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FAIRBANKS FIRE FIGHTERS ASS'N,)
LOCAL 1324, IAFF,)
Complainant,)
)
vs.)
)
CITY OF FAIRBANKS,)
)
Respondent.)
)
)
)

Case No. 04-1275-ULP

DECISION AND ORDER NO. 273

The ALRA Board decided this dispute based on the pleadings and documents filed by the parties, and on their written arguments. The parties filed simultaneous initial oral arguments and reply briefs. The record closed on January 21, 2005, when the Board concluded its deliberations. Hearing Examiner Mark Torgerson presided.

Digest: Although the Fairbanks Mayor recommended against approval of funding of some monetary terms for the third year of the parties' collective bargaining agreement, he did provide the appropriating legislative body, the Fairbanks City Council, with the parties' collective bargaining agreement that contained the monetary terms, for the Council's consideration. Further, AS 23.40.215 permits the Council to review each monetary term in an agreement, and choose to fund or not fund each term. There was therefore no unfair labor practice violation.

Appearances: Michael MacDonald, attorney for complainant Fairbanks Fire Fighters Association; Herbert Kuss, attorney for the City of Fairbanks.

Panel: Chair Gary Bader, and members Randall Frank and Dennis Niedermeyer.

DECISION

Statement of the Case

The Fairbanks Fire Fighters Association filed a complaint charging the City of Fairbanks with an unfair labor practice for bargaining in bad faith. The Fire Fighters allege that the City failed to submit the complete monetary terms of the third year of the parties' ratified three-year collective bargaining agreement to the Fairbanks City Council. The City of Fairbanks denies the charge, alleging that it submitted what the law requires.

Procedure in this case is governed by 8 AAC 97.350.

Issues¹

1. Should we grant the Fire Fighters' request to schedule this matter for oral argument?
2. Did the City of Fairbanks violate AS 23.40.110(a)(5) and (a)(1) when Mayor Steven Thompson submitted a budget, to the Fairbanks City Council, that incorporated most, but not all monetary terms included in the third year of the parties' collective bargaining agreement? In this regard, did the Mayor comply with the requirements of AS 23.40.215(a) when he provided the Council with the parties' collective bargaining agreement that contained all the monetary terms, and by giving the Council information about and copies of the parties' collective bargaining agreement?
3. Does the Public Employment Relations Act require the Fairbanks City Council to vote for or against the monetary terms of the agreement in their entirety, or can the Council pick and choose from a list of monetary terms and decide from the list those specific terms it will approve, or not?

Findings of Fact

The panel, by a preponderance of the evidence, finds the facts as follows:

1. The Fairbanks Fire Fighters Association Local 1324, IAFF (Fire Fighters), is recognized as the exclusive collective bargaining representative of certain fire fighting employees of the City of Fairbanks (City).
2. The Fire Fighters and the City entered into a collective bargaining agreement on January 21, 2002, effective February 1, 2002, through January 31, 2005. (Jt. Exh. A; Fire Fighters Opening Hearing Brief at 1).

¹ The Fire Fighters also appear to put forward a constitutional argument in addition to those listed above: a separation of powers argument. See Fairbanks Fire Fighters Opening Brief at 8. However, as an administrative agency of the executive branch of the State of Alaska, this Agency does not have jurisdiction to decide constitutional issues. These issues must be taken up in the courts on appeal. *Alaska State Employees Association, AFSCME Local 52, AFL-CIO v. State of Alaska*, Decision and Order No. 261 (December 31, 2002).

3. During the first two years of the agreement, the Fairbanks City Council approved the complete monetary terms of the parties' collective bargaining agreement.

4. When it came time to submit the terms for the third year, the City had experienced unexpected fiscal events that included loss of state municipal revenue sharing, larger than anticipated costs owed the State of Alaska's Public Employees Retirement System, and under-realization of real property tax revenues. (Affidavit of City Chief Financial Officer Ronald E. Woolf).

