[Labor Relations Agency Stationery]

BEFORE THE ALASKA LABOR RELATIONS AGENCY

ALASKA COMMUNITY COLLEGE FEDERATION OF TEACHERS, LOCAL NO. 2404	)	Complainant in ULPC 83-6 ULPC 83-7; Respondent in ULPC 83-9, ULPC 83-10 Petition 83-4
Complainant,	)	
vs.	)	
UNIVERSITY OF ALASKA,	)	Respondent in ULPC 83-6, ULPC 83-7; Complainant in ULPC 83-9, ULPC 83-10, Petition 83-4
Respondent.	)	

ORDER AND DECISION NO. 84

GENERAL BACKGROUND

To place these cases in focus, the Agency would like to set forth the past background.

1. In the past years (1974, 1979) these parties have had lengthy, continual negotiations which included the filing of unfair labor practices, mediations, strikes, arbitrations and final settlements. The past practice of the parties in regard to Sec. 1.5 of the contract was that the Teachers were given substitute teachers during the period of negotiations.

In March, 1983, collegial bargaining started and the Teachers were released from their class duties pursuant to a mutual agreement which necessarily incorporated Sec. 1.5 of the

then existing contract. The collegial bargaining process ended with tentative agreement being reached on many sections of the contract, those sections being similar to the past contract.

2. In May, 1983, the University solidified its position and entered formal bargaining with the proposition of three (3) major proposals:

a. Ending subsidization of the Teachers' Union by the University.

b. Changing the step and lane automatic increases for teachers' salaries into a merit system.

c. Increasing the actual teaching load of the Teachers from twelve (12) to fifteen (15) hours per semester at the University's discretion.

Simultaneous with the spring semester negotiations the University Management and faculty met and collegially discussed their summer and fall schedules. For the fall semester no members of the Teachers' bargaining team were scheduled to teach Fridays. The Teachers' bargaining team schedules were arranged so that almost all of them taught morning classes, several had afternoon classes, and one had evening classes. The schedules were set by Management.

3. Prior unfair labor practices were filed by the Teachers against the University, namely ULPC 83-1, 83-2 and 83-3. Those cases have gone to a hearing and unfair labor practices against the University have been found by this Agency. The Agency has not relinquished its continuing jurisdiction concerning the

time and place of meetings in ULPC 83-1.

Summertime negotiations took place with the majority of the Teachers' bargaining team not teaching. The University suggested, and the Union agreed, that the scheduling of the summertime meetings would be scheduled around the Teachers' personal schedules. Mr. McGrath went to Hawaii for half the summer and negotiations were somewhat sporadic. The scheduling of the negotiations made it rather obvious that the Teachers did not want to negotiate during the summer from 8:00 a.m. to 5:00 p.m. on a daily basis.

The issue of when and where the parties should meet was not resolved during the summer. The parties were constantly proposing new and different sites, alternate and neutral places. Meetings were held in Building A, the Management's preference; Humana Hospital was a neutral place; the Union offices, under protest by the Union.

Progress was made on many of the remaining and undecided proposals during the summer, even though the meetings were somewhat sporadic.

As the fall schedule approached, the Teachers obviously expected to be relieved of their teaching duties as they had been in the past. The University changed its prior practice of hiring substitutes for the Teachers, and correspondingly allowing the Teachers to negotiate full time relying on Sec. 1.5 of the expired contract. The University wanted to negotiate Monday

and Wednesday from 2:00 to 5:00 p.m. and Fridays, as available. The University subsequently changed its position in wanting to also negotiate Saturdays and Sundays from 7:00 a.m. to 7:00 p.m. The Union countered, proposing to negotiate 8:00 a.m. to 5:00 p.m. daily. No agreement was made concerning the negotiating schedule. The Teachers agreed to meet Monday, Wednesday and Friday, as available, but under protest.

In regard to the new collective bargaining agreement being negotiated, the parties have positioned themselves with the Union basically wanting a status quo contract. The University wants the three major changes which they first expressed at the end of the spring semester when collegial bargaining stopped.

