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MARINE ENGINEERS' BENEFICIAL ASSOCIATION, DISTRICT I, AFL-CIO,	)
Complainant,	)
vs.	)
STATE OF ALASKA and ART CHANCE,	)
Respondents.	)

Case No. 03-1246-ULP

DECISION AND ORDER NO. 275

The ALRA Board heard this unfair labor practice dispute on January 7, 2004, in Juneau, Alaska. Hearing Examiner Mark Torgerson presided. The record initially closed on January 7, 2004.[1]

Digest: The request by the Marine Engineers Beneficial Association (MEBA) that the Board issue a Decision and Order on the merits of this unfair labor practice dispute is denied. The hearing occurred more than a year ago. After the hearing, the parties requested that the Board place the case in abeyance and not issue a Decision and Order because the State of Alaska (State) agreed to negotiate with MEBA. The only remedy MEBA requested was that the Board order the State to start negotiations regarding the fast vehicle ferry M/V Fairweather. The State did just that, and the parties have now reached agreement on a new three-year contract. Lacking a live case or controversy, the issue for decision is now moot, and there are no public interest exceptions to the mootness doctrine.

[1] See "Statement of the Case," at page 2, for updated information regarding procedural history of the case. In addition, Member Smith's appointment expired in March, 2004, and he was eventually replaced on this case by Labor Member Randall Frank, who was provided a copy of the record and hearing tapes.

Appearances: Joseph W. Geldhof, attorney for complainant Marine Engineers' Beneficial Association, District 1, AFL-CIO (MEBA); William E. Milks, labor relations analyst, for Respondents State of Alaska and Art Chance (State and Chance).

Panel: Members Raymond Smith and Colleen E. Scanlon. Board Chair Aaron T. Isaacs, Jr.[2] was unable to attend in person due to weather-related flight cancellations. Chair Isaacs was provided a copy of the hearing tapes and the record.

DECISION

Statement of the Case

MEBA filed this complaint alleging the State and Art Chance committed an unfair labor practice (ULP) under AS 23.40.110(a)(5), (1), and (2) by refusing to negotiate with MEBA over placing its engineer officers on the M/V Fairweather (Fairweather), the State's new fast vehicle ferry. The State asserted that Order & Decision 15-A authorized it to establish a separate bargaining unit for Fairweather employees, and the State would only negotiate with a single representative for all the vessel's employees.

The State denied it committed a ULP. Hearing Officer Jean Ward investigated MEBA's charge and found probable cause that the State committed a violation. The Board scheduled and held a hearing on January 7, 2004, in Juneau, Alaska.

After the conclusion of the hearing, the Board deliberated, and it issued a written "Bench Order" on January 13, 2004. The Board found that the State committed an unfair labor practice violation for refusing to bargain in good faith over the Fairweather. (See attached "Order"). The Board also notified the parties it would issue a final, appealable Decision and Order. Later in January, the parties contacted the Agency and requested that the Board place issuance of the final Decision and Order in abeyance because the parties agreed to negotiate and hoped to reach agreement for a new contract. The Agency granted the parties' request.

The parties negotiated for almost a year. Then, in January 2005, MEBA's attorney Geldhof filed a letter stating that the parties were unable to reach agreement. On behalf of MEBA, he requested that the Board issue its final Decision and Order. The State responded that the parties' dispute was now moot because the State returned to the negotiating table with MEBA and negotiated 34 times since issuance of the Board's Bench Order. Alternatively, the State requested that the Board reopen the record and allow additional testimony and evidence to explain events subsequent to the January 2004, hearing. For the reasons below, we decline to reopen the record or schedule further hearings in this matter. We have already decided the dispute based on the evidence submitted at the time of the hearing. We issued a Bench Order that provided the parties with that decision. The State complied with the decision. Either party may file additional petitions or complaints if they believe such a filing is necessary due to events subsequent to the January 2004 hearing.

[2] Board member Isaacs is now Vice Chair of the Board.

