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NENANA CITY PUBLIC SCHOOLS,

Complainant,

vs.

NENANA EDUCATION ASSOCIATION, NEA-ALASKA,

Respondent.

CASE NO. 96-512-ULP

DECISION AND ORDER NO. 203

Digest: The term of a collective bargaining agreement may not exceed three years. A party to an agreement whose term exceeds this limit may demand to bargain at a reasonable time before the limit is reached. A refusal to bargain after such a demand may be an unfair labor practice.

DECISION

Statement of the Case

Nenana City Public Schools filed this unfair labor practice charge under AS 23.40.110(c)(2) on February 20, 1996, against the Nenana Education Association, NEA-Alaska, after the Association declined a request to bargain. The Alaska Labor Relations Agency investigated the charge and on April 3, 1996, found probable cause to support the charge. The notice of accusation was issued on April 4, 1996. On April 18, 1996, the Association filed its notice of defense denying the charge. The case was heard on June 13, 1996, before a panel of the Alaska Labor Relations Agency.

Panel: Board members Stuart H. Bowdoin and Raymond P. Smith, present, and member James W. Elliott, participating after review of the record.

Appearances: Andrew D. Steiner, Bankston & McCollum, P.C., for complainant Nenana City Public Schools and Robert M. Johnson, Wohlforth, Argetsinger, Johnson & Brecht, for respondent Nenana Education Association, NEA-Alaska.

Procedure in this case is governed by the Administrative Procedure Act, AS 44.62.330 -- 44.62.630, AS 23.40.130, and 8 AAC 97.340. Hearing examiner Jan Hart DeYoung presided.

Issues

1. Does AS 23.40.210 require that a collective bargaining agreement negotiated for a five-year term terminate at the end of the third year?

2. Is the three-year period in AS 23.40.210 a contract bar rule only?

3. If AS 23.40.210 limits the duration of the collective bargaining agreement to three years, when does the three-year term begin (July 1, 1993, March 11, 1994, or June 30, 1994)?

4. Is the school district estopped from asserting that the agreement is limited to three years?

5. Do provisions of the collective bargaining agreement require the school district to renew the agreement for additional time for a total period of five years?

6. Should the agreement be conformed or reformed to meet the intent of the parties?

7. Is reliance on the agreement a defense to the complaint?

8. Did the school district timely file the unfair labor practice charge?

Summary of the Evidence

A. Exhibits

Nenana City Public Schools offered the following exhibits, which were admitted into the record:

1. AS 23.40.210 (statute, demonstrative only);

2. AS 23.40.100(e) (statute, demonstrative only);

3. [withdrawn]

4. J. Sedor, letter to W. Black & J. Krause (Feb. 2, 1996);

5. R. Johnson, letter to J. Sedor (Feb 12, 1996);

6. Negotiation notes.

Nenana Education Association, NEA-Alaska, offered the following exhibits, which were admitted into the record:

A. Collective bargaining agreement (1993-1998)(extract);

B. Negotiation notes;

C. [withdrawn]

D. [withdrawn]

E. Negotiation agenda;

F. Nenana City Public Schools, special school board meeting, minutes (Mar. 11, 1994);

G. Administration contracts (15 pages).

B. Testimony

The District presented the testimony of Nenana City Public Schools Board Members Dallas Sutton and Gary Shields and of Superintendent Dr. John Gill.

The Association presented the testimony of Association President William Black, former Nenana City Public Schools Board Chair Cheryl Brady, and NEA-Alaska Uniserv Director Jean Krause.

Findings of Fact

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

1. The Nenana Education Association is an affiliate of NEA-Alaska and the recognized bargaining representative of a unit of certified employees of the Nenana City Public Schools (District).

2. The Association and the District negotiated a five-year collective bargaining agreement, which the parties signed on March 11, 1994. The parties agreed to a term for the agreement covering July 1, 1993, through June 30, 1998. Exh. A, at 1.

3. At the time the agreement was negotiated, the negotiating team members from both parties were unaware of any statutory limits on the term of a collective bargaining agreement, and both parties agreed to the term in good faith.