4. This Agency now has four unfair labor practices on time and places filed with it and one petition to enforce Sec. 1.5(a) of the expired but still adhered to contract. The contract is not presently in full force and effect but there is no doubt that the terms and conditions of the contract are. This Agency takes jurisdiction of all the matters put in front of it and is ready to rule on the unfair labor practices and petition.

5. Our intent in making our findings and our guidelines concerning the time and place issues is to insure that the parties negotiate pursuant to the intent of Sec. 1.5 in the expired contract. We believe that this can best be done by
having the parties state their reasons in writing, hopefully agree to all terms, and have this Agency take continuing

jurisdiction, if necessary.

OVERVIEW OF OUR DECISIONS

1. ULPC 83-6 is GRANTED and we take continuing jurisdiction over the matter.
2. ULPC 83-7 is DENIED.
3. ULPC 83-9 is DENIED.
4. ULPC 83-10 is GRANTED, in part, DENIED, in part, and continuing jurisdiction is asserted.
5. Petition 83-4 is DENIED.

ULPC 83-6

The issues contained in ULPC 83-6 are:

1. Did the University of Alaska violate 23.40.11(a)(1) and (5) by refusing to negotiate with the Union's bargaining team at reasonable times, and by restricting negotiations to time periods during which the Union's bargaining team had long standing conflicts, the University being aware of such conflicts?

2. Has the University violated 23.40.110(a)(1), (3) and (5) by failing to grant release time to members of the Union's bargaining team contrary to its former practice, even though the monies to pay substitute teachers for Union team members is readily available?

This Agency finds that:

a. The University's demand of limiting negotiation hours was made in bad faith.

b.University's demand of their terms and conditions of the meeting place was made in bad faith, the place being restricted by the three (3) criteria that:

i. The location should have available to it the support facilities which would facilitate bargaining, such as: typing, stenographic services, photocopying, caucus rooms, telephones and other common support systems.

ii. Ready access to pertinent information from the files of both the parties and pertinent information from various administrators and faculty.

iii. Control of the physical bargaining location by the parties themselves rather than some third party host.

3. The Agency makes this bad faith finding based upon the totality of the circumstances. After reviewing the past practices of the parties, these contracts have necessitated many hours of negotiations. The University has three (3) major proposals which they wish to bargain which appear to necessitate lengthy negotiations. A substantial amount of time was necessary for the University to create and propose its merit system document of approximately 90 pages. It is obvious to this Agency that any Union counterproposal will result in lengthy negotiations, as will the negotiation on the present proposal.

The past practices of the parties has shown that negotiations have been held at the University, union halls, hotel rooms and other areas in Anchorage. The University's sudden insistence that a typewriter, xerox machine and University personnel be at hand is inconsistent and made in bad faith. The University has admitted by their own testimony that the faculty are spread over the campus -- a 10-15 minute walk-is possibly necessary for administrators to meet with Management to confer on any particular matter. The bad faith of the University was shown by their demand which is, in effect, a limit on negotiations to places on campus. The parties have a duty to meet at reasonable times and places, such a duty does not necessitate meeting only on campus.

4. The Union members cannot be expected to teach twelve (12) hours during the week, which is their normal full load, plus the fifth part, which involves some other duties, prepare for classes, prepare tests, meet with students and meet their other duties which might take as long as twelve (12) hours, plus negotiate Monday and Wednesday for six (6) hours, Friday for eight (8) hours, and Saturday and Sunday for twenty-four (24) hours pursuant to Management's demands.

The Teachers' schedules which were submitted to this Agency and marked as exhibits clearly show that with the Management's demands there would be virtually no time for the Teachers to meet and prepare for negotiations.

5. The University has had a long past practice in allowing full release time to the Teacher negotiators.

6. We do find that the University's denial of any release time for any faculty negotiators for the fall of 1983 was made in bad faith. But we are not deciding exactly what hours should be granted under Sec. 1.5 of the contract. We are setting forth guidelines in our Order to insure that the parties do meet in the future and negotiate this matter in good faith.

7. The ACCFT has filed a grievance against the University based on the refusal of the University to grant release time to the faculty negotiators. At the hearing ACCFT expressed a desire to have the arbitrator decide the issues contained in the grievance. We understand ACCFT's position to be that they want this Agency to decide the non-release of faculty as a ULPC, and have this Agency defer to arbitration on the issue of damages or the other issues in the grievance. We understand the University's position to be one of acquiescing to arbitration.