Recently, the parties contacted Agency staff and disclosed that they reached agreement on a new three-year collective bargaining agreement. Nevertheless, MEBA requests issuance of a final Decision and Order. The Board deliberated on Sunday April 24, 2005, and the record closed after deliberations.

Issues

1. Should we dismiss Art Chance a respondent?

2. Is this dispute moot? If so, should we dismiss MEBA's complaint?

Findings of Fact

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

1. MEBA and the State entered into a collective bargaining agreement, effective July 1, 2000 – June 30, 2003. (Joint Exh. I, at 2 & 42.) MEBA and the State agreed to extend the terms of that agreement for an additional year, effective July 1, 2003, through June 30, 2004. (*Id*. at 1).

2. The parties' agreement recognizes MEBA "as the exclusive representative of all Engineer Officers as classified herein, and as the sole collective bargaining agent for the purpose of acting for the Engineer Officers in negotiating wages, hours, and conditions of employment, interpreting this Agreement, and adjusting disputes." (Joint Exh. I, at 5). MEBA represents approximately 80 licensed engineers who work aboard vessels on the AMHS. They are responsible to repair the vessels and insure they are working properly. They also work on vessels when they are in the shipyard.

3. Rule 1.05 of the MEBA/State agreement provides: "In the event additional vessels owned or charted by the State are added to the fleet, the MEBA shall have jurisdiction over negotiating contract terms of engineering Personnel aboard those vessels and all work related to the operation and maintenance of machinery on those vessels shall belong to MEBA- District 1." (Joint Exh. I, at 5).

4. Rule 35.01 of the parties' agreement provides:

> In the event additional vessels owned or chartered by the State are added to the fleet, or operating conditions or service requirements arise due to the length of the voyage or other reasons not specifically covered by Agreement, the parties agree to negotiate immediately on those mandatory subjects of bargaining as required in the Public Employment Relations Act for the purpose of arriving at a mutually satisfactory supplement covering such operations.

5. The State ordered construction of a fast vehicle ferry, the Fairweather. The Fairweather is the State's first fast vehicle ferry.

6. The State determined unilaterally that the Fairweather crew would consist of a master, two mates, a chief engineer, an engineer, two seamen, and three passenger service workers. (Exh. D, attached to unfair labor practice charge).

7. On August 1, 2003, the State began recruiting interested persons for employment on the Fairweather. (Exh. D, attached to unfair labor practice charge). On August 20, 2003, MEBA business agent Ben Goldrich sent the State a written request to begin negotiating for a successor agreement and for agreement on employment of licensed engineers for the Fairweather. (Joint Exh. II).

8. On August 29, 2003, Art Chance, Director of Labor Relations in the Department of Administration, responded to Goldrich:

> Pursuant to Alaska Labor Relations Agency Decision and Order[3] #15A, the State has determined that it will establish a separate bargaining unit for the employees manning the FVF's and that there will be only one exclusive representative for all of the employees.
>
> The State is willing to consider bargaining with all of the existing marine bargaining units as a consortium or in whatever form they or the employees may choose to be represented, as long as there is a singular representative. Please contact me to discuss a mutually agreeable time to meet.

(Joint Exh. III).

9. As a consequence of the State's decision that it would negotiate with only one bargaining representative, MEBA filed an unfair labor practice on September 24, 2003, alleging that the State and Art Chance refused to bargain over manning, deployment, or other conditions of employment for engineer officers aboard the Fairweather.

10. The Board heard the dispute on January 7, 2004. After the hearing the Board deliberated. On January 13, 2004, the Board issued a Bench Order notifying the parties that it concluded that the State committed an unfair labor practice for refusing to negotiate with MEBA over issues related to manning of licensed engineers on the Fairweather. As requested by MEBA, the Board ordered the parties to negotiate over issues related to the Fairweather.

11. During the January 7, 2004, hearing, the parties stipulated that Art Chance would be dismissed as a party in the case.