5. In a September 8, 2003, memorandum, Mayor Steve Thompson sent the City Council information about the projected fiscal year 2004 budget problems. Thompson estimated that without revenue increases, the City would have a budget deficit of \$1.5 million. (Jt. Exh. F).

6. On October 10, 2003, Mayor Thompson notified the four unions representing city employees that, to resolve the projected budget deficit, there were suggestions that the City may be required to forego payment of all monetary terms of collective bargaining agreements. He welcomed the unions' ideas. (Jt. Exh. G).

7. On October 22, 2003, city employee Pat Cole sent a memorandum to the four union leaders. The memorandum and attachments showed the affect of the proposed bonus leave deletion on each city employee. (Jt. Exh. U).

8. On October 27, 2003, Mayor Thompson forwarded his budget transmittal letter for fiscal year 2004. His recommendations included 1) not fully funding employee contractual pay rates to offset health care plan costs beyond \$750 per month per employee, and 2) non-funding of all so-called "bonus leave." (Jt. Exh. H). These proposals, if enacted, would not fully fund the monetary terms of the Fire Fighters' collective bargaining agreement. Thompson wrote: "I am taking the drastic step of recommending that the council not fully fund all of the monetary terms of our four labor agreements."²

9. On November 1, 2003, Mayor Thompson presented his annual budget estimate to the City Council. (Thompson Affidavit, ¶ 23). On November 17, 2003, Mayor Thompson introduced Ordinance No. 5554 (as substituted and amended) to adopt the fiscal year 2004 budget. (Jt. Exh. I). This Ordinance did not include complete funding for the Fire Fighters' contract.

10. On December 8, the City Council heard public testimony regarding the Mayor's proposed budget.

11. On December 10, 2003, Mayor Thompson wrote the City employee unions' leaders (including the Fire Fighters) that the City Council would vote on Ordinance No 5554 on December 15. The Mayor noted he had communicated with some of the union leaders during the prior few days, and he felt it "might be of value for us to meet this week." (Jt. Exh. K).

² This dispute involves the Fire Fighters only. However, the Mayor's proposal affected all city employees, including employees represented by other unions and also non-represented employees.

12. On December 11, 2003, Michael MacDonald, attorney for the Fire Fighters, wrote the Mayor that "your failure to submit the Collective Bargaining Agreement between the City and the Fire Fighters' Ass'n. to the city council for appropriation is considered an unfair labor practice by the Association." MacDonald added that the Mayor's failure to submit the "complete monetary terms of the CBA" violated AS 23.40.215(a). Finally, MacDonald asserted that the Mayor's failure to submit the complete collective bargaining agreement to the City Council was also an unfair labor practice. (Jt. Exh. L).

13. The City Council met on December 15, 2003, to discuss and vote on the budget. Mayor Thompson provided the Council with a memorandum summarizing recent budget work by the City's Finance Committee. He urged the Council to pass his budget that included reductions to bonus leave and health care costs. The Mayor also presented the Council with copies of the Fire Fighters' collective bargaining agreement (as well as those of other unions). (Jt. Exh. M).

14. During the meeting, the City Council exchanged ideas and debated elements of the budget. These exchanges included what to do with the Mayor's bonus leave and health care recommendations for the Fire Fighters. (Jt. Exhs. N & O). Some council members spoke in favor of fully funding these monetary terms. After considerable discussion, the Council amended the Mayor's budget and voted in favor of funding bonus leave and health care, as required by the collective bargaining agreement, but only for a three-month period, rather than the twelve-month period provided in the agreement. The purpose of the three-month funding was to allow the Mayor and the Fire Fighters to further negotiate these funding issues.

15. On December 22, 2003, Mayor Thompson notified the Fire Fighters and other unions that the City Council's appropriated budget did not fully fund the monetary terms of the collective bargaining agreements. "More than one of you has indicated the willingness to continue meeting to explore alternatives. Leslie Miller will be calling you for an agreeable meeting schedule: I suggest we meet at least every week." (Jt. Exh. P).