This Agency has acknowledged the Collyer doctrine where the NLRB defers to arbitration, at its discretion, where:

a. The dispute arose within the confines of a long and productive collective bargaining agreement without assertions of enmity by Respondent to employees' exercise of protected rights.

b. Respondent credibly asserts its willingness to arbitrate.

c.The contract and its meaning lie at the center of the dispute. We find the meaning of Sec. 1.5 certainly lies at the center of this dispute. The Respondent asserted a willingness to arbitrate, and the parties have asserted a willingness to arbitrate even though assertion of enmity is present. Therefore, our guidelines include that the parties meet and consider what, if anything, they wish to arbitrate and to report back to this Agency concerning same. The Agency will strongly consider deferring to arbitration on any matters put forth by the parties. Our primary intent in our guidelines is to insure that the public, the students and the parties of both sides meet in good faith to obtain a new collective bargaining agreement.

8. Both parties have argued in front of this Agency what they view Sec. 1.5 to mean. Sec. 1.5 places duties on both parties. Sec. 1.5(a) places the duty on the Teachers to schedule negotiations that minimally interfere with their teaching, administrative and other duties. However, both parties have recognized and realized that lengthy negotiations were necessary in the past, and the Management has a corresponding duty to release the Teachers as necessary for the negotiating sessions.

9. The evidence presented leads this Agency to the conclusion that Management has disregarded the principles of Subsection B of Sec. 1.5.

10. Phillip Slattery is a union negotiator who lives in

Sitka, Alaska. Prior to the hearing a substitute teacher was hired to replace him at Sitka Community College. We find the portion of the complaint in regards to Mr. Slattery was effectively dealt with by the parties prior to our hearing. We also find that the parties have effectively rendered the issue of Phillip Slattery moot.

Having made said findings, IT IS OUR ORDER, that the University cease and desist from the aforesaid unfair labor practices and to follow our guidelines in an attempt to resolve ULPC 83-6. Continuing jurisdiction is asserted. Our ORDER incorporates the guidelines set forth at the end of this Order and Decision.

ULPC 83-7

ULPC 83-7 contains the issues of whether the University committed a ULPC by refusing to meet at alternative sites proposed by the Union. This Agency finds that:

1. There is no "per se" rule that the parties alternate sites when they cannot agree upon one mutually agreeable site.

2. That we looked at the record as a whole and decided not to grant this particular unfair labor practice.

3. The granting of the unfair labor practice would set a precedent that if the parties cannot agree upon a mutually agreeable site, that alternate sites' issues would automatically be sought. The proposed precedent violates the spirit of

collective bargaining that the parties mutually agree upon sites, and not unilaterally agree upon alternate sites by being obstreperous.

4. Therefore, we find ACCFT has not met their burden of proof and ORDER the DISMISSAL of ULPC 83-7.

ULPC 83-9

In its complaint the University of Alaska has charged that Local 2404 has violated 23.40.110(c)(2) by refusing to bargain in good faith with a public employer. Specifically, that Local 2404 has engaged in surface bargaining and bad faith bargaining by proposing bargaining sites which the Union allegedly knew were not available to the parties.

We have reviewed the total record of this unfair labor practice and find:

1. That the Union agreed initially to meet at the Chancellor's conference room in Building A, suggesting that there be five sessions in the Chancellor's conference room and then sessions at a site selected by the ACCFT, such as IBEW Hall, Teamsters' Hall or Laborers' Hall. The Union also suggested alternative sites which would involve ongoing sessions for negotiations at one of three mutual sites depending upon the availability of those sites: St. Mary's Episcopal Church at Lake Otis and Tudor, the Alaska Pacific University at East Wesleyan Drive and the Municipality of Anchorage building on

East Tudor.

Those proposals are memorialized by Exhibits 9, 10 and 11 submitted at the hearings.

2. The three union halls were available to the parties at reasonable times. The alternative sites were submitted to the University sites as neutral depending upon the availability of those sites. The University's argument that the Teachers should have known that the sites were unavailable when they proposed them is not persuasive, as the written proposal of the sites specifically stated, if available.

