[Labor Relations Agency Stationery]

ORDER AND DECISION NO. 23

PERTAINING TO UNFAIR LABOR PRACTICE CHARGES FILED BY AMERICAN FEDERATION OF TEACHERS, LOCAL UNION NO. 2404, REPRESENTING COMMUNITY COLLEGE TEACHERS, AGAINST THE UNIVERSITY OF ALASKA

I. QUESTION AS TO JURISDICTION OF THE STATE PERSONNEL BOARD QUA LABOR RELATIONS AGENCY WITH RESPECT TO THE UNIVERSITY OF ALASKA.

Findings of Fact

1. A hearing was held at Anchorage, Alaska on February 23 and 24, 1976, on Unfair Practice Charges filed against the University of Alaska by Local 2404. The parties were afforded full opportunity to examine and cross-examine witnesses and to present all relevant and material evidence.

2. At the commencement of the hearing the University challenged the jurisdiction of the State Personnel Board, sitting as the Labor Relations Agency, over the matter at hand, stating the belief that under the Public Employment Relations Act the Department of Labor is the Labor Relations Agency with respect to University employees. A subsequent motion to dismiss on these grounds was denied.

3. Sec. 23.40.250. Definitions. Paragraph (3), states:

> "(3)'labor relations agency' means the state personnel board with regard to the state and employees of the state, and means the Department of Labor with regard to all other public employees and all other public employers;

23.40.250 (6), states:

"(6)'public employer' means the state or a political subdivision of the state, including without limitation, a town, city, borough, district, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and a person designated by the public employer to act in its interest in dealing with public employees;"

Conclusions

The University argues that it does not come under the provisions of the State Personnel Act and that therefore its employees do not come under the jurisdiction of the State Personnel Board even when the Personnel Board is functioning as Labor Relations Agency. However, the University does not deny that its employees are State employees. The Labor Relations Agency makes no assertion that University employees are under the coverage of the State Personnel Act, but does conclude that since University employees are state employees within the meaning of Sec. 23.40.250(3) The Labor Relations Agency with respect to such employees is the State Personnel Board functioning not as a Personnel Board but as a Labor Relations Agency.

The University further argues that 23.40.250(6) bolsters its position by specifically setting forth "board of regents" as being a public employer. A reasonable reading of the law would indicate no more than that the legislature meant to include the board of regents as a public employer; not that there was any intent to modify the clear statement of 23.40.250(3) that the State Personnel Board is the Labor Relations Agency with respect to employees of the State.

The escape clause of the Act reads:

> "Act is applicable to organized boroughs and political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply."

The failure to list the board of regents as an entity in the escape clause of the Act appears to be further indication that the legislature did not intend to make the University a public employer separate and distinct from the State under the provisions of 23.40.250(3).

It is concluded that employees of the University are also employees of the State for purposes of the Public Employment Relations Act and that the Labor Relations Agency having jurisdiction over the University as a public employer and the University's employees as public employees for the purpose of 23.40.70 to 23.40.260 is the State Personnel Board.

It should be noted that although the members of the State Personnel Board and the members of the Labor Relations Agency when functioning with respect to state employees are the same individuals there is no overlapping of functions. The State Personnel Board and the Labor Relations Agency have separate budgets and separate and distinct staff support.

DECISION AND ORDER

The University of Alaska's contention that the State Personnel Board/Labor Relations Agency does not have jurisdiction is dismissed.

II. UNFAIR LABOR PRACTICE CHARGES

Findings of Fact

1. Sec. 23.40.11O(a)(5) states that a public employer or his agent may not refuse to bargain collectively in good faith with an organization which is the exclusive representative of employees in an appropriate unit, including but no. limited to the discussing of grievances with the exclusive representative.

2. Local 2404 charges that the University of Alaska refused to bargain in good faith and supports these charges as follows:

(a) The President of Local 2404 made a presentation to the Board of Regents of the University when they met in Sitka on September 24 and 25th of 1975, requesting that negotiations for a new collective bargaining agreement begin prior to the Legislative Session so that any changes requiring funding by the legislature agreed to by the parties could be submitted prior to adjournment.*

[*AS 23.40.215. Funding. The monetary terms of any agreement entered into under the Public Employment Relations Act are subject to funding through legislative appropriation.