4. Dr. John Gill was employed as the superintendent of the District on or about July 28, 1994.

5. Dr. Gill became aware of the five-year term in the parties' collective bargaining agreement in the fall of 1994, but he did not discuss any concerns about it with the Association.

6. On February 2, 1996, the District's attorney provided the Association with a written demand to bargain.

7. The Association refused to negotiate on the basis that the parties' agreement remained in effect through June 30, 1998.

Discussion

This dispute is about the meaning and effect of language in AS 23.40.210 limiting a collective bargaining agreement to three years. The District believes the language prohibits collective bargaining agreements from exceeding three years. Because the parties' agreement exceeds this limit, the District believes that it could demand to bargain and that the Association could not then refuse to bargain without committing an unfair labor practice. The Association, on the other hand, argues that any limitation in AS 23.40.210 does not limit the duration of a collective bargaining agreement but, instead, limits the period the agreement can bar a representation election. It further argues that the District should be estopped from asserting any limit on the duration of the agreement, that the agreement should be conformed to give effect to the parties' intent, and finally, that its refusal to bargain was in good faith and therefore was not an unfair labor practice.

A. The meaning of AS 23.40.210.

The language at issue in AS 23.40.210 provides:

> Upon the completion of negotiations between an organization and a public employer, if a settlement is reached, the employer shall reduce it to writing in the form of an agreement. The agreement may include a term for which it will remain in effect, not to exceed three years. . . . Either party to the agreement has a right of action to enforce the agreement by petition to the labor relations agency.

The second sentence plainly states the maximum duration for a collective bargaining agreement. The rule for construing statutes is that unambiguous language in a statute should be given its ordinary and common meaning. Dillingham v. CH2M Hill Northwest, 873 P.2d 1271, 1276 (Alaska 1994).

The Association, however, argues that the language is ambiguous. It reasons that, when the three-year limit is considered in light of policy, reason, and the other sections of the Public Employment Relations Act, its effect is to amplify the contract bar in AS 23.40.100(e) rather than set a maximum term for a collective bargaining agreement. The contract bar prohibits any elections in a bargaining unit during the term of a collective bargaining agreement for a maximum period of three years. It appears in AS 23.40.100(e):

> An election may not be directed by the labor relations agency in a bargaining unit in which there is in force a valid collective bargaining agreement, except during a 90-day period preceding the expiration date. However, a collective bargaining agreement may not bar an election upon petition of persons in the bargaining unit but not parties to the agreement if more than three years have elapsed since the execution of the agreement or the last timely renewal, whichever was later.

However, this section plainly states that the Agency may not conduct an election during the term of an agreement for a maximum period of three years except during a window period before the end of the agreement. This meaning is clear without reference to AS 23.40.210, which does not mention the word "election" or touch on the election bar in any way.

The Association's argument requires the rejection of the common and ordinary meaning of the language in AS 23.40.210. Unless the second sentence in AS 23.40.210 limits the duration of a collective bargaining agreement, the language has no purpose. The straightforward reading is that AS 23.40.210, which addresses various aspects of collective bargaining agreements, allows the parties to set a term for their agreement and sets the maximum term at three years. We conclude that the language means what it says and the term of an agreement may not exceed three years.

The Association refers to the National Labor Relations Board to support its interpretation. The NLRB does not by statute or board decision limit collective bargaining agreements to three years, but it does recognize a three-year contract bar for elections that it developed through decisional law. 1 Patrick Hardin, The Developing Labor Law 398-399 (3d ed. 1992). By providing in statute for both a maximum term for the agreement and a contract bar for elections, PERA differs substantially from the national labor relations laws and the NLRB's precedent on this issue therefore is not helpful. But see 8 AAC 97.450(b).

