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BEFORE THE BOARD OF PERSONNEL APPEALS

CITY OF GREAT FALLS PUBLIC EMPLOYEES)
CRAFT COUNCIL,)
Complainant,)
-vs-)
CITY OF GREAT FALLS)
Respondent.)

ULP-18-1975

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER

STATEMENT OF CASE

As a result of an unfair labor practice charge filed by the Great Falls Public Employees Craft Council on September 30, 1975, the Executive Secretary of the Montana State Board of Personnel Appeals served Notice of Hearing to be held on January 14, 1976.

A Motion to Continue the hearing was requested by the Respondent and was granted by the Board of Personnel Appeals. A new hearing date was set on January 26, 1976.

The Complainant, hereinafter referred to as the Craft Council, basically alleges in ULP No. 18, 1975, that the City of Great Falls, hereinafter referred to as the City, is committing an unfair labor practice in violation of 59-1605(1)(e), in that the City's refusal to recognize the Craft Council's member employees employed at the Great Falls International Airport as part of the Craft Council's bargaining unit covered by an ongoing collective bargaining agreement entered into on July 1, 1975, constitutes a failure to bargain in good faith.

The City's answer to ULP No. 18, 1975, in substance denied the Craft Council's allegations. The City specifically denied that the contract in question covers the employees who are union members of the Craft Council and employed by the Great Falls Airport Authority at the Great Falls International Airport.

Central to the City's denial is that the City contends that it did not have the authority to negotiate or execute a collective bargaining agreement on behalf of the employees employed at the Great Falls International Airport. The City's denial of authority to bargain is based on the creation of the Great Falls Airport Authority, which occurred on December 26, 1973. The City contends that the

1 Airport Authority itself is a separate corporate body and responsible to negotiate
2 with the Craft Council concerning the airport employees.

3 The hearing was held on January 26, 1975, by Cordell R. Brown, appointed
4 agent of the Board of Personnel Appeals. The hearing was conducted in accordance
5 with the provisions of the Montana Administrative Procedure Act (Section 82-4201
6 - 82-4225, R.C.M. 1947). Since the date of the hearing, Mr. Brown has left the
7 employment of the Board of Personnel Appeals. As staff attorney for the Board,
8 I have been substituted as hearings examiner for this matter.

9 After thorough review of the entire record of the case, including sworn
10 testimony, evidence, and briefs, I make the following:

11 FINDINGS OF FACT

12 1. The City entered into a contractual agreement with the Craft Council on
13 July 1, 1973.

14 A. This contract is a Master Contract involving six individual craft
15 unions.

16 B. The Master Contract (Joint Exhibit #1) was in force until June 30,
17 1975.

18 C. It is important to note that this contract has specific references
19 to the airport employees: on page 2 paragraph (A) in the Special
20 Work Schedules clause, then on page 5 in the Parking clause, and
21 then on page 9 under the Wage Rates clause.

22 D. The Successor clause provided that the agreement would be binding
23 upon the party's successors or assigns.

24 2. The City entered into a contractual agreement with the Craft Council on
25 July 1, 1975 (Joint Exhibit #2).

26 A. This is a Master Contract involving the same individual unions as in
27 the 1973 contract negotiations.

28 B. Here again it is important to note that as in the 1973 contract (Joint
29 Exhibit #1) there are specific references to the airport employees.
30 For example, on page 2 Special Work Schedules clause, page 4 in the
31 Parking clause, and on pages 14 and 15 under the Wage Rates clause.
32

1 3. December 26, 1973, after the July 1, 1973 contract had been signed, the
2 City of Great Falls City Commission created by resolution, under state law,
3 1-904, an Airport Authority.

4 A. The Airport Authority is "a public body corporate" under 1-904,
5 and in effect became the new employer of the airport employees
6 on December 26, 1973.

7 B. During the hearing Mr. Richard Thomas testified that the Airport
8 Authority is completely independent of the City of Great Falls.
9 The Authority hires, fires, and pays its personnel itself, and
10 did so at the time of the Hearing.

11 4. In a letter dated April 10, 1975, (Respondent's Exhibit B) John E. Hamrell,
12 Secretary of the Craft Council, formally notified Mr. Richard D. Thomas, City Manager
13 of the City of Great Falls, that the Craft Council had decided to open the existent
14 Agreement for negotiations, pursuant to the Terms of Agreement, at a time and
15 place convenient to all.

