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GENERAL TEAMSTERS LOCAL 959,)
INTERNATIONAL BROTHERHOOD OF)
TEAMSTERS,)
)
Complainant,)
)
vs.)
)
ANCHORAGE SCHOOL DISTRICT,)
)
Respondent.)
)

Case No. 11-1609-ULP

DECISION AND ORDER NO. 298

This dispute over the effects of the Anchorage School District's installation and use of global positioning system devices was heard in Anchorage on May 8, 2012. Hearing Examiner Mark Torgerson presided. The record for this case initially closed on August 21, 2012, after the board panel completed deliberations. Subsequently, labor panel member Daniel Repasky withdrew from the panel.¹ Board chair Gary P. Bader then appointed board member Matthew McSorley to the panel. McSorley reviewed the record and the board panel deliberated on January 13, 2013. The record closed that day.

This decision is based on the documentary record, evidence admitted, and testimony of the witnesses. We also considered the parties' arguments, including those presented in post-hearing briefs received on July 6, 2012.

Digest: The unfair labor practice by the Teamsters Local 959 is denied and dismissed. The parties' collective bargaining agreement contains a broad management rights clause that gives the Anchorage School District the authority to decide all equipment and machinery to use in its operations, regardless of the effect on employment. By agreeing to this article in the collective bargaining agreement with the Anchorage School District, the

¹ The agency gave the parties notice of this change in panel composition.

Teamsters Local 959 waived its right to bargain over global positioning system devices, which are either equipment, machinery, or both. The Teamsters also waived the right to bargain any effects of the devices.

Appearances: Attorney Nancy Shaw for Teamsters Local 959; attorney Andrena Stone of the law firm Jermain Dunnagan and Owens for the Anchorage School District.²

Board Panel: Aaron Isaacs, Jr., Vice Chair; Will Askren and Matthew R. McSorley, Board Members.³

DECISION

Statement of the Case

On September 7, 2011, the General Teamsters Local 959 (Teamsters) filed a complaint with the Alaska Labor Relations Agency (agency) alleging that the Anchorage School District (District) refused to negotiate over the effects of the installation of global positioning system (GPS) devices, in violation AS 23.40.110. The District filed a timely notice of defense, asserting that it had no obligation to bargain over GPS devices because the parties' collective bargaining agreement gave it managerial authority to install and use the devices, and even if there was such an obligation, the Teamsters waived its right to bargain.

Issues⁴

1. Did the District commit an unfair labor practice by refusing to bargain the effects of installing global positioning system devices on school district maintenance vehicles, in violation of AS 23.40.110(a)(1) and (a)(5)?
2. If the District committed an unfair labor practice violation, what is the remedy?

² Attorney Eugenia G. Sleeper from the law firm represented the Anchorage School District through the filing of closing briefs and left the law firm sometime thereafter.

³ Board member Daniel Repasky originally sat on this panel but later recused himself. McSorley was then appointed by Board chair Gary P. Bader to replace Repasky, and McSorley deliberated with the other panel members after reviewing the record in this matter.

⁴ The Teamsters alleged at hearing that another issue was whether the *installation* of GPS devices on work vehicles was a mandatory subject of bargaining. However, the Teamsters did not raise this installation issue until the hearing. This issue was not investigated in the unfair labor practice investigative process, and the District objected to the hearing of the issue. We will not decide that issue here.

Findings of Fact

1. The Teamsters is an organization under AS 23.40.250(5).
2. The District is a public employer under AS 23.40.250(7).
3. The District employs approximately 140 employees who provide maintenance work at almost 100 district facilities. These facilities are spread out over a 70-mile wide area.
4. The maintenance workers use district-owned vehicles to travel to the district facilities and perform maintenance work. Employees are prohibited from using district vehicles for personal purposes.
5. The District assigns employees to locations on a largely reactive, as-needed basis. A lead employee gives the maintenance employees work orders at the beginning of their shift. Sometimes, while completing these work order projects during their shift, employees are assigned to handle emergencies in other locations.
6. The District believed that installing and using of GPS devices in maintenance vehicles would improve efficiency, boost savings in gasoline consumption, and promote safety. The GPS devices allow the District to track vehicle speed, location, and availability for dispatch.
7. GPS devices are a machine and/or a piece of equipment under Article 3.01(a) of the parties' collective bargaining agreement. The agreement does not contain any specific restrictions on the application, installation, or use of GPS devices.
8. The District has determined that use of the GPS devices saves an estimated \$75,000 per year in fuel costs. (District Exhibit K, p. 1).
9. The Teamsters represent several bargaining units within the District, including a bus driver unit in the Transportation Department.⁵
10. The Teamsters is also the certified bargaining representative of the warehouse and maintenance employees working for the District.
11. The Teamsters and the District have negotiated a number of collective bargaining agreements. Their agreement for the period July 1, 2008, to June 30, 2011, contained the following management rights clause:

