[Labor Relations Agency Stationery]

BEFORE THE ALASKA STATE LABOR RELATIONS AGENCY

CENTRALIZED CORRESPONDENCE STUDY EDUCATION ASSOCIATION,	)
Complainant,	)
vs.	)
STATE OF ALASKA, DEPARTMENT OF ADMINISTRATION, DIVISION OF LABOR RELATIONS; AND DEPARTMENT OF EDUCATION,	)
Respondents.	)

ULPC 87-9

ORDER AND DECISION NO. 113

RE:UNFAIR LABOR PRACTICE CHARGE; FAILURE TO BARGAIN IN GOOD FAITH

The State Labor Relations Agency ("the Agency") convened a hearing on March 29, 1988, in Juneau, to consider the unfair labor practice complaint filed by the Centralized Correspondence Study Education Association ("CCSEA") relating to negotiations between CCSEA and the State. Chairman C. R. "Steve" Hafling and members Marlene Johnson and Ben Humphries were present, and therefore constituted a quorum. CCSEA was represented by Jim Alter of NEA, and the State was represented by Art Chance of the Division of Labor Relations. The parties presented arguments, both oral and in writing, witnesses, and

documentary evidence. The Agency, having considered the arguments and evidence, renders the following Order and Decision dismissing the unfair labor practice charge filed by CCSEA.

Findings of Fact

1. CCSEA is the certified collective bargaining representative for the State's 22 advisory teachers engaged in correspondence study. The teachers are in exempt status under the Personnel Act. CCSEA's last collective bargaining agreement with the State expired on December 31, 1986.

2. Since the expiration of the CCSEA collective bargaining agreement, the State and CCSEA representatives have meet numerous times to consider the terms and conditions of a renewed collective bargaining agreement. At the time of the hearing, 26 of 31 articles in the draft collective bargaining agreement had been tentatively agreed upon, however the remaining five articles (8, 9, 10, 12 and 31) were of primary economic importance.

3. The State and CCSEA have failed to reach agreement with respect to the five key provisions, despite the assistance in December 1987 of a representative of the federal mediation service who assisted as a facilitator upon request by the Agency. The participation by the federal mediation service representative followed a request to the Agency by the parties. The Agency initially presumed the request for assistance was a request for formal mediation upon impasse and pursuant to AS 23.40.190, but that presumption was incorrect. The Agency acknowledged that the input from the federal mediation service was in the form of facilitation only, and did not constitute an admission by either party that impasse in negotiations existed.

4. The history of negotiation between the parties is lengthy. The State requested during the September 1986 window that the terms of the contract be renegotiated. Discussions concerning ground rules were not completed until April 1987, and the State did not submit a written proposal with respect to negotiated items until April 1987. At that time CCSEA also provided a written proposal. The delay in holding negotiations between September 1986 and April 1987 was based upon an evident mutual agreement with respect to delay as a consequence of a new administration taking office. According to CCSEA there have been 27 sessions since April 1987 with the last negotiating session occurring (prior to input from the federal mediation service) on October 7, 1987. Some sessions have been delayed as a consequence of needs by one party or the other.

5. The State's position respecting negotiable items changed from time to time. For example in April 1987, the State proposed personal leave as a combination of both annual and sick leave. In June 1987, despite no apparent bargaining concerning leave, the State changed its position back to one of annual and sick leave. The State's position changed from time to time respecting salary. A ten per cent cut was first proposed by the State in May 1987, with a subsequent change in June providing for a different reduction. In August 1987 current salary was maintained, but proposed hours were increased from 37.5 to 40.0 hours per week. CCSEA contended that changes such as these as well as other key changes were similar to changes brought about as the State bargained with other collective bargaining units such as APEA. There were apparent parallels between the State's offers to CCSEA and its offers to other collective bargaining representatives.

