[Labor Relations Agency Stationery]

BEFORE THE ALASKA LABOR RELATIONS AGENCY

ALASKA COMMUNITY COLLEGE FEDERATION OF TEACHERS, LOCAL NO. 2404	)	
Petitioner,	)	
vs.	)	
UNIVERSITY OF ALASKA,	)	
Respondent.	)	
	)	ULPC 83-3

ORDER AND DECISION NO. 81

On June 10, 1983, the Petitioner charged the University of Alaska with unfair labor practices alleging the University violated AS 23.40.110(a)(5) by engaging in bad faith bargaining, surface bargaining, and bargaining without any intention of reaching an agreement with the union. The parties waived the timeliness requirements of notice, the hearings were held the week of June 20, 1983. An oral Order and Decision was delivered by the Agency on June 24, 1983, and this written Order and Decision follows.

The negotiations had two phases. From January 24th until the middle of March, 1983, the parties were engaged in "collegial" negotiations in which the parties conceptualized their positions and attempted to make their positions known. The parties hoped that by doing same, there would be an agreement

reached by consensus. The parties' past practices of offering and counteroffering proposals were not followed in this collegial phase. The collegial phase had some success, as some 20 items were agreed to. The Agency notes that those items are basically the same as those contained in the prior collective bargaining agreements. While the parties were conceptualizing their ideas, they were, in fact, always referring back to the previous collective bargaining agreements before putting those ideas into tentative approval status. The collegial phase was agreed to by both parties and both parties agreed that the collegial process would not produce a final and total agreement .

During the final week of March 1983, the parties exchanged their written proposals.

Two weeks later, the petitioner requested the services of the Federal Mediation and Conciliation Service. Meetings with the Federal Mediators from Seattle were held in early April, May and June 1983. The April 15th letter from John Nelson, which requested the mediator, stated that the parties were at impasse, and requested the services of the mediator. The parties met with the mediator in April, in May, and the first week of June, 1983. Numerous correspondence was sent between the parties during that period of time.

During this period of time, the position of the University quickly solidified into a position that the Union had

to accept three major items. The position of the University was that the Union had to accept the items as is, and then the 40-50 other issues at the table would quickly be resolved.

Item No. 1 was that the Union capitulate to the University's compensation package. The compensation package took away annual step increases that are in the present contract. The step increases are based upon years of continual service to the University, plus advanced degrees being obtained by the professors. The parties have developed vertical and horizontal grids whereby the bargaining unit members can change lanes and achieve higher pay by continual teaching, or by receiving advance degrees or other criteria. The University wanted to change the grid system into a merit system. However, the merit system was one that was to be developed in the fall by the joint cooperation of the University and the Union. Either party could unilaterally veto the existence of any merit system by simply not agreeing to it. The present salary grid system would then only be applicable to new teachers.

The University proposed an across the board wage increase for all members of the present bargaining unit. After the merit system was agreed to, the system would be implemented into the new contract.

The Agency finds that the proposal of merit system is in part, illusory. While the University is demanding that the

merit system proposal be agreed to by the Union, it is an agreement that either party could unilaterally stop. There is no system proposed to insure that a merit system would be in existence before the end of the contract.

The second major item that the University demanded the Union capitulate to was the Union subsidization issue. The University presently has subsidized the Union by granting the President of the Union six hours of teaching time, Union committee members time off for their duties, as well as providing office space and other rights for Union members. In exchange for the end of the Union subsidization, the University proposed a $750 payment to each bargaining unit member. There are over 275 bargaining unit members. The Union members could take the $750 and pay it to the Union to finance the Union's activities, or the Anchorage Community College instructors could simply keep their $750.

The third unilateral demand was that the teachers be required, at the University's discretion, to teach three more hours per semester. Presently, the teachers are required to teach 12, plus a fifth part which involves community service, research or writing, or some other agreed upon part.

While there is no argument that the teachers presently are required to teach a fifth part, the teachers see the authority of the University to unilaterally impose a fifth class,

as objectionable. The teachers see themselves as being required to teach 25% more actual class time than they were before. The University argues that the increasing demands, because of increased student enrollment, are necessary for the continuation of the University.

The proposals are seen by the Union, that the University has demanded that they teach 25% more per year; give away their guaranteed step increases for a system that may or may not be agreed upon by the parties; and, to give away their Union subsidization rights which are presently very extensive.

The University argues that the merit system has to be implemented to reflect changing economic times, Union subsidization should stop, and teachers of the community college are there to teach; therefore, the fifth part is reasonable because of the increasing student demands.

The National Labor Relations Agency case, as well as our own Orders and Decisions, have repeatedly discussed the difficult criteria of determining when good faith bargaining is occurring. One of the prime indicia of good faith is that the parties have an open mind and sincere desire to reach an agreement, as well as a sincere effort to reach some common ground. The lack of good faith may be found from subjective states of mind evidenced by various types of overt conduct. PERA contemplates that a bargaining process will occur. Under this

scheme, if working conditions and wages are set unilaterally, or in a manner which avoids the bargaining process, good faith bargaining has not occurred. The Agency notes that the individuals outside the bargaining team of the Union made demands which were apparently substantially agreed to by the University even though those demands were not made by the bargaining team.