ANALYSIS

1. Should we grant the Fire Fighters' request to schedule this matter for oral argument?

The Fire Fighters have requested the opportunity to present oral argument to the Board. We deny the request. The record and the parties' substantial briefs adequately present the issues and positions of the parties.

2. Did the City of Fairbanks violate AS 23.40.110(a)(5) and (a)(1) when Mayor Steve Thompson submitted a budget, to the Fairbanks City Council, that incorporated most, but not all monetary terms included in the third year of the parties' collective bargaining agreement?

The Fire Fighters contend the City bargained in bad faith when Mayor Thompson failed to seek approval of the complete monetary terms contained in the third year of the negotiated agreement, as required by AS 23.40.215, as well as AS 23.40.110(a)(5) and (1). The Fire Fighters assert that the Mayor's action amounts to refusal to bargain in good faith and represents a violation

of the Fire Fighters' rights to collective bargaining. (Fire Fighters' "Charge Against Employer" filed by facsimile March 3, 2004; Fire Fighters Opening Brief at 3).

The Fire Fighters further argue that the Mayor's action "removes mandatory subjects of bargaining (wages and health insurance) from the bargaining process." The Fire Fighters contend that the Mayor's action is a violation of the duty to bargain in good faith. (Fire Fighters Opening Brief at 3).

Under AS 23.40.110(a)(5), an employer is required to bargain collectively in good faith with the organization that is the exclusive representative of employees in an appropriate unit, including but not limited to discussing grievances with the exclusive representative. AS 23.40.110(a)(1) prohibits an employer from interfering with, restraining, or coercing an employee in the exercise of the employee's rights guaranteed in AS 23.40.080. AS 23.40.080 protects the right to self-organize, form, join, or assist an organization to bargain collectively through representatives of the employees' own choosing, and engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

AS 23.40.215 (a) and (b) provide in relevant part:

(a) The monetary terms of any agreement entered into under AS 23.40.070 -- 23.40.260 are subject to funding through legislative appropriation.

(b) The Department of Administration shall submit the monetary terms of an agreement to the legislature within 10 legislative days after the agreement of the parties, if the legislature is in session, or within 10 legislative days after the convening of the next regular session. The complete monetary and nonmonetary terms of a tentative agreement shall be submitted to the legislature no later than the 60th day of the legislative session to receive legislative consideration during that calendar year. However, if the department has submitted a tentative agreement in a timely manner and the parties to the agreement decide to renegotiate the terms, the renegotiated agreement shall be considered to have been submitted in a timely manner. . .

AS 23.40.250(4) defines "monetary terms of an agreement" as "changes in the terms and conditions of employment resulting from an agreement that (A) will require an appropriation for their implementation; (B) will result in a change in state revenues or productive work hours for state employees; or (C) address employee compensation, leave benefits, or health insurance benefits, whether or not an appropriation is required for implementation [.]"

The Fire Fighters cite to an Alaska Supreme Court case to support their assertion that the Mayor's failure to seek legislative approval of the bargained-for monetary terms constitutes a failure to bargain in good faith. In *Public Employees' Local 71 v. State*, 775 P.2d 1062 (Alaska 1989), the Alaska Legislature approved the first and second years of the parties' collective bargaining agreement but passed a resolution telling the parties it would not fund the monetary terms of the contract for future years.

The State and Local 71 were unable to renegotiate the salary increase for the third year of the agreement. Nevertheless, the Governor submitted a budget that included the salary increase for

the third year of the contract. The legislature refused to appropriate the funds for the increase. Local 71 filed an unfair labor practice charge, alleging failure to bargain in good faith. The Supreme Court held that the State did not fail to bargain in good faith because the Governor "sought funding for the bargained pay raise when he submitted his executive budget . . ." *Id.* at 1064. The Fire Fighters contend that this case supports their assertion that the Mayor, like the Governor, must not only submit the monetary terms of the collective bargaining agreement but also seek funding for those monetary terms.