16 5. In a letter dated April 22, 1975, (Respondent's Exhibit E) Mr. Richard
17 Thomas replied to Mr. Hamrell saying it was "the desire of the City of Great Falls
18 to open the Agreement that now exists between the City and the Great Falls Public
19 Employees Council in its entirety for the purpose of modification, adjustment,
20 and/or change."

21 6. Mr. Richard D. Thomas is the City Manager for the City of Great Falls,
22 and entered his position on April 31, 1973.

23 A. Mr. Thomas was the chief negotiator for the City in both the 1973
24 and 1975 contract negotiations.

25 B. Mr. Thomas testified in the Hearing that he thought that the creation
26 of the Airport Authority removed the airport employees from the
27 bargaining unit for which he had the authority to negotiate.

28 C. Mr. Thomas testified that at no time before or during the negotiations
29 did he inform the Craft Council that he considered himself without
30 authority to negotiate concerning the airport employees.

31 D. Mr. Thomas testified that he communicated with Mr. Bill Utter, the
32 Airport Manager, concerning the negotiations during the negotiations

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and that he was not forbidden to negotiate on the behalf of the Airport Authority by the Airport Authority nor by the City Commission.

E. Mr. Thomas testified that the entire 1973 contract was renegotiated, and that he had gone over the entire contract paragraph by paragraph.

F. Mr. Thomas, upon being questioned by the Craft Council's counsel, concerning whether he had negotiated wages concerning the airport employees, answered in the affirmative.

7. Mr. Vincent J. Bosh, is the Business Representative for the Operating Engineers #400, and the President of the Craft Council.

A. Mr. Bosh was the chief negotiator for the Craft Council in the 1973 and 1975 contract negotiations.

B. Mr. Bosh testified that the Craft Council was not informed before or during the 1975 contract negotiations that the creation of the Airport Authority changed the unit status of the airport employees. Mr. Bosh testified that the Craft Council was under the impression that during negotiations and after the contract was signed that the airport employees were covered by the Agreement.

C. Mr. Bosh testified that the entire 1973 contract was renegotiated clause by clause, and that there was language directly speaking of the airport employees that was covered in the negotiations. This language directly relates to working conditions and wages.

DISCUSSION

In looking at the 1975 contract negotiations we can see some problems that preempted the alleged violation: First Mr. Thomas' admitted failure to notify the Craft Council as to the change in the airport employees' employer, was a failure to continue to bargain in good faith within the terms of the Agreement; and second Mr. Thomas' failure to notify the Craft Council that he no longer had the authority to negotiate concerning the airport employee as he had had in the 1973 negotiations, also was a failure to bargain in good faith. Good faith

1 bargaining requires that all the cards be shown on the table.

2 These two sins of omission have created an atmosphere of confusion, wherein
3 we can readily see why the Craft Council would be under the impression that the
4 1975 negotiations and signed agreement covered the airport employees.

5 However, we cannot overlook the fact that the creation of the Airport Authority
6 placed the airport employees under the jurisdiction of a new employer and that
7 this would have been in effect as of December 26, 1973. According to the successor
8 clause of the 1973 agreement, the Airport Authority had to accept the 1973
9 agreement in its entirety and continue thereon to bargain with the Craft Council.
10 The Airport Authority failed to notify the Craft Council as to the change in the
11 employer-employee relationship that existed after its creation.

12 The Craft Council charges that the City of Great Falls' refusal to recognize
13 the airport employees as covered under the 1975 agreement is a failure to bargain
14 in good faith. We conclude, however, that the City's position in this matter is
15 accurate; that it is not the employer of the Airport Authority's employees; and
16 that the City is therefore not guilty of failing to bargain in good faith.

17 However, we do find that Mr. Thomas did negotiate as to the airport employees,
18 and that he was in communication with the Airport Authority's chief staff officer
19 Mr. Bill Utter. We further find that Mr. Thomas was acting, therefore, as an agent
20 of both the City of Great Falls and the Airport Authority, and that Mr. Thomas'
21 signature binds both the City and the Airport Authority to the contract.

22 It is recommended that the Airport Authority formally appoint a representa-
23 tive to continue to bargain with the Craft Council.

24 CONCLUSION OF LAW

25 My conclusions of law are:

26 (1) That the City of Great Falls is not guilty of failing to bargain in
27 good faith by refusing to recognize the Airport Authority's employees as covered
28 by the agreement between the Craft Council and the City.