B. The term of the parties' agreement.

Applying AS 23.40.210 to the parties' five-year agreement raises the question of the date when the maximum three-year limit is reached. The agreement was executed on March 11, 1994, and made retroactively effective to July 1, 1993. The District asks whether the three-year maximum should run from the effective date of the agreement, July 1, 1993, from the date the agreement was made, March 11, 1994, or from the first complete prospective year following the date of agreement, June 30, 1994. Again, we adopt the most obvious and reasonable reading of the limit and apply the statute to the actual term set by the agreement. The parties' agreement set the term as beginning on July 1, 1993. The three year maximum term therefore must conclude on June 30, 1996.[1]

C. Estoppel.

The Association further argues, if AS 23.40.210 sets a three-year limit on agreements, the limit should not be applied to the parties' agreement. The Association argues that the District by its conduct should be estopped from asserting any term limit in AS 23.40.210. The essence of the Association's estoppel argument is that the District has reaped the advantages of a backloaded agreement on the front end and should be estopped from avoiding its obligations on the back end. The doctrine of estoppel and general principles of fairness should prevent the District from renouncing the agreement after benefitting from it.

The facts, however, do not support estoppel. The District did not make any representations that the Association reasonably relied upon to its prejudice, which are the elements required to establish estoppel. See LeDoux v. Kodiak Island Borough, 827 P.2d 1121, 1122 (1992)(per curiam). It is significant that the District's bargaining team was unaware of the term limit in AS 23.40.210 when proposing a five-year term. The record does not contain evidence of any representations to the Association about the validity of a five-year term.

The Association established the fact that the District initiated the proposal of a five-year term, but this fact is not material. Sumner Development Corp. v. Shivers, 517 P.2d 757, 762 (Alaska 1974).

In this case both parties innocently agreed to a five-year term for the agreement. This mutual mistake does not support

an estoppel against the District.

D. Reformation of the agreement.

The Association's third argument against the application of the three-year limit in AS 23.40.210 is that the agreement itself requires the agreement to be recast to accomplish the parties' intent without the offending term. Section 503.1 of the agreement provides, in part:

> The Board and the Association shall take such action as may be necessary in order to give full force and effect to the provision of this agreement.
>
> This Agreement shall remain in effect until a new agreement is reached.

Exh. A, at 7. In addition, section 504 of the agreement states,

> If any provision of this agreement is held . . . to be in conflict with any applicable law, directive, order, rule, or regulation, said provision shall be null and void. However, all other provisions of the Agreement shall remain in full force and effect. Within twenty (20) days of such holding, either party may deliver a written request, through the Superintendent and the Association President, to renegotiate the tainted provision, and only that provision. In such event, negotiations shall be conducted as described under applicable provisions of law and this Agreement.

Id., at 8. The Association argues that under these sections the parties must give effect to their intent by honoring the agreement for five years even though that time would exceed the maximum term allowed. For example, the agreement could be reformed to two consecutive agreements, neither of which exceeded the limit. Reforming the agreement in this way, however, mocks the limit. The law provides for a maximum three-year term. We conclude that the agreement cannot extend more than three years without offending this limitation.

The other provisions of the agreement, however, may have an effect beyond the three-year maximum term. Section 503.1 provides for the continuation of the agreement's provisions until the parties reach a new agreement. Id., at 7. This is also the effect of the rule that terms and conditions of employment may not be changed unilaterally during bargaining before the parties reach impasse. See Alaska State Employees Ass'n v. State, Decision & Order No. 174, at 8 (April 19, 1994).

The distinction is subtle but important. The agreement may have an effect beyond its term but the parties remain obligated to bargain in good faith for a new agreement during that time.

E. The unfair labor practice.

The District argues that refusing to bargain after its demand on February 2, 1996, was an unfair labor practice. AS 23.40.110(c)(2) provides that a labor organization may not "refuse to bargain collectively in good faith with a public employer." The Association responds that, because it relied in good faith on the agreement when it refused to bargain, it did not violate AS 23.40.110(c)(2).

A refusal to confer is considered a per se violation of the obligation to bargain in good faith. 1 Patrick Hardin supra, at 604. In a per se violation, proof of the conduct alone establishes the unfair labor practice without regard to any actual bad faith. Id., at 596; see Alaska Public Employees Ass'n v. State, Order & Decision No. 107, at 4 (June 1, 1987). Thus, a refusal to engage in the mechanics of bargaining can be an unfair labor practice despite the absence of any subjective bad faith.

Of course, before a refusal to confer can be an unfair labor practice, there must be an obligation to bargain. Because the term of the agreement violated the maximum term for an agreement, a party to the agreement should be able to initiate

bargaining. A reasonable time for the initiation of bargaining is suggested in Section 506 of the parties' agreement, which provides,

> After January 1st of the final year of this agreement, either party may request negotiations for a successor agreement by delivering written notice from the Association President to the Superintendent or vice versa.