Nothing in the Agreement shall be construed to limit or impair the right of the District to exercise its own discretion on all management matters,

⁵ Exhibit 16.

including by way of illustration but not limited to the following matter, whatever may be the effect upon employment, when in its sole discretion it may determine it advisable to do any or all of the following:

a. To manage the District generally; to decide the number and location of facilities; to determine work zones and assignment of resources to each zone; to decide all machines, tools, and equipment to be used; to decide the work to be performed; to move or remove a facility or any of its parts to other areas; to decide the method and place of providing its services; to determine the schedules of work; to maintain order and efficiency in its facilities and operations; to hire, layoff, assign, transfer and promote employees; to determine the qualifications of employees; to determine and re-determine the number of hours to be worked; to make such reasonable rules and regulations not in conflict with this Agreement, as it may from time to time deem best for the purposes of maintaining order, safety and/or effective operation of its facilities, and after advance notice thereof to the Union and the employees, to require compliance therewith by employees; to discipline and discharge employees for cause.

b. Management shall have all other rights and prerogatives including those exercised unilaterally in the past, subject only to express restrictions on such rights, if any, as are provided in this Agreement.⁶

12. The parties' 2008 – 2011 collective bargaining agreement gives the District “its own” discretion, “whatever may be the effect on employment,” to decide which machinery or equipment to use in its operations.

13. On October 27, 2010, Chris Borst, maintenance supervisor for the District, held a meeting in which installation of the GPS devices was an agenda item. A Teamsters' shop steward was present at this meeting.

⁶ (District's Exhibit B at 4-5, Agreement Between Anchorage School District and General Teamsters Local 959, Covering: Warehouse and Maintenance Employees, July 1, 2008 – June 30, 2011) (emphasis added).

14. At the District's monthly safety meeting with employees in October 2010, Borst reminded all employees about the installation of the GPS devices.⁷ A shop steward from the maintenance unit attended the meeting and later sent members an email reminding them to not tamper with the devices.⁸

15. Pam Chenier, the District's director of purchasing and warehouse, met with Dale Miller from the Teamsters periodically to keep communications open between the District and the Warehouse and Maintenance unit. She told Miller as early as the summer of 2009 that the District had ordered GPS devices to be installed in the maintenance vehicles.⁹

16. The GPS devices were installed into maintenance vehicles primarily as a tool for tracking idling, fuel usage, asset location, and route efficiency.¹⁰ The device data had also been used as a tool in disciplinary investigations, but the instigation for those investigations derived from complaints received about workers' locations. The District then later ran a query to determine actual location.¹¹

17. During negotiations for the 2011–2014 agreement, the Teamsters' bargaining team included Dale Miller, and the District's team included Todd Hess.¹² Dale Miller is a business representative for the Teamsters.¹³ Todd Hess is director of contract administration for the District.¹⁴

18. In January 2011, Dale Miller asked Todd Hess to bargain over the issue of the GPS devices.¹⁵ The first bargaining session for the 2011-2014 collective bargaining agreement occurred on April 5, 2011. At that session, the Teamsters proposed language regarding the effects of the data gathered from the GPS devices.¹⁶ The parties discussed the GPS proposal and the Teamsters' concerns about the use of GPS data.¹⁷ No agreement was reached.

19. Another bargaining session occurred on June 1, 2011. The Teamsters again presented language providing for management of the data gathered from GPS devices.¹⁸ During

⁷ District's Exhibit J, p.2; testimony of Borst, Tr. 159-160. Borst testified he reminded employees to not disable the GPS devices.

⁸ District's Exhibit J, p.5; testimony of Borst, Tr. 162-163.

⁹ Testimony of Chenier, Tr. 137.

¹⁰ Testimony of Borst, Tr. 177:11-17.

¹¹ Testimony of Borst, Tr. 177-179.

¹² Testimony of Wisniewski, Tr. 20:21-24.

¹³ Testimony of Miller, Tr. at 42.

¹⁴ Testimony of Hess, Tr. at 88.

¹⁵ Testimony of Miller, 47:14-19.