29 (2) That a binding agreement exists between the Craft Council and the
30 Airport Authority, which is identical to the one which exists between the City and
31 the Craft Council.

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ORDER

IT IS THEREFORE ORDERED THAT Unfair Labor Practice #18, 1975, filed with this Board be dismissed.

Dated this 27th day of April, 1976.

Jerry L. Painter
Jerry L. Painter
Hearings Examiner

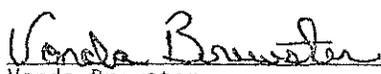
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CERTIFICATE OF MAILING

I, Vonda Brewster, hereby certify and state that I did, on the 27th day of April, 1976, mail a copy of the Findings of Fact, Conclusions of Law, and Recommended Order to the following people at their last known address:

McKittrick & Duffy
Attorneys
315 Davidson Building
8th Third Street North
Great Falls, MT 59401

Mr. Paul D. Miller
City Attorney, Great Falls
P. O. Box 1744
414 Strain Building
Great Falls, MT 59403


Vonda Brewster

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BEFORE THE BOARD OF PERSONNEL APPEALS

CITY OF GREAT FALLS PUBLIC EMPLOYEES
CRAFT COUNCIL,

Complainant,

vs-

CITY OF GREAT FALLS,

Respondent.

O R D E R

* * * * *

The Board of Personnel Appeals, having heard oral argument in the above-captioned matter on July 19, 1976, finds as follows:

IT IS ORDERED, that the Motion to Modify Order filed by the City of Great Falls, Montana on June 10, 1976 is denied.

IT IS ORDERED, That the Motion to Modify Order filed by the Complainant dated July 15, 1976, is denied.

IT IS FURTHER ORDERED, that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Examiner, Mr. Jerry L. Painter, are upheld as written.

Dated this 12th day of August, 1976.

BOARD OF PERSONNEL APPEALS
BY Brent Cromley
Brent Cromley
Chairman

CERTIFICATE OF MAILING

I, Trena Scoffield, hereby certify and state that I did on the 13th day of August, 1976, mail a true and correct copy of the Board of Personnel Appeals Order to the following:

Mr. Pat McKittrick
Attorney at Law
McKittrick & Duffy
315 Strain Bldg
Great Falls, Mt 59401

Mr. Paul Miller
Alexander, Kuenning, Miller & Ugrin
Strain Bldg
Great Falls, Mt 59401


Trena Scoffield

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ULP-18-1975

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2 with the Craft Council concerning the airport employees.

3 The hearing was held on January 26, 1975, by Cordell R. Brown, appointed
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5 and in effect became the new employer of the airport employees
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8 Authority is completely independent of the City of Great Falls.
9 The Authority hires, fires, and pays its personnel itself, and
10 did so at the time of the hearing.

11 4. In a letter dated April 10, 1975, (Respondent's Exhibit B) John E. Hanrell,
12 Secretary of the Craft Council, formally notified Mr. Richard D. Thomas, City Manager
13 of the City of Great Falls, that the Craft Council had decided to open the existent
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22 and entered his position on April 31, 1973.

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24 and 1975 contract negotiations.

25 B. Mr. Thomas testified in the hearing that he thought that the creation
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27 bargaining unit for which he had the authority to negotiate.

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30 authority to negotiate concerning the airport employees.

31 D. Mr. Thomas testified that he communicated with Mr. Bill Utter, the
32 Airport Manager, concerning the negotiations during the negotiations

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3 Airport Authority by the Airport Authority nor by the City
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23 the airport employees that was covered in the negotiations. This
24 language directly relates to working conditions and wages.

25 DISCUSSION

26 In looking at the 1975 contract negotiations we can see some problems that
27 precepted the alleged violation: First Mr. Thomas' admitted failure to notify
28 the Craft Council as to the change in the airport employees' employer, was a
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17 However, we do find that Mr. Thomas did negotiate as to the airport employees,
18 and that he was in communication with the Airport Authority's chief staff officer
19 Mr. Bill Uster. We further find that Mr. Thomas was acting, therefore, as an agent
20 of both the City of Great Falls and the Airport Authority, and that Mr. Thomas'
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22 It is recommended that the Airport Authority formally appoint a representa-
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24 CONCLUSION OF LAW

25 My conclusions of law are:

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ORDER

IT IS THEREFORE ORDERED THAT UnFair Labor Practice #18, 1975, filed with this Board be dismissed.

Dated this 27th day of April, 1976.


Jerry L. Painter
Hearings Examiner