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MID-KUSKOKWIM EDUCATION ASSOCIATION,)
Complainant,)
vs.)
KUSPUK SCHOOL DISTRICT,)
Respondent.)
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KUSPUK SCHOOL DISTRICT,)
Complainant,)
vs.)
MID-KUSKOKWIM EDUCATION ASSOCIATION,)
Respondent.)
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CASE NOS. 93-149-ULP & 93-162-ULP	(Consolidated)

DECISION AND ORDER NO. 156

This matter was heard on February 4, 1993, in Anchorage, Alaska, before the Alaska Labor Relations Board, Chairman B. Gil Johnson and member James Elliott, with Hearing Examiner Jan Hart DeYoung presiding. Member James Elliott participated by telephone. Member Darrell Smith did not participate. The record closed on February 4, 1993.

Appearances:

Robert M. Johnson, Wohlforth, Argetsinger, Johnson & Brecht, PC, for Mid-Kuskokwim Education Association; and Howard S. Trickey, Jermain, Dunnagan & Owens, for Kuspuk School District.

Digest:

- (1) When the resolution of a grievance eliminates an unfair labor practice, the Agency will dismiss the related unfair labor practice charge as moot.
- (2) A labor organization's attempt to persuade the governing body of a public employer to change its bargaining representative violates AS 23.40.110(c)(1)(B).

DECISION

Findings of Fact

- 1. The Mid-Kuskokwim Education Association (MKEA) is the recognized collective bargaining representative of certain certified teachers of the Kuspuk School District.

2. The collective bargaining agreement between MKEA and the District has expired. Agreement (July 1, 1989), 162/exh. 4.
3. The District's representative and spokesperson in negotiations is Al Weinberg, a consultant and Superintendent of Kushunamiut School District. MKEA's representative in negotiations is Vince Speranza of NEA/Alaska.
4. During negotiations for a successor agreement, the parties sought mediation from Federal Mediation and Conciliation Services. Ben Yatzee mediated between the parties in May of 1992. Yatzee told the MKEA bargaining team during mediation that the District would not be paying the column and step increases provided in the expired agreement (Agreement, at 37 - 42, HE/exh. A), during the 1992 - 1993 school year.
5. Individual employment contracts that the District provided to the teachers at the end of the 1991 - 1992 school year for the following school year did not provide for column or step movement.
6. Teachers' first paychecks for the 1992 - 1993 year in September of 1992 did not contain any column and step increases.
7. MKEA filed individual grievances dated October 1, 1992, on behalf of affected teachers, grieving the District's failure to pay the column and step increases. The remedy sought was,

appropriate placement on the salary schedule, retroactive to the beginning of the school year. Interest shall be paid, at a rate of 12%, for the amount improperly withheld.

162/exh 5.

8. In furtherance of a goal to improve relations with the school board, MKEA sent the school board three letters.
9. The first letter, dated October 1, 1992, stated:

The teachers of Kuspuk School District whose names are undersigned on this letter feel it is timely and vital that we communicate to you the present status of our bargaining status and our working relationship with the district.

For over two years now we have tried to bargain with the district for a new contract. Our bargaining team has set at the table with Mr. Weinberg alone and had him repeatedly refuse to negotiate in good faith. As a result we have found ourselves at impasse as school ended last year. The process of arbitration, normally a last step to resolve a few difficult issues, is being used in our case to settle almost all of the issues.

Bargaining has become a protracted process. The choice of arbitrators and his ruling could have been done this fall, but now is being delayed until mid January. By the time we receive the decision and sit down to negotiate once again it will be March or later. This situation is totally unacceptable. The teachers of Kuspuk deserve a contract.

The Board needs to know that the teachers want, expect, and deserve a contract. The issue is not money. It is an issue of what's right, and an issue of respect. We as professionals deserve to have a current, clear, mutually acceptable contract.

We have several proposals to make to you. First we propose to get back to the table to negotiate in the very near future. Also we believe that it is vital to our ability to settle this contract that members of the board participate in the process, so that we all feel a better sense of representation at the table. It is unacceptable to have the Superintendent of Kashunamiut School District negotiate a contract without direct involvement of this district.

If you don't accept this idea, then we propose that we the teachers will pay the \$125 fee, normally paid by the school district, as their half of the cost of using an arbitration service that is more expedient than the

one Mr. Weinberg has insisted upon using. This will at least facilitate an earlier date for arbitration to occur. [This refers to the fact that earlier this summer when the choice of arbitrator was to be decided Mr. Weinberg insisted on using the AAA service which is free, but which is known to take much longer. As a result of that we are dealing with a service which has finally given us a list of arbitrators and our negotiator and Mr. Weinberg made the decision of selecting an arbitrator who has been selected and he has given us the date of January 15 before he would be able to do anything toward it.]

Once arbitration has taken place, if that is the route chosen the teachers want to ask the district to accept the arbitrator's decision as binding, and let the new contract proceed from it.