[3] Before July 1, 1990, the State Labor Relations Agency (SLRA) administered the Public Employment Relations Act for the State. The SLRA called the decision it issued after a hearing an Order and Decision, and it assigned consecutive numbers to its Orders and Decisions. It issued Order and Decision Number 15A on April 3, 1975. This Agency, the Alaska Labor Relations Agency, calls a decision it issues after a hearing a Decision and Order, and it continued with the number sequence the SLRA had utilized, beginning with Decision and Order No. 127.

12. On February 4, 2004, the Hearing Examiner notified the parties that, in accordance with their request, the Board would hold issuance of the final Decision and Order in abeyance.

13. The parties met numerous times in negotiations over the ensuing year.

14. In January 2005, MEBA representative Joseph Geldhof requested that the Board issue the final Decision and Order because the parties still had not reached agreement.

15. The State's representative, Nancy Sutch, responded that the underlying dispute was now moot because the State complied with the Board's Bench Order by meeting with MEBA 34 times following issuance of the Bench Order. Alternatively, the State requested that the Board reopen the record to allow the State the opportunity to provide evidence that it complied with the Board's Bench Order.

16. The parties subsequently notified the Agency that they reached agreement on a new three-year collective bargaining agreement. Nevertheless, MEBA requested that the Board issue a final Decision and Order.

17. The Board deliberated on Sunday, April 24, 2005, and the record closed on that date.

ANALYSIS

1. Should Art Chance be dismissed as a respondent?

MEBA filed this charge against both the State and Art Chance. Chance serves currently as the Director of the Division of Labor Relations for the Department of Administration. At the hearing, MEBA and the State stipulated that Chance should be dismissed as a named respondent, and MEBA withdrew its charge against Chance. Therefore, we dismiss Chance as a respondent.

2. Is this dispute moot? If so, should we dismiss MEBA's complaint?

Well over a year has passed since we held a hearing and issued a written Bench Order in this case. In the Bench Order, we found that the State committed an unfair labor practice and we ordered the State to start bargaining with MEBA over employment of engineers on the Fairweather. Soon after issuance of our Bench Order, the parties contacted the Agency and requested that it place issuance of the final Decision and Order in abeyance as they planned to return to the bargaining table, pursuant to the Bench Order.

The parties did return to bargaining and negotiated for almost a year before MEBA submitted its request that the Board issue the formal Decision and Order. Sometime after MEBA's January, 2005 request, the parties reached agreement on a new three-year contract. The State asserts that the primary issue in the case -- that the State failed to bargain in good faith -- is now moot because the State did return to bargaining and met MEBA in negotiations no less than 34 times during the ensuing year.

"The law considers a disputed claim to be moot when its resolution would not result in any actual relief, even if the claiming party prevailed." *Alaska Center for the Environment v. Rue*, 95 P.3d 924, 929 (Alaska 2004).

> The mootness doctrine generally counsels against deciding moot claims; but . . . an exception to the mootness doctrine arises when the public interest would be served by deciding an issue even though it is technically moot. In applying the public interest exception, courts must find (1) that the issue in question is capable of repetition, (2) that it might repeatedly evade review if the mootness doctrine strictly applied, and (3) that it 'is so important to the public interest as to justify overriding the mootness doctrine.'

Id., *citing Peninsula Mktg. Ass'n v. State*, 817 P.2d 917, 920 (Alaska 1991) (quoting *Hayes v. Charney*, 693 P.2d 831, 834 (Alaska 1985). As the Eighth Circuit Court of Appeals provided: "The federal courts' impotence to review moot cases derives from the requirement of Article III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy. *Bright v. Taylor*, 554 F.2d 854, 859 (8th Cir. 1977).

In *Mid-Kuskokwim Education Association v. Kuspuk School District*, Decision and Order No. 156 (March 8, 1993), the Education Association filed a grievance, then an unfair labor practice, and sought an order requiring the District to grant wage increases consistent with the parties' collective bargaining agreement. We found the case was moot because the District had already complied with the parties' grievance/arbitration procedures by paying the required pay increases. "The District's present actions, however, are completely consistent with such an order. The order is not needed. No issues remain that justify the expense and time of a hearing before the Agency." *Id*. at 9.