However, unlike the Local 71/State dispute described above, this case involves a political subdivision as employer. We must therefore determine whether AS 23.40.215 requires negotiators of political subdivisions like the City of Fairbanks to submit or seek funding for bargained monetary terms. We first conclude that AS 23.40.215(a) does not specifically provide that a public employer must "submit" the monetary terms of an agreement for legislative approval. This subsection provides only that "monetary terms of an agreement . . . are subject to funding through legislative appropriation."³

Second, AS 23.40.215(b) does require the "Department of Administration" to "submit the monetary terms of an agreement to the legislature." There is nothing in this subsection suggesting it applies to political subdivisions. Moreover, the Alaska Supreme Court has held that this statutory subsection "on its face . . . applies only to the state government . . ." *Fairbanks Police Department Chapter, Alaska Public Employees Association v. City of Fairbanks*, 920 P.2d 273, 275 n.2 (Alaska 1996).⁴ AS 23.40.215(b) therefore does not apply to political subdivisions such as the City of Fairbanks.

But it would be inconsistent from a policy standpoint to require the State to submit the monetary terms of agreements and not require other public employers under our jurisdiction to do the same. It makes no sense to allow a non-state government public employer to negotiate an agreement with a public employee union, then let them sit on the agreement and not submit it to a legislative body for consideration. Accordingly, we conclude that AS 23.40.215(a) requires an executive officer of a political subdivision -- like the Mayor and City -- to "submit" the monetary terms of an agreement to the appropriating legislative body (in this case, the Fairbanks City Council).

The City admits the Mayor did not submit a budget that "fully funded" the monetary terms of the collective bargaining agreement. (City's Memorandum in Support of Respondent's Motion to Dismiss Unfair Labor Practice Claim, at 2, 7-8). The Mayor himself admitted this. The City cites to many financial issues that required the Mayor and City Council to find ways to reduce costs. The City argues that in his role as Mayor, Thompson must by law submit a balanced budget. The City

³ The Alaska Supreme Court has held that subsection 215(a) applies to political subdivisions of Alaska. *Fairbanks Police Department Chapter, Alaska Public Employees Association v. City of Fairbanks*, 920 P.2d 273, 275 (Alaska 1996).

⁴ This statute is less than clear. It lacks clarity in providing an understandable roadmap for parties, other than the State, to submit the monetary terms of their agreement to their fund-appropriating body. As the Supreme Court provided in *Fairbanks Police Department Chapter, Alaska Public Employees Association v. City of Fairbanks*, 920 P.2d 273, 277 n.2 (Alaska 1996), "Because on its face § 215(b) applies only to the state government, this problem [unequal bargaining power] may be heightened where the dispute involves a municipality."

contends that although the Mayor did not submit all the agreement's monetary terms in his proposed budget, the City Council reviewed the collective bargaining agreement and even considered fully funding the agreement's monetary terms. Ultimately, the City argues, the Mayor did submit the monetary terms by including, with the budget, the collective bargaining agreement containing the monetary terms, and also other related financial documents. Accordingly, the City denies that it did anything wrong and contends that the Mayor's action was valid.

In his duty to submit a balanced to the City Council, Mayor Thompson requested less than the amount required to fully fund all the monetary terms of the City's agreement with the Fire Fighters. However, the Mayor did provide the Council with a wealth of information that allowed the council members to review, analyze, and ultimately cast a vote for funding, or not, of the monetary terms. The Council received copies of the Fire Fighters/City collective bargaining agreement that included a description of the monetary terms for the third year of the contract. The Council reviewed the terms and other information provided by the Mayor. After considerable discussion, some Council members urged full funding of the monetary terms. Ultimately, the Council decided to fund all the monetary terms of the agreement except bonus leave and medical costs above \$750 per month per employee. The Council funded these items for three months, despite the Mayor's urging to do otherwise.