At this point the teachers have doubts about the superintendent's desire to negotiate a contract. His lack of seriousness in looking at arbitration is being seen as a delaying tactic.

If, as stated in one of your recent meetings, the board really desires as its goal better rapport and relationships with the teachers then this issue of contract needs to be settled and quickly. It is critical that we all understand the importance of a mutually respectful working relationship. That, coupled with honest, open communication can only benefit our district.

162/exh. 2 (emphasis added). The second letter was the same except for formatting differences, the addition of the material in brackets, and the identity of the signers of the letter. 162/exh. 1. The two letters are signed by a total of 37 members of MKEA in addition to its President Bambi Hill. Bambi Hill presented the letter to the school board at its meeting on October 5, 1992.

10. On October 13, 1992, MKEA filed an unfair labor practice charge against the District alleging a unilateral change in a term of employment in violation of AS 23.40.110(a)(1),(2), and (5) and the rights guaranteed in AS 23.40.080.

11. By letter to Bambi Hill, President of MKEA, dated October 16, 1992, Leo Morgan, President of the Kuspuk School District Board of Education, stated that an oversight had occurred. He further stated that, "the Board has instructed that these matters be addressed prior to the next payroll so that these salary adjustments are made pending continued good faith negotiations." 149/exh. 2. Copies of the letter were sent to all of the teacher grievants.

12. The third letter that MKEA sent the school board, dated October 19, 1992, stated:

Once again the teachers of the Middle Kuskokwim Education Association find it critical that we communicate to the Board our thoughts and feelings on several issues vital to the workings of our district.

First, we would like to commend you on the difficult decision you made recently to change the leadership of the district. We see the removal of Mr. McHenry as a positive step in the direction of an improved educational environment in Kuspuk. We hope that in this spirit of change the Board will truly seek to develop a new and mutually trusting working relationship with the teachers.

We realize there are many, as yet, unresolved issues related to this change which will require the Board's attention and demand time and energy. For that reason, we would like to offer some suggestions for your consideration.

Regarding the issue of the grievances filed by teachers and the Unfair Labor Practice accusation filed by the Association we would like to recommend these steps:

1) The district takes the appropriate action of recognizing the existing contractual agreement and pays the teachers their step and column increases retroactively and with interest.

2) The district agrees to commence the bargaining process as soon as possible with members of the Board and members of the MKEA negotiating team sitting down to work out a contract. We would like to meet you without our NEA-AK staff person, Vince Speranza, and you meet with us without Mr. Weinberg.

These two steps would eliminate the lengthy process of hearings required by the grievances and the ULP charge and would also be a demonstration of trust on the part of both parties. This would also facilitate an earlier resolution to the issue of contract which is now a stumbling block to building new relations. Teachers feel frustrated by what only be interpreted as a lack of respect for them as professionals, and although money is not the only issue, you should understand that we expect fair compensation commensurate with other districts around us.

In addition to a fair contract, there are some other concerns we have which could be addressed by some changes at this time. Teachers have a desire to be valued and respected as professionals who are part of a partnership for building better educational programs in our district. There are many ways that this partnership can be built and developed. Some of our ideas are:

- 1) Allowing teachers to participate in an advisory capacity in the hiring of the new permanent superintendent.
- 2) A commitment by the district to attracting and working at keeping the best quality personnel for our schools. This commitment would include making teacher salary, housing, and working conditions a top priority.
- 3) Fostering viable avenues for frequent, open communication between administrators, the Board, teachers and parents.
- 4) Articulating a goal statement which outlines clear, achievable objectives and ways to implement them.
- 5) Fostering mutual trust and respect that allows for differences of opinion but recognizes and gives credit to hard work and dedication.
- 6) A commitment to developing cutting edge educational programs and a plan to implement them in all phases. This includes making certain that teachers have the supplies, materials, resources, and training they need as well as prompt and courteous attention to their needs from support personnel.

We see this as a crucial time of change. If we all seize the moment to address our past problems and learn from our mistakes we have a rare opportunity to create a unique relationship between all of the necessary players in our district. If we work together with honest, caring, energy, it could be a refreshing, exciting time. We are extending an offer of conciliation. We truly hope you will recognize the opening and begin to build anew with us.

There is an important deadline on Tuesday the 20th. It concerns the resolution of the grievances filed earlier this month. Hopefully, you will take the suggestions we've made to avoid a hearing. If not, we will expect the deadline to be met and a hearing set up by the end of this week. If that is not the case then we will immediately request a date for a binding arbitration hearing on this matter.

The letter is signed, "All members of MKEA." 162/exh. 3 (emphasis added).

13. On November 3, 1992, the District, through representative Weinberg, filed an unfair labor practice charge against MKEA, alleging a violation of AS 23.40.110(c)(1)(B).

14. The Agency conducted an investigation of the parties charges in 93-149-ULP and 93-162-ULP and on December 1, 1992, issued notices of accusation in each case.