Exh. A, at 8.

Because the District's demand to bargain followed January first of the third and therefore maximum year of the agreement, it was timely. After the District's February 2, 1996, demand, the Association was obligated to bargain. By refusing to bargain, the Association committed the per se violation of a refusal to confer. Filing an unfair labor practice charge after the Association's refusal to bargain on February 12, 1996, was not premature and therefore was also timely.

In sum, the maximum term for an agreement in the law is clear and unambiguous and does not leave room for creative interpretation. The policy behind the law is also sound. Senior management officials in government are appointed by elected officials or may even themselves be elected. Limits on the time labor and management can commit themselves to terms and conditions of employment are therefore appropriate.

But the impact of our holding today does raise a concern. The District's victory may well cost it the good will of these employees. The bargaining unit members feel that they accommodated the political needs of the board members by delaying salary benefits to the latter part of the agreement. Both the Association and the District made a point at the hearing of addressing the collaborative nature of the 1994 negotiations that led to the five-year agreement. The parties agree that they identified issues and solutions to meet their mutual needs. The five-year term was one of these solutions. In contrast, the current environment includes rumors of future surprises, written demands before any preliminary discussion, and adversarial proceedings and is not likely to foster a harmonious relationship. But however much we may regret the possible effect of this decision on the parties' relations, we believe the law allows no other decision.

Some of the arguments addressed here were raised by the District in a motion for summary judgment. The Administrative Procedure Act, AS 44.62.330--44.62.630, and the regulations under PERA, 8 AAC 97.010--8 AAC 97.990, do not specifically address motions for summary judgment. The practice has been to address them under 8 AAC 97.390. However, the issues in this case did not lend themselves to summary judgment. An important part of the Association's defense was its equitable argument. Facts concerning the formation of the contract and the effect on the parties were material to the consideration of these issues. The issues therefore were considered in the context of a full hearing.

Conclusions of Law

1. The Nenana City Public Schools is a public employer under AS 23.40.250(7) and the Nenana Education Association, NEA-Alaska is an organization under AS 23.40.250(5). This Agency has jurisdiction under AS 23.40.110 to consider this matter.

2. AS 23.40.210 limits the term of a collective bargaining agreement to a maximum of three years.

3. The effect of AS 23.40.210 on an agreement containing a term longer than three years is to provide the parties with the right to demand to open bargaining.

4. A refusal to bargain after a demand made a reasonable time before the end of three years of a collective bargaining agreement whose term exceeds three years is an unfair labor practice under AS 23.40.110(c)(2).

5. The Association's refusal to bargain after the District's demand letter on February 2, 1996, was an unfair labor practice under AS 23.40.110(c)(2).

ORDER

1. The Nenana Education Association is ordered to cease and desist its refusal to bargain on mandatory subjects of bargaining; and

2. The Nenana City Public Schools 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.

ALASKA LABOR RELATIONS AGENCY

Stuart H. Bowdoin, Vice Chair

James W. Elliott, Board Member

Raymond P. Smith, Board Member

This is to certify that on the day of , 1996, a true and correct copy of the foregoing was mailed, postage prepaid to

Andrew Steiner, Nenana City Public Schools

Robert M. Johnson, Nenana Education Ass'n

Signature

APPEAL PROCEDURES

An Agency decision and order may be appealed through proceedings in superior court 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 NENANA CITY PUBLIC SCHOOLS v. NENANA EDUCATION ASSOCIATION, CASE NO. 96-512-ULP, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 8th day of July, 1996.

Margie Yadlosky

Administrative Assistant

This is to certify that on the 8th day of July, 1996, a true and correct copy of the foregoing was mailed, postage prepaid to

Robert M. Johnson, Nenana Education Association, NEA-Alaska

Andrew Steiner, Nenana City Public Schools

Signature

1We do not mean to address whether the parties themselves could enter into consecutive agreements to extend the effect of an agreement and delay bargaining, for example, by entering into a one-year agreement with a three-year agreement to follow or by delaying the commencement date of an agreement.