AS 23.40.250. Definitions. (l) "collective bargaining" means that the performance of the mutual obligation of the public employer or his designated representatives and the representative of the employees to meet at reasonable times, including meeting 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 and the execution of an agreement, or negotiation of a question arising under an agreement and the execution of a written contract incorporating an agreement reached if requested by either party, but these obligations do not compel either party to agree to a proposal or require the making of a concession.]

3. There is in existence a collective bargaining agreement between the parties that expires June 30, 1976, unless renewed. This agreement contains a no-strike, no lockout provision.*

> [*ARTICLE 11. NO STRIKE OR LOCKOUT - During the period of this agreement, the Union will not cause or condone its members, nor will it encourage, cause, or sanction other members of the bargaining unit, to take part in any strike, work stoppage, work interruption, or activity which would violate the Public Employment Relations Act, as amended. The University will not engage in any lockout during the period of this agreement. The University will not cause or condone its supervisory employees, not will it encourage, cause, or sanction other University employees, to take part in any lockout or activity which would violate the Public Employment Relations Act, as amended, during the period of this agreement.]

4. The Public Employment Relations Act confers upon some, but not all, public employees a conditional right to strike. with respect to Community College teachers the right to strike is conditional upon (a) impasse having been reached; (b) mediation having been attempted; and (c) a secret ballot vote to strike by a majority of employees in the collective bargaining unit. A further condition is imposed by making teacher strikes enjoinable; if such a strike is enjoined the impasse goes to final and binding arbitration.

There is nothing in the Public Employment Relations Act that can be construed as giving public employees the right to strike during the term of an agreement containing a no-strike, no lockout provision; nor is there anything in the regulations or in decisions of the Labor Relations Agency that can be so construed.

5. Following the appearance of Local 2404's President before the Board of Regents they indicated a willingness to have negotiations commence. Local 2404 then sent a letter, on or about October 10, 1975, to Dr. Dafoe, Vice President of the University, citing reasons why it was desirable to begin negotiations between the fall and spring semesters. On or about October 22, 1975, Dr. Dafoe responded to the effect that the suggestion was reasonable and should be discussed with Mr. Westman, Assistant Vice President for Personnel to work out details.

On November 14th, 1975, Mr. Westman agreed to opening sessions for the purpose of exchanging proposals and to commence daily sessions beginning January 2, 1976. A proposal by the Union concerning substitute pay for negotiators on their team was rejected by the University.

A first meeting was scheduled for December 19th, 1975, but was cancelled and rescheduled for December 22. On the 22nd the Union submitted a proposal for ground rules that was rejected by the University and it was agreed to proceed without ground rules. The Union then submitted a comprehensive proposal for changes in the collective bargaining agreement, to which the University responded by presenting the Union with its proposals.

The parties met again on January 2, 1976, and subsequent meetings were held through January 5. On or about January 2 and a draft "Agreement to Open Negotiations" was presented to the Union by the University's negotiator, Mr. Maxwell. This proposal includes the following:

"...WHEREAS the University has consented to open negotiations for the sole purpose of bargaining regarding prospective changes in the CBA, which changes if agreed upon during this negotiation shall not become effective before July 1, 1976 ...

"...3. Nothing which occurs as a result of these negotiations, including the inability of the parties to reach agreement on any particular prospective change in the CBA, shall entitle the Union to engage in any strike, work stoppage or work interruption nor shall the University be entitled to engage in any lockout."

On or about January 4 a revised University proposal was submitted to the Union, including the following language:

"...4. Because the parties are entering into negotiations concerning wages, hours and conditions of employment which will not take effect until after the expiration of the current CBA they agree that no deadlock required as a prerequisite for statutory mediation under the Alaska Statutes (§ 23.40.190) shall occur because of the inability of the parties to come to an agreement regarding wages, hours or conditions of employment for any employee or group of employees represented by the Union and employed by the University until on or after July 1, 1976."

On January 6 Mr. Maxwell wrote to Mr. Nelson, Local 2404's chief negotiator as follows:

"...the University respectfully declines to enter into such negotiations until and unless the Union will sign an Agreement not to strike during the term of the current collective bargaining agreement.