3. Therefore, we ORDER that ULPC 83-9 be DISMISSED as the University has failed to meet the requisite burden of proof.

ULPC 83-10

ULPC 83-10 is the University's unfair labor practice alleging a violation of Alaska Statute Sec. 23.40.110(c)(2) in particular surface bargaining by the acts of:

1. Refusing to meet at reasonable times and places that minimally interfere with the other employment responsibilities of the members of the negotiation team, (as is required by Article 1.5 of the collective bargaining agreement executed by the parties).

2. By insisting that negotiations be scheduled during the times which do not conflict with the numerous outside personal and union activities of the members of the Union

negotiating team, when the Union has unilateral control of scheduling such outside activities. We make the following findings of fact after reviewing the total record:

a. We DENY the unfair labor practice charged insofar as it alleges that the Teachers have refused to meet at reasonable times and places that minimally interfere with the other employment responsibilities of the negotiating team required by Article 1.5 of the collective bargaining agreement executed by the parties. The Teachers, in fact, agreed to meet at the University's times and places under protest.

b. We find an unfair labor practice was committed by the Union by insisting that negotiations only be scheduled during the times which do not conflict with the numerous outside personal and union activities of the members of the Union negotiating team, when the Union has unilateral control over the scheduling of such outside activities.

c. We find that the Union insisted that negotiations not take place on Wednesday afternoons from 3:00 5:00 p.m., as that time was set aside for the Anchorage campus' weekly union meeting. We find that the Teachers committed unfair labor practices by insisting that such time was unavailable to have

negotiating sessions. The Union wanted negotiations from 8:00 a.m. - 5:00 p.m. daily Monday through Friday which directly contradicts their Wednesday p.m. objection.

d. Concerning the first Friday of each month, we find that the Union's unilateral insistence that the first Friday of each month is preempted as their statewide executive board meeting is held, is not unreasonable. The statewide executive board is probably necessary for the union negotiating sessions to be fruitful -- as the Board of Regents' meeting would be absolutely essential to the Management's negotiating strategy. The Union's insistence of meeting 8:00 a.m. - 5:00 p.m. daily does not necessitate actual meetings during all such times. Such time is obviously also set aside for reviewing proposals, preparing strategy, preparing counterproposals, etc.

e.The third Friday of each month in which the Anchorage Instructional Advisory Council meets is a time that should be negotiated between the parties. The Management cannot expect the negotiating team to be at the Advisory Council at the same time as they are expected to be in negotiating sessions. We do not find the Union's objections to meetings on the first Friday of the month as objectionable, as the Teachers

cannot be in two places at once.

f. We find the Union's bad faith by this unilateral insistence based upon the fact that they have argued that negotiating should be Monday through Friday from 8:00 a.m. to 5:00 p.m., such times which necessarily include these meetings. The Teachers appeared to be more than willing to have meetings 8:00 a.m. to 5:00 p.m., Monday through Friday, if they did not have to teach their sessions pursuant to Sec. 1.5 of the collective bargaining agreement.

g. Neither party is attempting to look at the entire situation of Sec. 1.5 of the contract and strike the proper balance necessary for negotiating while meeting their administrative and other duties, and possibly teaching.

h. We ORDER the Union to cease and desist from insisting that negotiations not be held on Wednesday afternoon from 3:00 - 5:00 p.m., and DENY any other allegations of bad faith bargaining.

Our remedial Order contained at the end of this Order and Decision, and guidelines set forth therein, are incorporated in this Order and Decision. Our remedial Order is intended to make the parties strike the balance by agreement -- and by taking continuing jurisdiction over this matter, the Agency will consider striking the balance if the parties cannot do so by

negotiating in good faith.

PETITION 83-4

Petition 83-4 requests the Agency to specifically enforce Sec. 1.5(a) of the collective bargaining agreement and specifically to order that the scheduling by the University from 2:00 5:00 p.m., Monday and Wednesday, Fridays as available, and Saturday and Sunday from 7:00 a.m. to 7:00 p.m. as the appropriate times. This Agency declines to grant said petition for the following reasons:

1. Sec. 1.5(a) must be read with Sec. 1.5(b) to gleen the full intent of the parties. The crucial sections of Sec. 1.5 are that:

a. Negotiations shall be scheduled at times and places that provide minimal interference with the instructional, administrative and other employment duties of the negotiating team. Negotiations shall be held in Anchorage.

b. Bargaining unit members who serve as negotiators shall be excused from class duties as necessary in the course of negotiations without prejudice, and approved substitutes shall be provided by the negotiator or the Union.