¹⁶ Teamsters Exhibit 3, p. 5.

¹⁷ Teamsters Exhibit 17, p. 3.

¹⁸ Teamsters Exhibit 4, p. 4.

the meeting, the District responded that it did not think it needed to bargain over GPS devices or effects.¹⁹

20. The District offered proposals at a bargaining session on July 19, 2011, but none of its proposals addressed the Teamsters' proposal on GPS data.²⁰

21. At the next bargaining session on August 4, 2011, the Teamsters again proposed that the parties include a GPS device use provision.²¹ The District's proposal said nothing about GPS devices.²² However, the District did assert that it did not believe GPS devices are a mandatory subject of bargaining.²³

22. At a bargaining session on August 9, 2011, the Teamsters again requested bargaining on the GPS issue.²⁴ The District did not respond or propose anything related to GPS.

23. Each of the Teamsters GPS device proposals provided: "It is understood by the parties that the District has the right to install G.P.S devices in their vehicles."²⁵

24. The parties signed a collective bargaining agreement on January 23, 2012. The agreement was made retroactive to July 1, 2011. It expires on June 30, 2014.²⁶ This agreement did not include language regarding GPS devices, the data from the devices, or the effects on employees of the data from the devices. The management rights clause of the 2011-2014 agreement contained language similar to that in the 2008-2011 agreement, except the new agreement does not require advance notice to the union of changes the District makes under the clause.

25. The parties' collective bargaining agreements, including the 2008–2011 agreement, and the 2011 – 2014 agreement, do not address GPS devices specifically.

ANALYSIS

AS 23.40.110(a) (1) prohibits a public employer from interfering with, restraining, or coercing an employee in the exercise of the employee's rights guaranteed in AS 23.40.080. AS 23.40.080 allows public employees to "self-organize and form, join or assist an organization to bargain collectively through representatives of their own choosing, and engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection." AS 23.40.110(a)(5) provides that a public employer may not "refuse to bargain collectively in good

¹⁹ Teamsters Exhibit 5, p. 2.

²⁰ Teamsters Exhibit 7.

²¹ Teamsters Exhibit 8.

²² Teamsters Exhibit 10.

²³ Teamsters Exhibit 10.

²⁴ Teamsters Exhibits 11, 12.

²⁵ Teamsters Exhibit 3, p. 5.

²⁶ District's Exhibit B.

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.”

The duty to bargain in good faith prohibits an employer from making a unilateral change in a term or condition of employment unless it has first negotiated to impasse with the labor organization representing the employees. *See Alaska Community Colleges Federation of Teachers, Local No. 2404 v. University of Alaska*, 669 P.2d 1299, 1303-1304 & n. 4 (Alaska 1983). However, “[i]t is well established that unions can waive their right to bargain over wages or other mandatory bargaining subjects.” *Public Safety Employees Association vs. State of Alaska*, Decision and Order No. 255 at 8 (July 25, 2001). Waiver must be “clear and unmistakable.” *Id.*, citing *Allison Corporation*, 330 N.L.R.B. No. 190, 2000 WL 559853 (2000).

The Teamsters contend that the District committed an unfair labor practice violation by refusing to bargain the effects of the installing global positioning system devices (GPS) on the District’s vehicles driven by maintenance workers represented by the Teamsters.²⁷ The Teamsters contend these devices are a term or condition of employment and therefore a mandatory subject of bargaining.²⁸ The District counters that it is not required to bargain effects in this instance because the parties’ management rights clause in the collective bargaining agreement gives the District authority to install the GPS devices, which are machinery or equipment under the clause, regardless of the effects on employees.²⁹

Testimony of rebuttal witness

As a preliminary issue, we address whether to accept and allow the testimony of Pam Chenier, a rebuttal witness called by the District. The Teamsters objected to the testimony because it was not rebuttal in nature, and the witness should have been named on the witness list and called during the District’s presentation of its witnesses.

In Decision and Order 258, this Agency looked to *Sirotiak v. H.C. Price Company*, 758 P.2d 1271, 1277 (Alaska 1988), where the Alaska Supreme Court described the nature of rebuttal testimony:

“[R]ebuttal testimony is any competent evidence which explains, is a direct reply to, or a contradiction of material evidence introduced by ... a party in a civil action.” *Riffey v. Tonder*, 36 Md.App. 633, 375 A.2d 1138, 1145 (1977); 6 J. Wigmore, *Evidence* § 1873 (Chadbourn rev. ed. 1976) (usual rule excludes all evidence which has not been made necessary by the opponent’s

²⁷ As noted previously, the Teamsters argued at hearing and in closing briefs that the *installation* of the GPS devices and the District’s refusal to negotiate installation was an unfair labor practice violation. However, the installation issue was not raised or addressed during the investigation of this unfair labor practice complaint, and we will not address it here. In any event, it would not have made a difference in the outcome.

