[Labor Relations Agency Stationery]

ORDER AND DECISION NO. 54
PERTAINING TO UNFAIR LABOR
PRACTICE CHARGE 79-4

FINDINGS OF FACT

An Unfair Labor Practice Charge, designated by the Alaska Labor Relations Agency as ULPC 79-4 was filed by the Anchorage Community Colleges Federation of Teachers, Local 2404, against the University of Alaska, et al.

I

In its unfair labor practice charge, the Union has alleged that the University has committed a number of unfair labor practices during the course of negotiations between the Union and the University. First, the Union has alleged that after protracted negotiations, which resulted in an agreement between the Union and Management Bargaining teams, the University committed an unfair labor practice by rejecting the agreement. Specifically, the University is charged with repudiating certain proposals made by its own bargaining team. The University in response pointed to the first ground rule agreed upon by the parties as a precondition to the negotiations. That ground rule stated that:

"Any proposal once signed by all the parties shall cease to be an object of further negotiations and is subject only to ratification of the entire agreement by the Union membership and by the Board of Regents."

During the hearing before the Court and before the Agency, the Union sought to introduce evidence indicating that the express reason for the refusal to ratify the contract was the desire to repudiate certain agreements made by the Union's own negotiators. Copies of certain press releases and public statements made by the University's President, Dr. Jay Barton, in which he indicated his opposition to certain features of the agreement, were offered in support of this contention. The University argued that the action of the Board of Regents stands by itself and that the Board of Regents exercised its right to review the contract as a whole and decided not to ratify it.

The Agency finds as a matter of fact, that under the terms of the ground rules agreed to between the parties, the Board of Regents had the right to review the contract as a whole and to determine whether or not to ratify it. They acted in compliance with the ground rules. The Agency concludes as a matter of law, that by sop doing, the Board of Regents of the University of Alaska did not commit an unfair labor practice.

II

The Union also contended that after the excoriation of the contract between the parties, the University unilaterally implemented certain changes in the work load and the work rules governing the faculty activities. the work rule changes were not the subject of negotiations between the parties. Further, the Union alleged that the University made no attempt to bargain with regard to the proposed work rule changes and this failure constituted an unfair labor practice.

The basic facts regarding this unfair labor practice charge are not in dispute. the parties agree that the contract was terminated and the work rule changes were implemented by the University without any attempt to bargain collectively with regard to them. During the course of the hearing before the Agency, the Union asserted that at the time the work rules were implemented, it was ready to return to the bargaining table and that it was merely waiting for the University to formally notify it of who would be on the reconstituted negotiating team. The University pointed to the Union's hesitancy about coming forward to start negotiations and its reliance upon strict adherence
to the formalities as an indication of the Union's unwillingness to bargain seriously at that point in time. The union argued that it was improper for management to make unilateral

changes in wages and working conditions while the parties were still negotiating. The Union cited a number of cases in support of this position, one being the American Federation of Television and Radio Artists v. NLRB 395 F. 2d. 622 67 L.R.R.M. 3032 (D.C. Circuit, Court of Appeals 1968). In that case the Court said:

> "It is settled "that an employer's unilateral change in conditions of employment under negotiation is a violation of § 8 (a)(5), for it is a circumvention of the duty to negotiate . . ." But the Board held that the present case was governed by this qualifying principle: "[A]fter bargaining to an impasse, that is, after good faith negotiations have exhausted the prospects of concluding an agreement, an employer does not violate the Act by making unilateral changes that are reasonably comprehended within his pre-impasse proposals." that is a correct statement of applicable doctrine. The salient question in this case is whether there is substantial evidence to support the Board's finding that the parties had bargained to an impasse.

This duty not to make changes does not rise out of any particular provision of the contractual relationship but by implication from the policy of the National Labor Relations Act which is intended to encourage collective bargaining between employers and employees. Though this case does not come under the jurisdiction of the National Labor Relations Act, the Alaska Public Employment Relations Act is similar in construction and is designed to effectuate the same purposes. Alaska's Legislature has firmly indicated that public policy favors collective bargaining between public

employees and public employers. The University has argued that an automatic extension of the contract terms would give the Union an unfair and unintended bargaining advantage because the Union could avoid situations in which it might have to give up benefits gained in prior years by refusing ton consummate an agreement. It contended that unilateral changes were permissible after contract termination.

This is a possible result of a policy which mandates the continuation of a prior contract during the continuation of negotiations. However, permitting unilateral changes immediately after the termination of a contract would give a similar unintended advantage to management and would run counter to the policy favoring collective bargaining contained in the Public Employment Relations Act.

