[Labor Relations Agency Stationery]

BEFORE THE ALASKA LABOR RELATIONS AGENCY

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

AMENDED ORDER AND DECISION NO. 81(A)

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, and 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 by that by doing same there would be an agreement reached by consensus. The parties' past practices of offering and counter offering proposals was not followed in this collegial phase. The collegial phase had some success as some 20 items were agreed on. 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, 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 in June of 1983. Numerous correspondence was sent between the parties during that 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 be quickly resolved.

Item number one 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 and 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. After the merit system was agreed to, the system would be implemented into the new contract.

The Agency finds that the proposal of a 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 the merit system would be in existence before the end of the contract.

The University also proposed an across the board wage increase for all members of the present bargaining unit.

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 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 view 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 increased student enrollment necessitates the teachers having more actual class time.

The University proposals as viewed by the Union, are the teachers 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 cases, 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 Union 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. The terms impasse and deadlock are used

interchangeably in our statutes and the legal significance is important. When an impasse occurs and bargaining breaks down, as a well recognized matter of Federal law, the employer may unilaterally impose his last offer on the Union members. This Federal principle has not been directly addressed or adopted by this Agency. This Order and Decision does not adopt said principle. However, all litigants before this Board are aware that relevant Order and Decisions of the NLRB and Federal courts are given great weight by this Agency. (See 2 AAC 10.440). The Agency has repeatedly stated its purpose as (a) interpreting statutes and regulations; and, (b) attempting to aid both parties so collective bargaining is given the opportunity to work under our particular State law.

The Agency wishes to take the opportunity to discuss in obiter dictum, its application of the statutes so the parties are not (a) assuming that a unilateral request for mediation will automatically have the Agency request same; or (b) the parties are not racing the impasse to impose their last offer (if said Federal principle is adopted and applied in Alaska law), or, (c) assuming this Agency views one party's request for mediation or declaration of deadlock as the sole prerequisite to

having a strike vote or strike under AS 23.40.200, and (d) explain the legal criteria the Agency looks at in making its determinations.

The Agency realizes that every impasse or deadlock does not necessitate mediation. Impasses often come and go through the bargaining process. Parties take positions and retract them, maneuver for a position in collective bargaining by changing their positions, and resolve impasses without the aid of mediation. That is simply part of the collective bargaining process. The next type of impasse occurs when the parties need outside assistance to aid them. AS 23.40.190 gives the Agency wide discretion in aiding the parties when it states in part, "The Labor Relations Agency may appoint a competent, impartial disinterested person to act as mediator in any dispute either on its own initiative or other requests of one of the parties to the dispute." (Emphasis added.) The Agency has utilized said statute to call the Federal Mediation Conciliation Service to aid the parties. Sometimes the mediation works and the mediator leaves the parties to negotiate. The mediator can be called back by the parties or the Agency if a new impasse is reached.

In most of the collective bargaining negotiations, the parties have reached agreement without a strike or arbitration. The ACCFT/University of Alaska negotiations are a notable exception to the norm in Alaska. AS 23.40.200 requires mediation, a deadlock, and a strike vote as prerequisites to a strike for public school and education and institutional employees. The Agency has, in the past, interpreted aforesaid 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 good faith negotiations have taken place." Such good faith negotiations contemplate the use of a mediator to attempt to break the temporary deadlocks that the parties encounter, and full and frank exchange of materials, information, and positions.

2. The determination of when a deadlock has reached

the proportions of one that contemplates the implementations 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 at 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 good faith negotiations."

3. The deadlock, under AS 23.40.190, is one that evidences the parties' ability to reach an 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 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.

4. 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, normally has 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 bad faith bargaining by unilaterally demanding that the Union accept the University's proposals on compensation, workload, 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.

6. That the University quickly solidified their proposals on the compensation, workloads, and subsidization issue, and refused to bargain in good faith on the remaining issues at 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 workload and subsidization offers that reduced the Union's rights and prerogatives. The bad faith was their unilateral demands without a willingness to discuss other items.

THEREFORE, the Agency FINDS that the University, as a matter of law, had 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;

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 12 day of September, 1983

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C. R. "STEVE" HAFLING, Chairman
ALASKA LABOR RELATIONS AGENCY

DATED this 12 day of September, 1983

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MORGAN REED

[Signatures on File]