We believe, under the particular facts of this case, that the Mayor did submit the monetary terms required by AS 23.40.215(a), even though ordinance No. 5554 did not include full funding of the monetary terms of the Fire Fighters contract. As an alternative, the Mayor could have submitted all the monetary terms in his budget and then indicated that the budget would not balance unless the Council reduced part of the budget. Nonetheless, we conclude the Mayor's submission of the contract and related documents satisfied the statutory requirement. The Council clearly had all the pertinent information about the budget and the monetary terms of the collective bargaining agreement.

The Mayor not only heads the City's administration but also has a legal responsibility as an elected mayor to submit the executive balanced budget to the Council. The Council is the legislative body responsible for voting on budgetary matters. Moreover, the Mayor has legislative responsibilities: he must cast a vote on the budget in the event there is a tie vote among the members of the Council. These various elected, official and administrative responsibilities require the Mayor to assume different roles at different points in the budget and appropriations process.

We conclude that Mayor Thompson, as executive officer of the political subdivision of the City of Fairbanks, did what AS 23.40.215(a) requires: he submitted the monetary terms of the Fire Fighters collective bargaining agreement by providing the City Council with the information it needed to decide whether to fund the agreement's monetary terms.

The pertinent question for our determination is whether the City bargained in good faith when the City's negotiator (the Mayor) agreed to monetary terms with the Fire Fighters but then its negotiator (the Mayor) failed to advocate their approval to the City Council. The Fire Fighters contend that the Mayor's conduct in failing to seek funding of the complete monetary terms is a *per se* violation of his duty to bargain in good faith. Further, the Fire Fighters argue that the City

violated AS 23.40.070 by unilaterally changing wages, health care, and other terms and conditions of the parties' agreement. (Fire November 18, 2004, Reply Brief at 1).

AS 23.40.215(a) does require the Mayor to submit monetary terms for consideration by the City Council, but we do not believe this subsection requires the Mayor to advocate for approval. We have already held that the Mayor did submit the monetary terms of the agreement as required by AS 23.40.215(a). We do not find the Mayor's conduct constitutes a *per se* violation.

Further, under the totality of circumstances standard, we conclude that the City did not violate the duty to bargain in good faith under AS 23.40.110(a)(5). While we find that the City unilaterally changed wages, health care, and other terms of employment, the City's actions reflected the City Council's duty to review and adopt a balanced budget. Since we have not found a violation of AS 23.40.110(a)(5), there is no derivative violation of AS 23.40.110(a)(1), and there is insufficient evidence to establish an independent violation. Under either subsection, the Fire Fighters have failed to prove their case by a preponderance of the evidence. We will dismiss the Fire Fighters' unfair labor practice charge.

3. Can the Fairbanks City Council pick and choose from a list of monetary terms and decide from the list those specific terms it will approve, or not?

After discussing its budget, the Council chose to fund the monetary terms for the third year of the collective bargaining agreement, except for bonus leave provisions and some medical costs after the first three months of the year. The Fire Fighters argue that the law does not give the Council authority to pick and choose to fund some provisions while declining to fund other provisions. The City maintains that Alaska Supreme Court cases support the notion that AS 23.40.215 gives legislative body discretion to fund parts of or all of the monetary terms of a collective bargaining agreement.

We agree with the City and reject the Fire Fighters' argument. We do not construe AS 23.40.215(a) to require a legislative body to vote to fund either all or none of the monetary terms of a collective bargaining agreement. Further, several Alaska Supreme Court cases indicate that AS 23.40.215 authorizes a legislative body to fund all or part of an agreement. For example, in *Public Employees' Local 71 v. State*, 775 P.2d 1062 (Alaska 1989), the Supreme Court concluded that failure to approve a salary increase was not an unfair labor practice. The court implies that it was valid for the legislature to approve all the other monetary terms of the contract but disapprove the salary increase. See also *Public Safety Employees Association v. State*, 895 P.2d 980 (Alaska 1995); *Fairbanks Police Department Chapter, Alaska Public Employees Association v. City of Fairbanks*, 920 P.2d 273 (Alaska 1996); and *University of Alaska Classified Employees Association, APEA/AFT, AFL-CIO v. University of Alaska*, 988 P.2d 105 (Alaska 1999).