15. The District filed its notice of defense on December 4, 1992, denying that it committed any unfair labor practice.

16. MKEA filed its notice of defense on December 18, 1992.

17. A hearing was held on February 4, 1993, and the parties filed briefs and presented testimony and other evidence.

The parties stipulated to the consolidation of the two cases and the cases were consolidated.

Conclusions of Law

1. As a school district or regional educational attendance area, the District is a public employer under AS 23.40.250(7) (1992 Supp.) and this Agency has jurisdiction of these complaints under AS 23.40.110.
2. 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.
3. As part of the duty to bargain under AS 23.40.110, parties negotiating the successor to an expired agreement are under an obligation to maintain the status quo until they reach impasse and satisfy any conditions to exercising the economic weapons of unilateral action or strike under AS 23.40.200. An employer's unilateral changes to a term of the expired agreement during negotiations can violate its duty to bargain in good faith under AS 23.40.110(a)(5).
4. The District has not disputed that it was obligated to pay the step and column increases under the expired agreement. Almost immediately after the filing of grievances, it remedied any violation of AS 23.40.110(a)(5) by paying the increases. MKEA continues to pursue its unfair labor practice charge because it believes the District's handling of the matter raised questions about the effectiveness of the association to the unit members. MKEA makes the point that an employer can handle a dispute in a manner that undercuts the employee association and thereby commit an unfair labor practice. In this case, however, the District adhered to the agreement's grievance arbitration procedures when it remedied the pay problem. Its response should have reinforced rather than undercut the association's effectiveness as the teachers' representative. By responding promptly to the grievance the District ended any unfair labor practice, and it now argues the case is moot. MKEA in its unfair labor practice complaint sought an order requiring the District to grant wage increases consistent with the agreement and to refrain from unilateral changes in the terms and conditions of employment until impasse and the conclusion of advisory arbitration. The District's present actions, however, are completely consistent with such an order. The order is not needed. No issues remain that justify the expense and time of a hearing before the Agency. The complaint should therefore be dismissed as moot.
5. The District's letter in response to MKEA's grievances does raise some concerns. The statement that the pay adjustment is made "pending continued good faith negotiations" is susceptible to the interpretation that the District is conditioning the teachers' pay adjustment on MKEA's future conduct. The District's statement could read to mean that it would discontinue the increase if, in its discretion, it believes that MKEA is not bargaining in good faith. However, the procedure to follow when a labor organization refuses to bargain in good faith is to file an unfair labor practice charge under AS 23.40.110(c)(2). By withdrawing the adjustment in retaliation for bad faith bargaining, the District would be disrupting the status quo, which itself can be an unfair labor practice under AS 23.40.110(a)(5). The determination that the District committed an unfair labor practice would be made by this Agency independently of any unfair labor practice by MKEA for refusal to bargain in good faith. In addition, the District needs to avoid communications regarding retaliation for the pursuit of rights under PERA. Such a communication would violate AS 23.40.110(a)(1).
6. AS 23.40.110(c)(1)(B) prohibits a labor or employee organization or its agents to "restrain or coerce" "a public employer in the selection of the employer's representative for the purposes of collective bargaining or the adjustment of grievances."
7. MKEA sought in its letters and in its presentation at the school board meeting to influence the District's continued reliance on its representative, Weinberg. The apparent meaning of "It is unacceptable to have the Superintendent of Kashunamiut School District negotiate a contract" and MKEA's request to meet with the board "without Mr. Weinberg" in the context of the bargaining demands in the letters is the demand that the District change its bargaining representative. Such statements are impermissible attempts to restrain or coerce the District in the selection of its representative in violation of AS 23.40.110(c)(1)(B).
8. Nothing here is intended to prevent an individual teacher from writing personally to the school board as a citizen or

constituent. Two elements must exist before the communications are prohibited unfair labor practices under AS 23.40.110(c)(1)(B). The first element concerns the content of the communication, discussed in paragraph 7, supra. The second is that the communication must be from a labor or employee organization or its agents. AS 23.40.110(c). The three letters sent to the school board in this case qualify. Although in two of the letters, the teachers signed individually, the number of signers and the fact that they followed the signature of Bambi Hill, signing as President of MKEA, make the communication from MKEA.

ORDER

1. Mid-Kuskokwim Education Association's complaint in 93-149-ULP is DISMISSED;
2. Mid-Kuskokwim Education Association is ordered to CEASE AND DESIST from attempting to restrain or coerce the Kuspuk School District in the selection of its representative for collective bargaining in violation of AS 23.40.110(c)(1)(B); and
3. The District is ordered to post copies of this decision in a manner reasonably calculated to give notice of the decision 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 Mid-Kuskokwim Education Ass'n v. Kuspuk School District, case no. 93-149-ULP, and Kuspuk School District v. Mid-Kuskokwim Education Ass'n, case no. 93-162-ULP (Con), dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 8th day of March, 1993.

Norma Wren

Clerk IV

This is to certify that on the 8th day of March, 1993, a true and correct copy of the foregoing was mailed, postage prepaid to

Robert M. Johnson

Howard S. Trickey

Signature