6. The State called for impasse initially on June 25, 1987, asserting an intention to impose its last best offer on August 1, 1987. The State did not impose those terms, but following further discussions on August 6, 1987 indicated that it would impose its last best offer on September 16, 1987. Once again the State did not impose a prior offer, but on October 7, 1987 (after further negotiations), asserted an intention to impose on October 16, 1987. No subsequent negotiations have occurred since that time, except for a relatively short session with the federal mediator on December 2, 1987. It is unclear whether the October 16, 1987 asserted imposition has in fact taken effect. However, after the December 2, 1987 mediation session, the State said that the old contract was in place but with a 40.0 hour work week in place.

7. No major economic issues have been negotiated since August 6, 1987. The five remaining articles have remained unresolved.

8. Sometime shortly before the instant hearing, representatives of CCSEA contacted the State inquiring as to further negotiation. No further negotiation was conducted.

Conclusions of Law

1. The Agency has jurisdiction to hear and consider complaints regarding unfair labor practice charges described in AS 23.40.110 and is authorized and charged with responsibility to make appropriate orders concerning such complaints pursuant to AS 23.40.140.

2. AS 23.40.110(a) provides in pertinent part, particularly with respect to this unfair labor practice complaint:

A public employer or agency of a public employer may not:

(1) Interfere, restrain, or coerce an employee in the exercise of the employee's rights guaranteed under AS 23.40.080 ...

(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.

3. Collective bargaining, as defined in AS 23.40.250(1) means:

... the performance of the mutual obligation of the public employer or employer's designated representatives and the representative of the employees to meet at reasonable times, including meetings in advance of the budget making process and negotiate in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or negotiation of a question arising under an agreement and the executing of a written contract incorporating an agreement reached if represented by either party, but these obligations do not compel either party to agree to a proposal or require the making of a concession ...

Thus, collective bargaining negotiations are to be undertaken in good faith, but neither the State nor CCSEA is compelled to agree to the terms and conditions presented by the other party, provided that discussions have been engaged in good faith with an attempt to amicably resolve the differences.

4. CCSEA's unfair labor practice complaint relies upon AS 23.40.110(a)(1) and AS 23.40.110(a)(5), through nine allegedly improper practices. The facts do not support these allegations as unfair labor practices within the meaning of law, as follows:

A. Preconditions On Future Bargaining. The evidence does not support a finding that the State refused to move from any specific position prior to commencement of bargaining with

CCSEA. That the State advanced a maximum cost containment level within which a contract could be executed is not per se a violation of collective bargaining responsibilities. The number of bargaining sessions coupled with changes on economic issues, albeit changes which did not prove favorable to CCSEA, evidence tough, but appropriate "collective bargaining".

B. Recognition of Separate Status of CCSEA. The evidence did not support a finding that the State failed to treat CCSEA as a separate bargaining unit. The fact that the State's bargaining postures viz-a-vis CCSEA in certain instances followed bargaining positions taken with other collective bargaining units is not, in the absence of anti-union animus, impermissible. Indeed it is logical to presume that the State would exercise its prerogative to maintain general parity among collective bargaining units, particularly when a unit such as CCSEA is small and other units are large. The evidence demonstrated a substantial number of bargaining sessions between State officials charged with bargaining with many collective bargaining units and representatives of CCSEA. No evidence was presented to suggest that the State coerced or restrained CCSEA from acting as an independent bargaining unit.

C. Failure to document bargaining positions with information. The evidence indicated that the State indeed presented written proposals as well as oral proposals, and so did CCSEA. There is no canon of labor law which requires a negotiating party to definitively support any proposal with written justifications, although a negotiating party may well choose to do so as a means of negotiation. That the State arguably had money available to fund CCSEA's proposed contract does not mandate that the State agree to expend that money as CCSEA would see fit.

D. Failure to reconcile bargaining Position. This particular allegation is somewhat unclear. However, the facts that the State focused its negotiations on the first page of the agreement under consideration four times or that the State wished to talk about other things than what CCSEA preferred, do not constitute ipso facto unfair labor practices. The totality of the number of negotiating sessions and the fact that 26 of 31 articles were tentatively agreed upon constitutes evidence of difficult but good faith bargaining.