The University cited the case of International Association of Machinists and Aerospace Workers v. Reeve Aleutian Airways 469 F. 2d. 990 (C.A. 9 1972). However, in that case, which involved negotiation under the terms of the Railway Labor Act, 45 U.S. C.A. §252 et. seq., the Court noted that certain remedies provided for under the Act had been unsuccessfully utilized in an attempt to settle the labor dispute prior to the making of the unilateral changes. thus, it is the Agency's belief that the real issue in this dispute is whether bargaining between the parties had broken down at the time the unilateral changes were implemented.

It appears to the Agency that both parties were interested in resuming negotiations at that time. Also, considering that the University rejected the agreement proposed by the negotiators and officially announced that it was reconstituting a new negotiating team it was not unreasonable for the Union to have requested formal notification of the names of the persons with whom it was expected to bargain before sitting down at the table.

The Agency finds as a matter of fact, that bargaining had not reached an impasse and that the parties were engaged or prepared to engage in collective bargaining. The University failed to submit its desired work rule changes to collective bargaining prior to implementing them. The Agency concludes as a matter of law, that under the provisions of A.S. 23.40.070 et. seq., the University had an obligation to bargain with the representatives of the Union and that its failure to submit its desired work rule to for collective bargaining prior to implementing them, constituted an unfair labor practice.

III

The Union contended that the University committed an unfair labor practice by refusing to grant Ralph McGrath annual leave during the period of time he was on developmental leave in contravention of existing University policies.

They alleged this was done because Mr. McGrath was a Union official. In support of its allegations that such a leave policy was in existence, the Union submitted the copy of a letter written by Carl Westman, Contract Manager. In that letter Mr. Weston stated, accrual status for person on developmental leave, Section 9-1(i) states:

> "A faculty member on developmental leave is still an employee of the University for purposes of payment into the retirement fund and other contributions to group health, life insurance and similar fringe benefits programs to the extend that the leave recipient participates in them". . .in other words the leave recipient would accrue annual leave and accumulates sick leave as though he/she were still on the job at the University.

The University has attempted to contradict this letter by offering testimony of Mr. Johnson that the policy did not exist.

The Agency finds as a matter of fact that the Union has failed to meet its burden of proof of the fact that the University of Alaska does maintain a policy allowing individuals on a developmental leave, to accrue anneal leave and sick leave. The final sentence of the paragraph is no more than Mr. Westman's opinion of the meaning of the previous sentence and not a portion of that sentence itself. The Agency concludes as a matter of law that the failure to grant Ralph McGrath annual leave and sick leave while on developmental leave was not an unfair labor practice.

IV

The Union has contended that Art Petersen was

denied the right to teach a course in summer school during the year of 1979 because of his activity as a Union negotiator and that this action was an attempt to coerce Mr. Petersen in the exercise of his rights. Evidence submitted during the course of the hearing indicated that Mr. Petersen had taught the course in two previous summers. Other evidence indicated that the administrators at the Community College in Juneau expressed concerns that Mr. Petersen might not be an appropriate party to teach the course because of Union negotiations which were expected to keep him in Anchorage and interfere with the teaching of the course. However, testimony of Mr. Ackley, indicated that the course was withdrawn because no students signed up for it.

The Agency finds as a matter of fact, that the University did not refuse to allow Mr. Petersen to teach the course because of his Union activities and that Mr. Petersen was not coerced in the exercise of his rights. The Agency concludes as a matter of law that the University did not commit an unfair labor practice charge by failing to let Mr. Petersen teach the course.

ORDER AND DECISION NO. 54

It is the Order of the Alaska Labor Relations Agency that:

1. The parties meet for the purpose of engaging in collective bargaining, and that the University negotiate with the Union regarding the implementation of its work rule changes.

2. The work rule changes in question shall be rescinded until the parties have the opportunity to negotiate with regard to them and such other issues as may properly be considered by the parties. The work rule changes may not be re-introduced until such time as the negotiations have reached an impasse on those issues.

3. The foregoing Order requiring the rescission of the work rules shall not apply to work rule changes mandated by federal law or to changes caused by the failure of the Legislature to fund certain activities such as the final step in the grievance procedures established under the Old contract.

4. All other unfair labor practice charges are hereby dismissed.

DATED this 26th day of October, 1979

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

SIGNED:_____
Morgan Reed, Member

SIGNED:_____
Ronald M. Henry, Member

[Signatures of Hafling and Reed on File]