem. Totem, on the other hand, never unambiguously accepted a district proposal. If option B can be called an offer, it was never accepted. Totem sought to "sweeten" option B rather than accept the option as set forth by Alexander. There was no meeting of the minds of the parties on a wage schedule.

14. On September 14, 1992, Totem filed an unfair labor practice charge with the Agency, alleging a willful refusal to bargain collectively in good faith in violation of AS 23.40.110(a)(5).

15. The Agency investigated the charge under AS 23.40.120 and, on finding probable cause to support the charge of an unfair labor practice, issued a notice of accusation on September 21, 1992.

16. The District filed a notice of defense, denying the charges on October 7, 1992.

17. On November 3, 1992, a hearing was held before the Alaska Labor Relations Agency, at which the parties presented testimony and other evidence.

Conclusions of Law

1. The Anchorage School District is a public employer under AS 23.40.250(7), as amended sec. 7., ch. 1, SLA 1992, and the Alaska Labor Relations Agency has jurisdiction of this complaint under AS 23.40.110.

2. Totem has the burden of proof under 2 AAC 10.430 to establish a violation of AS 23.40.110.

3. AS 23.40.110(a)provides in part:

> A public employer or an agent of a public employer may not . . . .
>
> (5) refuse to bargain collectively 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.

4. Making contradictory and ambiguous statements about a wage proposal is inconsistent with the duty to seek agreement in good faith under AS 23.40.110(a)(5). An employer commits an unfair labor practice by refusing to make a written proposal and by offering vague, contradictory, and confusing statements about its position. Clackamas Intermediate Education District Education Ass'n v. Clackamas Intermediate Education District, ERB C-141-77, 3 P.E.C.B.R. 1848 (Or. Empt. Rel. Bd. 1978). The district made a number of proposals, none of them as appealing to Totem as its first proposal. When confronted with questions about the earlier proposal, the District's spokesperson confirmed that it remained available. However, his actions were inconsistent with his statements.

5. Refusal to reduce an agreement to writing can be an unfair labor practice. Alaska Community Colleges Federation of Teachers, Local 2404 v. University of Alaska, 669 P.2d 1299, 1302 (Alaska 1983). In this case, however, Totem has not demonstrated that an agreement existed. The District's communications on wages were confusing, but they did not result in an agreement on wages with Totem. Totem's response to the District's option B can be characterized as a counterproposal. It was not an unequivocal acceptance of option B. Neither did the District manifest acceptance of Totem's counterproposal. When provided an opportunity to TA the "agreement" by signing Totem's written proposal,

Alexander declined. Alexander then stated proposals inconsistent with Totem's counterproposal or even its own version of option B. At one point Alexander stated that the District could not fund option B. Alexander's actions are not consistent with an agreement. Even if the District's option B was an offer that remained open for Totem to accept, Totem never accepted it. The offer Totem accepted was different in significant respects from the option B Alexander described at the parties' July 1 meeting. This is not a case in which the union's acceptance of a final offer has created a contract. Cf., Warehousemen's Union Local No. 206 v. Continental Can Co., 821 F.2d 1348, 125 L.R.R.M.(BNA) 3178 (9th Cir. 1987). While technical rules of contract law may not be needed to create a contract, NLRB v. Truckdrivers, Chauffeurs and Helpers, Local Union No. 100, 532 F.2d 569, 571, 91 L.R.R.M.(BNA) 2849, 2851, (6th Cir. 1976), cert. denied 429 U.S. 859 93 L.R.R.M.(BNA) 2364 (1976), a meeting of the minds must occur. Interprint Co., 273 N.L.R.B. No. 222, 118 L.R.R.M.(BNA) 1394 (1985). See Bobbie Brooks, Inc. v. International Ladies' Garment Workers Union, 835 F.2d 1164, 127 L.R.R.M.(BNA) 2216 (6th Cir. 1987).

6. Ground rules are an important aid to the parties when disputes arise during negotiations. In this case compliance with the ground rules is a relevant factor in determining whether the parties reached an agreement on wages. The parties' ground rule 13 provides that valid proposals must be in writing and TA'd items must be signed and dated by the spokesperson. The parties' demonstrated agreement on noneconomic terms with dated signatures on written proposals. Failure to sign and date a written wage schedule is evidence that the parties did not reach agreement on one. The evidence is particularly strong in this case where the parties had followed the ground rule on all of the noneconomic terms of the agreement.

ORDER

The Anchorage School District is ordered

1. to cease and desist from refusing to bargain in good faith as required under AS 23.40.110(a)(5);

2. to bargain in good faith upon a request; and

3. to post copies of this decision on employee notice boards for a period of 14 days following the effective date of this decision.

ALASKA LABOR RELATIONS AGENCY

B. Gil Johnson, Chairman

James W. Elliott, Board Member

Not participating

Darrell Smith, Board Member

APPEAL PROCEDURES

An Agency decision and order may be appealed through proceedings in superior court brought by a party in interest against the Agency and all other parties to the proceedings before the Agency, as provided in the Alaska Rules of Appellate Procedure and the Administrative Procedures Act.

The decision and order becomes effective when filed in the office of the Agency, and unless proceedings to appeal it are instituted, it becomes final on the 31st day after it is filed.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of Totem Ass'n of Educational Support Personnel v. Anchorage School District, Case No. 93-143-ULP, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 3rd day of December, 1992.

Norma Wren

Clerk IV

This is to certify that on the 3rd day of December, 1992, a true and correct copy of the foregoing was mailed, postage prepaid to

Helene Antel Brooks

Bradley Owens

Signature