2. The obvious intent of the two sections is that there will be minimal interference with the instructional, administrative

and other employment duties of the Teachers' negotiating team; (amply federal precedent says that both parties must meet at reasonable times and places); and that Teachers shall be excused from class duties as necessary during the course of negotiations. The parties have contractually realized that negotiating interferes with the instructional duties of the Teachers. The section tends to strike a balance between the needs of the Teachers to negotiate, to teach if possible, on the needs of the Teachers to do both, and be excused from teaching as necessary.

3. The past practice of the parties show that the Teachers have been excused from teaching any classes during negotiations. But that fact alone does not create a waiver of the responsibilities of both parties to meet their bargained terms and conditions of employment while the new contract is being negotiated.

4. Management bases its argument by relying on the plain reading of Sec. 1.5. We find that the plain reading of the statute will not be given the interpretation that the Teachers are going to be required to both teach and negotiate full time. Management's reliance on the Flint arbitration of June 8, 1976, and particularly the final paragraph on page 3, which concerns a hypothetical question about mass negotiating teams, is strained at best. Sec. 1.5 (c) provides "the ACCFT negotiating team may consist of five (S) members. The University shall pay for four (4) ACCFT negotiating team members' substitutes. Subsection (c) was negotiated by the parties and makes Management's position even more incredulous.

We find the position to be another example of how Management is picking at every straw and arguing everything possible to avoid effectuating the true intent of Sec. 1.5, while alleging that an arbitrator's decision of seven (7) years ago supports their position.

This Agency wishes to resolve the six cases of time and place (ULPC 1, 6 and 7, 9 and 10; Petition 83-4), (which could be an all time record for the most hearings on time and place during one contract negotiation), by taking continuing jurisdiction of ULPC 83-6 and ULPC 83-10. It ORDERS the parties to meet the following guidelines in their future collective bargaining meetings. If they cannot resolve the issues of time, place and Sec. 1.5, they must inform the Agency of that fact no later than November 19, 1983, for a further hearing in front of a Hearing Officer.

THE GUIDELINES

1. To meet and confer on the student needs at this point and time during this semester, and the spring 1984 semester. To exchange present and proposed assignments and schedules of classes for the individual negotiators so a full response by each party can be made. To set forth in writing the views of both the administration and the individual teachers teaching those classes, utilizing their past experience as to what courses could be substituted in the future and what should not be substituted for now.

2. To exchange the length of time which is necessary for each teacher to prepare for present and 1984 classes and to meet the class requirements. We want both parties to stop proposing unilateral hardline positions. Both parties must realize that extra burdens are going to be placed upon them during the negotiating of this contract. Both parties are to set forth in writing how much time is necessary to prepare for a class or lab. We want the parties to be frank, state how many times the course has been taught in the past, any changes in the textbooks from semester to semester. To determine if it is a regular class or an evening schedule, and to set forth specifically how it would affect the students to have a substitute at this time during the semester and if the substitutes are available for classes in the spring of 1984. To explore what substitutes are available and any particular problems with any particular course.

3. To attempt to arrange a schedule to meet daily or to have scheduled daily meetings with breaks for good cause.

4. To attempt to set meetings from three (3) to four (4) continuous hours.

5. To attempt to reschedule internal conflicting administrative matters except for the first Friday of each month when the statewide union meeting is to be held, and Board of Regents' meetings as are called in the future.

6. To meet, confer and discuss the areas of the previously filed grievance concerning release time. To inform this

Agency of the parties' desire to defer or not defer any issues relating to the grievance to arbitration at the times set forth below.

7. To discuss having all the meetings at those sites proposed by the University and those sites proposed by the Union. If you cannot agree to a formula for negotiation, to then discuss neutral sites. To set forth in writing any objections to any and all of the sites mentioned above. If you do not make an agreement on University or Union sites, to set forth in writing any and all objections to all the neutral sites which have been utilized by the parties in the prior negotiations. (All the while realizing that the arguments of the Management covering their three criteria concerning sites are not proper objections, per se, to any proposed site.)