Likewise, we find this unfair labor practice complaint is now moot. In its pleadings and briefs, MEBA requested that we find the State committed and unfair labor practice and that we order the State to bargain in good faith with MEBA. In the Bench Order, we found exactly what MEBA requested, and we granted MEBA the remedy it requested -- an order requiring the State to bargain with MEBA over the Fairweather. The State complied with our Bench Order and restarted negotiations with MEBA. The parties subsequently reached agreement on a new contract.

MEBA does not now complain that the State is negotiating in bad faith or that the State has refused to negotiate. Moreover, MEBA has not requested a remedy other than the remedy we have already granted. Even if we issued the Decision and Order, we could not provide any new remedy to MEBA.

Although we have concluded this matter is moot, we must analyze whether the public interest exception applies here. First, we find the issue in dispute is capable of repetition. Allegations of bad faith in negotiations are common. Second, we do not believe the issue in question would repeatedly evade review. This dispute did not evade review. In fact, the Bench Order issued soon after the hearing had exactly the effect we had hoped: the parties returned to the bargaining table and ultimately worked out an agreement without significant participation by this

Agency. Should this issue arise in the future, MEBA may again file an unfair labor practice complaint and seek a Board Order to remedy the complaint. If that occurs, we will again proceed to investigation and, if probable cause exists to support a violation, we will schedule a hearing. If appropriate, we will remedy the situation.

Finally, we must determine whether the issue is so important to the public interest that we should proceed with an appealable Decision and Order. We do not find this particular issue justifies overriding the mootness doctrine.

Testimony at the January 2004, hearing indicated that prior to the most recent round of negotiations, the parties enjoyed an excellent bargaining relationship. Each party had previously worked diligently toward the ultimate goal of reaching agreement for a new contract. Notwithstanding our conclusion on mootness, we believe that issuing a decision on the merits would not foster a return to the parties' earlier cooperative relationship. As stated by the Pennsylvania Labor Relations Board:

> We have often held that the successful completion of contract negotiations may make moot disputes over alleged misconduct during negotiations . . . . Continued litigation over past allegations of misconduct which have no present effects unwisely focuses the parties' attention on a divisive past rather than a cooperative future.

Slippery Rock Area Education Association, PSEA/NEA v. Slippery Rock Area School District, 24 Pennsylvania Pub. Employee Rep. ¶ 24175

We conclude that the unfair labor practice issue for decision is now moot. There is no live case or controversy, and no exception under the public interest doctrine. Accordingly, we deny MEBA's request for a final Decision and Order, and we dismiss the complaint.

CONCLUSIONS OF LAW

1. The Marine Engineers' Beneficial Association is an organization under AS 23.40.250(5), and the State of Alaska is a public employer under AS 23.40.250(7).

2. The parties' dispute is now moot. There is no live case or controversy. The public interest exception to the mootness doctrine does not apply in this case.

ORDER

1. This order incorporates provisions of the abbreviated order issued on January 13, 2004, adding the customary order to post copies of the decisions in the workplace.

2. Art Chance is dismissed as a party Respondent.

3. This unfair labor practice complaint is moot and is therefore dismissed.

4. The State of Alaska 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

_____
Aaron T. Isaacs, Jr., Vice Chair

_____
Colleen E. Scanlon, Board Member

_____
Randall Frank, 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 No. 275, in the matter of *Marine Engineers' Beneficial Association, District No. 1, AFL-CIO, vs. State Of Alaska and Art Chance,* Case No. 03-1246-ULP, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 29th day of April, 2005.

_____
Sherry Ruiz
Administrative Clerk III

This is to certify that on the 29th day of April, 2005, a true and correct copy of the foregoing was mailed, postage prepaid to:
Art Chance, State of Alaska
Joseph W. Geldhof, MEBA

_____
Signature