²⁸ Teamsters Closing Brief, at 2-4 (July 6, 2012).

²⁹ District’s Post Hearing Brief, at 1, 18-19 (July 6, 2012).

case in reply). Cf. *Van Horn Lodge, Inc. v. Ahearn*, 596 P.2d 1159 (Alaska 1979). The focus of rebuttal is to respond to new points or material first introduced by the opposing party. *Chrisler v. Holiday Valley, Inc.*, 580 S.W.2d 309, 314 (Mo.App.1979); *Souza v. United Electric Railways Co.*, 49 R.I. 430, 143 A. 780, 782 (1928). Rebuttal should not merely contradict or corroborate evidence already presented, instead it should be evidence in denial of some affirmative fact which the answering party endeavors to prove. *Yeomans v. Warren*, 87 A.D.2d 713, 448 N.Y.S.2d 889 (1982).

In this case, the rebuttal testimony of Chenier responded to the testimony of Dale Miller, who denied that he knew before January 2011 that GPS devices would be installed in maintenance vehicles. (Transcript at 81-82). Chenier testified that she told Miller about the GPS installation plans as early as 2009, and also in December 2010, when the GPS devices were being installed in warehouse vehicles. (Transcript at 128-129; 139-140).

We find that the District did not know what Miller's testimony would be until he testified at hearing. The District was surprised that Miller testified that he did not know about the GPS installation until January 2011. We find Chenier's rebuttal testimony was proper.³⁰ Moreover, the Teamsters were given full opportunity to question Chenier, and the Teamsters could have called Dale Miller or another witness to respond to Chenier's testimony. The Teamsters declined to do so.

Waiver

The District argues that regardless of whether the installation or the effects of the GPS devices were mandatory subjects of bargaining, the Teamsters waived its right to bargain by 1) agreeing to the management rights clause in the collective bargaining agreement, and 2) by failing to request bargaining in a timely fashion after having knowledge that the GPS devices were installed. It contends that the Teamsters had knowledge of the installation through notification at a safety meeting, by consenting to other security measures, by having a member on its bargaining team who had knowledge of the use of GPS devices in another unit, and by Pam Chenier telling Dale Miller.

Waiver is generally defined as "the intentional relinquishment of a known right." However, waiver is:

a flexible word, with no definite, and rigid meaning in the law....While the term has various meanings dependent upon the context, it is nevertheless, capable of taking on a very definite

³⁰ Because we find the management rights clause gives the District authority to use GPS devices, the testimony on when Miller knew is given little weight in this determination.

meaning from the context in which it appears, and each case must be decided on the facts peculiar to it.

A waiver can be accomplished either expressly or implicitly....To prove an implied waiver of a legal right, there must be a direct, unequivocal conduct indicating a purpose to abandon or waive the legal right.

Carr-Gottstein Foods Co. v. Wasilla, LLC, 182 P.3d 1131, 1136 (Alaska 2008), citing *Milne v. Anderson*, 576 P.2d 109, 112 (Alaska 1978) (other citations omitted).

In *Carr-Gottstein*, the Alaska Supreme Court noted that “neglect to insist upon a right’ may imply a waiver when such neglect would “convey a message to a reasonable person that the neglectful party would not in the future pursue the legal right in question.” *Carr-Gottstein Foods*, citing to *Anchorage Chrysler Ctr., Inc. v. Daimler Chrysler Corp*, 129 P.3d 905, 917 n. 35 (Alaska 2006).

Regarding the assertion that the Teamsters failed to request bargaining timely, we find that the Teamsters requested bargaining of the effects of the GPS devices at the parties’ first bargaining session after the devices were installed. Even prior to that time, Dale Miller informed Todd Hess that the Teamsters would request bargaining over this issue. The Teamsters’ request for bargaining, in the negotiations for the 2011–2014 collective bargaining agreement, over the effects of the installation of the GPS devices, was timely for those negotiations.