E. Refusing to meet reasonably and at consistent times. The evidence does not support this allegation given the number of sessions if or no other reason. The inability to meet on certain occasions (approximately 7) is not unreasonable, particularly given the context of the negotiating period -- a period when the State administration was changing and a substantial number of other collective bargaining agreements

were requiring attention by a limited number of State personnel.

F. Sufficient authority for negotiators. The facts do not demonstrate that the state was hiding behind a lack of authority in negotiations. Clearly negotiators have to respond to their principals. CCSEA, a small unit, is not as burdened with a hierarchy as a consequence of its size. The State on the other hand has a clear right and responsibility to maintain lines of authority. The State's chief spokes person did indeed authorize and tentatively agree to numerous articles of the contract, and the fact that contacts on the occasion needed to be made with principals does not constitute an unfair labor practice. There was no pattern of employing consultation with-principals as a mere tactic.

G. Threatening and imposing unilateral changes in absence of impasse. The State evidently presumed impasse to exist, and its conclusions were not illogical given an inability to move on five key articles in the contract under negotiation. In the event of true impasse, the State would generally have the authority to impose -- thus allowing economic sanctions to take hold. The fact that the State made the threat but then resumed negotiating is evidence of willingness, not unwillingness, to negotiate. That the State did not move or agree to CCSEA's positions respecting mandatory topics of bargaining, is not an unfair labor practices since the State is not obligated to ultimately settle upon terms desired by CCSEA.

H. Threatening to withdraw certain bargained provisions. The evidence indicates that tentatively agreed upon provisions were subject to consummation of a whole contract package, such that failure to agree upon all terms did not permit selection of some of the tentatively agreed upon terms in the absence of settlement. The State's changes of posture with respect to hours and salary at various points in time is not an unfair labor practice given the fact that negotiations were ongoing and definitive agreement had not been reached.

I. Coercion. CCSEA seeks to elevate the exercise of economic dynamics in collective bargaining to the level of coercion. This does not follow as the relative exercise of economic strengths is part and parcel of the collective bargaining process. Refusal by the State to agree to certain issues, or withdrawal of previous issues following negotiation and failure to reach overall agreement does not constitute coercion prohibited under AS 23.40.110. The participation of CCSEA in the collective bargaining process under AS 23.40.080 is not a guarantee that CCSEA will be successful in all of its

negotiations but only an assurance that CCSEA has a right to collectively bargain with the State.

5. In closing arguments CCSEA requested the Agency to determine whether or not advisory teachers were in Class II or III, as defined under AS 23.40.200. Status in Class II or III for the CCSEA members determines certain prerequisites to strike. CCSEA did not make a request for this determination in its complaint. The relevance of this issue appears to go to whether an impasse needs to be definitively declared. Specific determination of impasse at this particular point and time is not required nor has it been properly requested. See the Order and Decision following.

Order and Decision

Based on the foregoing findings of fact and conclusions of law, the Agency unanimously orders and decides that:

1. The State did not engage in unfair labor practices with respect to its ongoing negotiations with CCSEA. The negotiations which have not proved to be successful in the eyes of at least CCSEA have however been conducted in good faith and not in violation of AS 23.40.110.

2. Given evidence suggesting that the parties are close to (if not at) impasse, the Agency requests that the parties meet for purposes of further negotiation within two weeks from the date of this decision. If within 60 days from the date of this decision, the parties have been unable to resolve their differences, particularly with respect to the five articles which have not yet been tentatively agreed upon, then upon a request to this Agency filed by either party, the Agency will find that impasse exists in negotiations between CCSEA and the State. The Agency expects that each party will engage in good faith negotiations.

3. The unfair labor practice complaint filed by CCSEA is dismissed.

4. This written Decision sets forth the rationale for the Decision reached by the Agency following the March 29, 1988 hearing.

DATED this 19 day of April, 1988.

STATE LABOR RELATIONS AGENCY

By_____
C. R. "Steve" Hafling, Chairman

[Signature on File]