We find that in this circumstance, the Public Employment Relations Act (PERA) "as written creates unequal bargaining power; §215(a) allows the legislature or funding body of a political subdivision to choose whether to accept or reject a negotiated result[.]" *Fairbanks Police Department Chapter, Alaska Public Employees Association v. City of Fairbanks*, 920 P.2d 273, 277, n.2 (Alaska 1996). The current law does not provide a level playing field. We are troubled that employees go to the bargaining table, negotiate with their public employer, and believe they have an

agreement upon completion of those negotiations. This process involves considerable give and take by both sides. Thus, employees (through their union representative) give up certain desired contract items in order to work out a deal with their employer.

AS 23.40.215 permits an appropriating body to not fund part or all of a collective bargaining agreement that was negotiated in good faith. "Subsection 215(a) also allows the legislature to make that choice in several stages, as each item of a negotiated result requires funding." *Id.* Moreover, AS 23.40.215 does not contain any requirement for the parties to return to the bargaining table should the legislature or other funding body decline to fund the tentative agreement, or the subsequent years of a ratified collective bargaining agreement. We are troubled as we find this creates an inconsistency with the stated intent of PERA, outlined in AS 23.40.070.⁵

CONCLUSIONS OF LAW

1. The Fairbanks Fire Fighters Association is an organization under AS 23.40.250(5).
2. The City of Fairbanks is a public employer under AS 23.40.250(7).
3. This Agency has jurisdiction to consider unfair labor practice complaints under AS 23.40.110.
4. The Fairbanks Fire Fighters failed to prove by a preponderance of the evidence that the City of Fairbanks committed an unfair labor practice under AS 23.40.110(a)(5) or (1).
5. AS 23.40.215(a) requires that the "monetary terms of any agreement entered into . . . are subject to funding through legislative appropriation." This subsection also requires political subdivisions to submit the monetary terms of collective bargaining agreements to the appropriate funding body.
6. Mayor Steve Thompson fulfilled the requirement of AS 23.40.215(a) by providing the Fairbanks City Council with his proposed budget, financial documents, and the parties' collective bargaining agreement.
7. AS 23.40.215(b) does not apply to collective bargaining agreements at the political subdivision level.
8. There is no statutory provision that prohibits the City from approving or rejecting individual monetary terms in a collective bargaining agreement.

⁵ See the Alaska Legislature's Declaration of Policy in AS 23.40.070.

ORDER

1. The unfair labor practice complaint of the Fairbanks Fire Fighters is denied and dismissed.

2. The City of Fairbanks is ordered to post a notice of this decision and order at all work sites where members of the bargaining unit affected by the decision and order are employed or, alternatively, serve each employee affected personally. 8 AAC 97.460.

ALASKA LABOR RELATIONS AGENCY

Gary Bader, Chair

Randall Frank, Board Member

Dennis Niedermeyer, Board Member

APPEAL PROCEDURES

This order is the final decision of this Agency. Judicial review may be obtained by filing an appeal under Appellate Rule 602(a)(2). Any appeal must be taken within 30 days from the date of filing or distribution of this decision.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of FAIRBANKS FIRE FIGHTERS ASSOCIATION, LOCAL 1324, IAFF vs. CITY OF FAIRBANKS, Case No. 04-1275-ULP, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 11th day of March, 2005.

Sherry Ruiz
Administrative Clerk III

This is to certify that on the 11th day of March, 2005, a true and correct copy of the foregoing was mailed, postage prepaid to:

Mike McDonald, FFFA, Local 1324, IAFF
Herbert Kuss, City Attorney
Steve Thompson, Mayor, City of Fairbanks

Signature