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PUBLIC SAFETY EMPLOYEES)
ASSOCIATION,)
)
Petitioner,)
)
vs.)
)
STATE OF ALASKA,)
)
Respondent.)
_____)

Case No. 01-1125-CBA.

DECISION AND ORDER NO. 260

The board heard this dispute on April 10, 2002. Hearing Examiner Mark Torgerson presided. This matter was decided based on the evidence submitted and the testimony of witnesses at the hearing.

Appearances: James Gasper, attorney for the Public Safety Employees Association; Art Chance, labor relations analyst for the State of Alaska.

Digest: The Agency will decline to interpret contracts and will order the parties to arbitration when the subject of their dispute concerns the interpretation or construction of a term contained in the collective bargaining agreement.

Panel: Robert Doyle, Raymond Smith, and Dave Rasley.

DECISION

Statement of the Case

The Public Safety Employees Association (PSEA) filed a petition to enforce its collective bargaining agreement (CBA) with the State of Alaska (State). PSEA asks this Agency to construe or apply the term "as soon as practical," contained in Article 21.8 of the parties' current collective bargaining agreement. PSEA asserts it is only asking us to apply the collective bargaining agreement, not interpret it. The State disputes PSEA's assertion. It contends that an arbitrator should interpret the term PSEA asks us to apply.

Issues

1. Should we grant PSEA's petition and assess the meaning of the term "as soon as practical," contained in the collective bargaining agreement?

2. Should we deny PSEA's petition and compel the parties to arbitration?

Findings of Fact

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

1. The Public Safety Employees Association (PSEA) is recognized as the exclusive bargaining representative for the Correctional Officers' bargaining unit. (State/ASEA Collective Bargaining Agreement (1999-2002), Exh. 3.)

2. PSEA and the State of Alaska (State) entered into a collective bargaining agreement for the period July 1, 1999, to June 30, 2002. *Id.*

3. Article 21.8 of the agreement states as follows:

The parties agree to change to a bi-weekly pay cycle, based on an existing bi-weekly cycle for payroll processing. This bi-weekly pay cycle will be implemented as soon as practical. Leave accrual and any other conditions or benefits calculated based upon a semi-monthly pay cycle will be recalculated to ensure that the conditions or annual benefits are not reduced by conversion to a bi-weekly pay cycle.

Id. at 58.

4. Article 16 of the agreement contains grievance/arbitration provisions. Part A defines a grievance as "a dispute over the application or interpretation of the terms of this Agreement. The parties recognize that the application of other rules and regulations of the State may be necessary for the resolution of the grievance." *Id.* at 36. The Article goes on to describe the procedures for filing and advancing grievances to ultimate resolution. Article 16.4(D) states in part that grievances not settled at Step Three "may be submitted to arbitration for settlement." *Id.* at 38. Article 16.6(A) gives the arbitrator authority to decide questions of procedural and substantive arbitrability. *Id.* at 39. In addition, the parties may alternatively agree to resolve their grievance through a mediation procedure outlined in Article 16.8 of the agreement. *Id.* at 40.

5. On June 27, 2000, PSEA Business Agency Brad Wilson sent the State a letter requesting "the necessary steps be taken to implement a 26 pay period schedule." (Exh. 6, Brad Wilson letter to Diane Corso).

6. The parties exchanged correspondence and had meetings concerning implementation of the bi-weekly pay period. Keith Perrin, Business Manager at PSEA, e-mailed and discussed implementation with David Koivuniemi, Assistant Commissioner for the Department of Administration. Brad Wilson, Business Agent for PSEA, had discussions with several Department of Administration Employees, including Debbie Bump, Mark Menthorn, and Art Chance.

7. Debbie Bump is the Administrative Services Manager for the Department's Division of Finance. She testified on the priorities of her Division. The number one priority is to run production and pay state employees timely. Her Division is currently working on implementation of the bi-weekly pay cycle and hopes to implement it by August 1, 2002.