The Agency also realizes the significance of the April 15, 1983 letter from John Nelson to the University which proposed a Federal Mediator. In that letter, Mr. Nelson declared an impasse existed, and ever since that date, he has been trying to say that he meant a deadlock. The terms impasse and deadlock are used interchangeably in AS 23.40.200 and the legal significance of those are very important. The arbitration provisions of AS 23.40.200 occur whenever a deadlock or impasse exists. When an impasse occurs and bargaining breaks down, the University, as a matter of law, may unilaterally impose their last offer on the Union members. A mediator may be appointed under AS 3.40.190 if a deadlock exists.

This Agency has in the past, interpreted such statutes, and will continue to do so as follows:

1. Deadlocks often occur in collective bargaining. The Federal Mediation and Conciliation Service has been repeatedly called on by this Agency to aid the parties in breaking such deadlocks. The deadlock may be over a single item,

or a series of items. However, that deadlock, under AS 23.40.190 does not ripen into a deadlock or impasse under AS 23.40.200 until there are "irreconcilable differences in the parties' positions after exhaustive good faith negotiations have taken place." Such exhaustive good faith negotiations contemplate the use of a mediator to attempt to break the temporary deadlocks that the parties encounter, and the full and frank exchange of materials, information, and positions before an AS 23.40.200 impasse occurs.

The determination of when a deadlock has reached the proportions of one that contemplates the implementation of AS 23.40.200 is a difficult one for the parties and the Agency. The Agency has been requested repeatedly to find that an impasse occurs and that request has been objected to by responding party. The Agency has looked the length of negotiations, the tone of the negotiations, the positions of the parties (as to whether they have changed their positions since the beginning of negotiations), and other relevant facts brought to the Agency by the parties.

In the present case, the record is clear that the Union was still attempting to reach agreements on several contract portions with the aid of the Federal Mediator, and that the University was also responding to the Mediator's efforts by exchanging information and proposals. Based upon those facts, it is clear to the Agency that the impasse did not reach a level

where there were "irreconcilable differences after exhaustive good faith negotiations."

The deadlock, under AS 23.40.190, is one that evidences the parties' inability to reach agreement by themselves. There is no requirement that the parties attempt to exhaustively reach agreement without aid from the Agency or the Federal Mediation Conciliation Service. The Agency has been quick to request the aid of outside parties whenever both parties have requested same. If one party objects to mediation, the normal procedure has been to confer with both parties to attempt to see what the nature of the dispute is, attempt to determine what the significance of the items upon which the parties are deadlocked, and make a determination as to whether the outside assistance is necessary. Often times, the parties are not communicating as well as they could be, and new ideas, new suggestions and new proposals offered by the mediator are helpful. Before the Agency calls the Federal Mediation and Conciliation Service, we attempt to determine whether the parties had engaged in meaningful discussions over bargaining proposals, offered counterproposals, or otherwise attempted to narrow the gap of disagreement. The number of bargaining sessions and length of time the parties have met without meaningful progress are important factors considered by the Agency before calling upon the Federal Mediation and Conciliation Service. The Agency has often used the Federal

Mediation and Conciliation Service and found it to be extremely effective.

The Agency also notes that in any negotiation significant positions are taken in the area of wages, hours and working conditions of employment. The most significant positions are often directly related to salaried benefits. Major items change from negotiation to negotiation.

There are always other items on the table which seem to be used as bargaining chips that can be added to or taken away, with less overall importance to the major items. The determination whether there is an impasse or deadlock under AS 23.40.200 has normally been granted by the Agency whenever a stipulation has been entered. If a petition is filed and a hearing is held, the Agency looks at the totality of the facts to make its determination.

Based upon the complete record, and the totality of the circumstances, the Agency makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That the University of Alaska has engaged and is engaging in bad faith bargaining, surface bargaining, and bargaining without any intention of reaching an agreement with the Union.

2. That the University has not refused to meet with the

Union negotiating team at reasonable times.

3. That the issue of the University refusing to negotiate with the Union at reasonable places was decided in ULPC 83-1.

4. That the University engaged in the bad faith bargaining by unilaterally demanding that the Union accept the University's proposals on compensation, work load and Union subsidization.

5. That the merit system proposal is illusory in that either party could unilaterally veto it by simply refusing to accept the other party's system and that no merit system could be reached at the unilateral insistence of any party.

6. That the University quickly solidified their proposals on the compensation, work loads, and subsidization issue, and refused to bargain in good faith on the remaining issues of the bargaining table unless the Union accepted the University's three major proposals.

7. That overt acts of the University show the bad faith intent by demanding that the Union accept the three major proposals.

8. That the totality of the conduct shows an obvious bad faith motive. That the University was guilty of surface bargaining by rejecting the Union's proposals, tendering their own, and not attempting to reconcile the differences. Also, the University refused to discuss items outside the three major issues.

9. That the University did not violate its duty to bargain in good faith by proposing the work load and subsidization offers that reduced the Union's rights and prerogatives. The bad faith was their unilateral demands without willingness to discuss other items.

THEREFORE, the AGENCY FINDS that the University, as a matter of law, has engaged and is engaging in bad faith bargaining, surface bargaining, and bargaining without an intention of reaching an agreement with the Union and that the University has attempted to declare an impasse where none exists under AS 23.40.200,

IT IS HEREBY ORDERED THAT the University cease and desist from the bad faith practices aforesaid mentioned in the Findings of Fact and Conclusions of Law.

DATED this 15th day of July, 1983.

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C.R. "Steve" Hafling, Chairman
Alaska Labor Relations Agency