We next address the District’s allegation that the Teamsters waived the right to bargain the effects of the installation of the GPS devices by agreeing to and ratifying the language in the management rights clause in the parties’ collective bargaining agreement. The management rights clause provides that the District may “exercise its own discretion on all management matters...whatever may be the effect upon employment.”³¹ This includes deciding all “machines, tools, and equipment to be used.”³²

The Teamsters argue that the management rights clause only applies to selecting the “types of vehicles driven...heavy equipment used by them, the hand tools and power tools that are purchased.”³³ However, we find that, like power tools and the types of vehicles driven, the use of GPS is a matter of time and fuel efficiency. These devices provide valuable information for a work environment which reacts to both planned and immediate maintenance concerns.³⁴

³¹ Teamsters Exhibit 1, p. 1.

³² Teamsters Exhibit 1, p. 1.

³³ Teamsters Closing Brief p. 12

³⁴ District’s Post Hearing Brief p. 3.

We find that the Teamsters' reading of the management rights clause is too narrow. There is no hint anywhere that the applicability of the management rights clause is limited as alleged by the Teamsters.

The management rights clause incorporated into the Teamsters/District collective bargaining agreements for the maintenance workers is broad. It gives the District, among other things, broad authority to choose and install equipment, machinery, and tools it deems necessary for its operations. GPS devices are machinery or equipment. These devices have provided benefits to the District. There is no evidence that installing these devices has changed the working conditions or work requirements of maintenance workers who drive the vehicles containing these devices.

Further, the collective bargaining agreement between the parties gives the District authority to exercise the powers granted in the management rights clause "whatever may be the effect upon employment" This being so, the Teamsters waived any right it may have had to bargaining the effects of GPS devices by agreeing to include this broad management rights clause in the collective bargaining agreement.³⁵

Finally, the management rights clause gives the District "all other rights and prerogatives including those exercised unilaterally in the past, subject only to express restrictions on such rights, if any, as are provided" in the parties collective bargaining agreement. We find that the parties' collective bargaining agreement does not in any way specifically restrict the installation or use of GPS devices.

To the contrary, the agreement grants the District authority to decide whether or not to use such equipment or machinery. We have found that GPS devices are equipment and/or machinery. By agreeing to, signing, and ratifying the collective bargaining agreement, the maintenance and warehouse workers bargaining unit waived its right to bargain the effects of equipment and machinery that the District decides to use in its operations.

Further, the Teamsters agreed to give the District the authority to decide the types of equipment, machinery, and tools that it may use in its operations regardless of the effects those items have on employment. By agreeing to this clause, the Teamsters waived the right to bargain the effects of the use of the GPS devices. We find the language in the management rights clause sufficiently specific to constitute a waiver of the right to bargain.

Because we find that the Teamsters waived the right to bargain over the effects of installing GPS devices, we conclude that the District had no obligation to bargain such effects.

³⁵ As noted at page 6 above, the District is no longer even required to give the Teamsters advance notification when the District decides to exercise the authority granted under the management rights clause in the most recent collective bargaining agreement.

Therefore, the District did not commit an unfair labor practice violation because it was not required to bargain the effects.

Accordingly, the Teamsters' September 7, 2011, unfair labor practice complaint is denied and dismissed.

CONCLUSIONS OF LAW

1. Teamsters Local 959 is an organization under AS 23.40.250(5). The Anchorage School District is a public employer under AS 23.40.250(7).

2. This Agency has jurisdiction to determine whether a violation was committed under AS. 23.40.110.

3. As complainant, the Teamsters has the burden to prove each element of its claim by a preponderance of the evidence. 8 AAC 97.340 and 350(f).

4. The Teamsters failed to prove each of the elements of its claim by a preponderance of the evidence.

5. The Teamsters waived its right to bargain the effects of the use of global positioning system devices on maintenance vehicles at the Anchorage School District.

ORDER

1. The unfair labor practice complaint by the General Teamsters Local 959 against the Anchorage School District, dated September 7, 2011, is denied and dismissed.

2. The Anchorage School District 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, personally serve each employee affected. 8 AAC 97.460.

ALASKA LABOR RELATIONS AGENCY

Aaron T. Isaacs, Vice Chair

Will Askren, Board Member

Matthew R. McSorley, 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 mailing or distribution of this decision.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of *General Teamsters Local 959, International Brotherhood of Teamsters, vs. Anchorage School District*, Case No. 11-1609-ULP, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 6 day of May, 2013.

Kathleen Wagar
Office Assistant III

This is to certify that on the _____ day of May, 2013, a true and correct copy of the foregoing was mailed, postage prepaid to:

Nancy Shaw, Teamsters
Andrena Stone, District

Signature