In the same writing Mr. Maxwell stated it as the University's position that it had not commenced negotiations and that it was not legally obligated to do so.

No further negotiations took place until after the filing of the subject unfair labor practice charge and after the hearing on the charge.

6. The Union's December 22, 1975, proposal for ground rules for negotiations included the following:

> "...This agreement will not prohibit an otherwise legal strike..."

7. Counsel for the Union, Mr. Jermain, had stated to the University on December 22 that the Union could not strike prior to July 1, 1976, and reiterated that this was the case in a telephone conversation with Mr. Westman and Mr. Maxwell when the question was raised during the first few days of January.

8. Local 2404's President responded, in answer to questions from Mr. Maxwell, to the effect that if the University didn' t think the Union could strike they had better read the agreement again. The chief negotiator for the Union responded to a request for a no-strike pledge in terms of a contract interpretation that the contract means exactly what it says.

9. The Union, when requesting the commencement of negotiations, had requested substitute pay for teachers on the Union' s negotiating committee. This request was denied. The Union was thereupon desirous of negotiating during the break between semesters, in order that members of the negotiating committee would lose only their own time and not loss of salary. Due to the insistence of the University on a no-strike pledge from the Union, above and beyond that contained in the collective bargaining agreement, no negotiations took place after that pre-condition was made.

Conclusions

1. The University had competent legal counsel who were capable of determining what the Union's legal right to strike was, and when this could be excercised and under what circumstances. The same applies to interpretation of the clause in the Union's December 22 proposal for ground rules that included the statement that "This agreement will not prohibit an otherwise legal strike." The University's spokesmen were informed by legal counsel for the Union that he had advised them that they could not strike before July 1 and only then if certain procedures called for under PERA had been complied with. The University's insistence on a no-strike pledge when such was already contained in the collective bargaining agreement appears to have been confusing to the relatively inexperienced and non-lawyer members of the Union's negotiating team. The Union had not, at the very least at the first instance this precondition was made to further negotiations, made any threat to strike illegally. There appears to be no grounds for any fear on the part of the University that the Union could legally strike prior to July 1.

2. The first University proposal for a precondition of a no-strike pledge, cited in the findings of fact, does not put any time limit on the duration of the Union's waiver of the right to strike; to the contrary, it can be construed as a waiver with- out limit. Therefore, the conclusion is that this proposal, drawn up by an attorney specializing in labor law and in collective

bargaining, was not designed to be a simple affirmation of what is already in the collective bargaining agreement.

The second proposal, also cited under findings of fact, asked the Union to agree that no deadlock required under 23.40.190 as a prerequisite for mediation should occur because of the inability of the parties to reach agreement. Since the parties must reach impasse before mediation, and must undergo the mediation process before taking a strike vote, and must pass a strike vote before striking, a plain reading of this proposal is that the University's chief negotiator was effectively asking for a total waiver of the right to strike without respect to the expiration date of the agreement, not to mention the waiver of the right to invoke third-party mediatory assistance. Here again the conclusion is that this proposal was clearly more than a request for written affirmation of the no-strike provision of the agreement.

3. The conclusion is reached that the University did agree to commence negotiations on December 22, 1975, and did in fact commence such negotiations by presenting the Union with University proposals for changes in the agreement.

4. After having commenced negotiations the University refused to negotiate further unless certain preconditions were agreed to by the Union. These preconditions had the effect of asking the Union to waive certain rights under PERA and were thereby unreasonable.

5. It is concluded that under PERA and the terms of the agreement between the parties the Union may not strike

before July 1, 1976, and thereafter only if the preconditions set forth in PERA are met.

DECISION AND ORDER

The University of Alaska is found to have refused to bargain collectively in good faith with Local 2404 and is hereby ordered to cease and desist from such refusal and to take such affirmative action as may be necessary to bargain in good faith.

Signed: _____
C. R. "Steve" Hafling, Chairman

Signed: _____
Ronald M. Henry, Member

(Member Morgan Reed absent and not voting)

Dated: 5/5/76 .

[Signatures on File]