8. If you cannot immediately agree upon where to meet to discuss the aforementioned issues, contact William J. Pauzauskie at 276-2232 who will make his conference room available for all of you to meet, or will arrange for a room at the federal courthouse for you to meet at, or some other place.

9. To exchange in writing each party's full and complete initial positions on all the matters contained herein no later than November 14, 1983. To exchange your positions in writing concerning counterproposals or why you view the other party's position is unreasonable or made in bad faith. If the matters contained herein concerning times, places, schedules, release

time, arbitration, substitutes, internal conflicting administrative matters, and student needs are not agreed upon by the parties, to deliver full and complete copies of all initial proposals and counterproposals to Mr. Hafling at 430 West 7th Avenue, Anchorage, Alaska 99501 and Mr. Humphries at 3707 Locarno Drive, Anchorage, Alaska 99508, and the Alaska Labor Relations Agency, P. 0. Box 6701, Anchorage, Alaska 99502, and personally delivering a copy to William J. Pauzauskie, 1101 West 7th Avenue, Anchorage, Alaska 99501, by November 22, 1983, at 10:00 a.m. To meet at the offices of William J. Pauzauskie on November 23, 1983 at the hour of 9:00 a.m., to have a further hearing on any unresolved matters.

10. If any of the matters mentioned above or contained in this Order are resolved, or partially resolved, by November 21, 198, those resolutions are to be delivered to Messrs. Hafling, Humphries and Pauzauskie no later than November 22, 1983, at 10:00 a.m.

11. If there are unresolved matters that cannot be agreed upon at the meeting with the Hearing Officer, a further meeting of the full Board will take place on November 30, 1983 at the hour of 9:00 a.m. at a place consistent with the regulatory hearings which are scheduled for November 29, 1983, in Anchorage.

12. Our continuing jurisdiction in ULPC 83-1 is not changed in any way by this Order and Decision, and the case of ULPC 83-1 will be considered with the schedule of hearings set

forth in this Order and Decision so that all matters can be more effectively dealt with at one time and place.

Finally, in the event you would like to comment in obiter dictum, we realize the parties have engaged in lengthy negotiations concerning time and place, Sec. 1.5 of the contract, release time and three (3) major new proposals by the University. Those negotiations have been fruitful to a large degree. The parties are now placed in the position where there are several portions of the new collective bargaining agreement which have been held in abeyance pending the extensive collective bargaining necessary to resolve whether the three major proposals made by the University are going to be accepted by the Union in whole or in part or counterproposals are going to be made by the Union concerning the University's proposed changes.

We believe it is time for the parties to meet and negotiate in good faith on the times and places of meetings, and the application of the mutual duties of Sec. 1.5 of the contract in regards to release time and to finally resolve that matter so that the real factual issues of this collective bargaining process can be dealt with.

To put it bluntly, enough time has been spent talking about the time and place of meetings and release time. Your past negotiating practices in 1976 and 1979 did not revolve around the issue of the time and place of meetings, as this collective bargaining process obviously has. In the past, you

have met in hotel rooms, union halls, the university campus, and the Teachers have been released from their duties under Sec. 1.5. Sec. 1.5 was written by both parties, agreed to by both parties, and each of you have been found guilty of an unfair labor practice by not following the obvious intent of that section.

Alaska Statute 23.40.140 enables the Agency to "take affirmative action which will carry out the provisions of Alaska Statute 23.40.070 - 23.40.260." This Agency has not taken affirmative action in the form of setting the schedules, as there is a strong public policy that the negotiators (which include numerous Ph.D., Masters' degree holders, and all being college graduates) should seemingly be able to find a time or place to meet without taking obstreperous positions. We have set forth the guidelines so that the policies of the Act <u>are</u> dealt with by the parties. This Agency wants you to resolve these matters so that the real underlying issues involved in this collective bargaining process can be dealt with satisfactorily.

DATED: October 31, 1983

C. R. "Steve" Hafling

DATED: October 31,1983

Ben Humphries

DATED: October 31, 1983

Morgan Reed