8. PSEA members desire to have the bi-weekly pay cycle implemented as soon as possible.

DISCUSSION

1. Should we grant PSEA's petition and assess the meaning of the term "as soon as practical," contained in the collective bargaining agreement? If so, what does the term mean in the context of the parties' collective bargaining

agreement?

PSEA contends that in this case, the facts are clearly defined. It asserts that the State has failed to implement the bi-weekly pay cycle "as soon as practical" as required in the parties' collective bargaining agreement. Promises have been made and expectations have been created. PSEA asserts that the State needs to make a better effort to implement the bi-weekly cycle. PSEA argues that by failing to implement this pay cycle over two years into a three-year agreement, the State has not fulfilled its part of the bargain. It asks this Agency to find that the State has breached its contractual obligation, render "an appropriate [o]rder," and reject the State's proposed deferral to arbitration. (PSEA Prehearing Brief at 6).

The State admits it has not implemented the bi-weekly pay cycle but it is working toward implementation. However, the State asserts that this matter is an inappropriate use of the petition to enforce process. PSEA should have availed itself of the parties grievance/arbitration process. (State Prehearing Brief at 3).

AS 23.40.210 provides in part that "[e]ither party to the [collective bargaining] agreement has a right of action to enforce the agreement by petition to the labor relations agency." This Agency has jurisdiction under AS 23.40.210 to decide issues of arbitrability. *Fairbanks Fire Fighters Ass'n v. City of Fairbanks*, Opinion No. 5579, ___ P. 3d ___ (Alaska Supreme Court, June 7, 2002).

We listened to the testimony, reviewed the exhibits filed in the record, and considered the parties' arguments. We conclude that if we assess, interpret, or apply the term "as soon as practical," we would be standing in the shoes of an arbitrator. We find in particular that the term "as soon as practical" is subject to varying interpretations depending on specific circumstances. Interpretation of this term is not our province. We therefore deny and dismiss PSEA's petition to decide this matter as requested.

2. Should we deny PSEA's petition and compel the parties to arbitration?

As we have stated above, we will not determine the meaning of the term "as soon as practical" in Article 21.8 of the collective bargaining agreement. That interpretation and decision lies with an arbitrator, in accordance with Article 16 of the collective bargaining agreement. However, we will not order the parties to arbitration, as there was no evidence that a grievance has been filed in this matter.

CONCLUSIONS OF LAW

1. The Public Safety Employees Association is an organization under AS 23.40.250(5), and the State of Alaska is a public employer under AS 23.40.250(7).
2. This Agency has jurisdiction under AS 23.40.210 to consider this dispute over enforcement of the parties' grievance/arbitration provisions in their collective bargaining agreement.
3. As petitioner, PSEA has the burden to prove each element of its case by a preponderance of the evidence.
4. PSEA has failed to prove by a preponderance of the evidence that we should interpret or construe the term "as soon as practical" in Article 21.8 of the parties' collective bargaining agreement, rather than require the parties to proceed to arbitration.
5. AS 23.40.210 requires that all collective bargaining agreements include a grievance procedure that culminates in binding arbitration.
6. The term "as soon as practical" in the parties' collective bargaining agreement is subject to interpretation or application. The remedy for this dispute lies in Article 16 of the parties collective bargaining agreement.

ORDER

1. The petition by the Public Safety Employees Association is DENIED and DISMISSED.

2. The State of Alaska shall 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

Not available for signature.
Dave Rasley, Vice Chair

Robert A. Doyle, Board Member

Raymond Smith, Board Member

APPEAL PROCEDURES

This order is the final decision of this Agency. Judicial review may be obtained by filing an appeal under Appellate Rule 602(a)(2). Any appeal must be taken within 30 days from the date of filing or distribution of this decision.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the order in the matter of *Public Safety Employees Association vs. State of Alaska*, Case No. 01-1125-CBA, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 27th day of June, 2002.

Margie Yadlosky
Personnel Specialist

This is to certify that on the 27th day of June, 2002, a true and correct copy of the foregoing was mailed, postage prepaid, to
James Gasper, PSEA
Art Chance, State of Alaska

Signature