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BEFORE THE BOARD OF PERSONNEL APPEALS

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL #400, DISTRICT #3,)
Complainant,)
vs-)
CITY OF SHELBY,)
Respondent.)

ULP-6-1976

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER.

* * * * *

On March 25, 1976, the International Union of Operating Engineers, Local #400, District #3, (herein referred to as the Union), filed an unfair labor practice charge with the Montana Board of Personnel Appeals against the city of Shelby (herein referred to as the City).

The charge alleges that Section 59-1605(1)(e), R.C.M. 1947, has been violated in that the city has failed to bargain in good faith with the Union, the exclusive representative of certain employees of the city and that the city has employed dilatory tactics with the intent of signing no agreement.

The city denied the charge in an answer filed with the Board of Personnel Appeals (herein referred to as the Board) on April 5, 1976.

A hearing in the above captioned matter was held on May 6, 1976, in the Hospitality Room of the Marias River Electric Co-op, Shelby, Montana. Union representative was Mr. Jack Ball, Business Agent for the Union; the City was represented by Mr. Don R. Lee, City Attorney of Shelby.

As the duly appointed hearing examiner of the Board, I conducted the hearing in accordance with the provisions of the Montana Administrative Procedures Act (Sections 82-4201 to 82-4225, R.C.M. 1947).

After a thorough review of the record of the case, I make the following:

FINDINGS OF FACT

1) On March 12, 1975, the Union filed a petition with the Board for a new unit determination and election. The proposed unit was to include certain employees of the city of Shelby, including the Street, Dept., the Water Dept., the Sewer Dept., and the Park Dept. An election was subsequently held on April 18, 1975, and the majority of eligible employees voted for representation

1 by the union. The Board then certified the Union as the exclusive represen-
2 tative for collective bargaining purposes for the members of the new unit.

3 2) A meeting was held on June 4, 1975, at which time representatives
4 of both the City and the Union were present. At this time the Union presented
5 a proposed contract. Since this time there have been no further face-to-face
6 negotiations.

7 3) On December 10, 1975, the City submitted a counter proposal to the
8 Union, six months after the first meeting. On December 30, 1975, the Union
9 submitted their counter proposal to the City. Both these contacts were by
10 mail.

11 4) In a series of letters written to Mayor Harry Simons by Union officials,
12 Vincent Bosh and Jack Ball, requests were made to begin meeting to negotiate
13 a contract:

14 September 30, 1975: "Due to the extended time lapse in getting a
15 meeting set up, we would appreciate the opportunity of sitting down and
negotiating with you in the near future."

16 December 30, 1975: "We feel that it will be to the advantage of all
17 parties to sit down and get this thing finalized as soon as possible."

18 February 10, 1976: "...the best solution to this situation seems to be to
19 sit down across the table and iron these things out. We are again
requesting that a meeting be set up as soon as possible."

20 March 5, 1976: "I am still waiting for word from you setting up a
date for across the board, fact-to-face negotiations."

21 5) On August 11, 1975, and again on February 11, 1976, the Union request-
22 ed the Board to send in a mediator to help resolve the problems they were hav-
23 ing bargaining with the City. After a review of the situation and talking to
24 both parties, the mediation staff of the Board determined the situation at
25 Shelby was not ready for mediation.

26 6) Mr. Jack Ball, in the latter part of December, 1975, made a trip to
27 Shelby. He contacted Mayor Simons at his place of work but no progress was
28 made. Mr. Ball at other times attempted to contact Mayor Simons by phone both
29 at his place of work and at his home with no success.

30 7) Mayor Simons testified that neither he nor the other officials of
31 the City had any experience with contracts or labor negotiations. He testified
32 that he felt the Union should have been more aggressive in their demands for

1 meetings:

2 "My impression of a union contract is this, that these people were
3 hired by the workers to represent them, to sell this contract to the
4 city council."

4 He testified that things tend to move slowly because:

5 "All of us, in order to serve on the city in a small community, have a
6 business or another job."

7 8) City Attorney Don Lee testified:

8 "The fact is that the City of Shelby has twenty or thirty different things
9 going on at one time. If we're stalling on this then we're stalling on
10 other things too."

10 and that:

11 "There are more pressing matters."

12 On the subject of responsibility to initiate meetings, he testified:

13 "If the Union doesn't set a date, the City is going to sit back, not
14 intentionally, its just out of sight, out of mind."

14 "Its not up to us, its up to the union to carry through."

15 DISCUSSION

16 In the case currently at issue (to be known as ULP#6, 1976), the Union
17 alleges that the City has violated Section 59-1605(1)(e) R.C.M. 1947, which
18 states:

19 It is an unfair labor practice for a public employer to refuse to bargain
20 collectively in good faith with an exclusive representative. Section 19-1605
21 (3) defines collective bargaining as:

22 ... the performance of the mutual obligation of the public employer, or
23 his designated representatives, and the representatives of the exclusive
24 representative to meet at reasonable times and negotiate in good faith
25 with respect to wages, hours, fringe benefits, and other conditions of
26 employment, or the negotiation of an agreement, or any question arising
thereunder, and the execution of a written contract incorporating any
agreement reached. (emphasis added)

27 In ULP #6, 1976, it is obvious that the provision of Section (3) requiring
28 the parties to "meet at reasonable times" has been ignored. In the period of
29 over a year since the Union was certified as the exclusive representative of
30 certain employees of the City there has been only one face-to-face meeting
31 between the Union and the City. While there can be no hard and fast rule with
32 regard to the number of meetings between the parties, we can nonetheless rely

1 on the frequency of meetings as evidence of intent. By no stretch of the law or
2 the imagination, can it be held that one meeting in over a year satisfies the
3 statutory requirement of Section (3).

4 The Section (3) definition also refers to the "mutual obligation" of both
5 parties. This duty is a bilateral one and places the responsibility on both
6 parties to actively pursue the negotiations.

7 The basic determination which must be made in ULP#6, 1976, is who was
8 responsible for the interminable and intolerable delays in the contract nego-
9 tiations between the Union and the City. It must be discerned if one or both
10 parties employed dilatory tactics. Ultimately, it must be decided if the City
11 is in violation of Section 59-1605(1)(e) R.C.M. 1947.

12 The Union has made a convincing case of its willingness to meet and ne-
13 gotiate with the City. In its communications with Mayor Simons there have been
14 consistent requests to begin negotiations. The Union further attempted to
15 vivify the moribund proceedings by phone and in person. The Union requested
16 outside help, in the form of a mediator from the Board. The union would
17 have been well advised to have been more aggressive in its pursuit of a time
18 and place to begin meeting, but the delays which have characterized the
19 negotiations are clearly not the fault of the union.

20 The city based its defense against the Union's allegations on these three
21 points:

22 1) That the Mayor and other officials of the City had no experience in
23 negotiating contracts,

24 2) that the Mayor and city officials in small, rural communities such as
25 Shelby were only able to dedicate a portion of their time to the business of
26 running the city and that delays were therefore inevitable despite their best
27 efforts,

28 3) that it was the duty of the Union to initiate the meetings.

29 In my opinion the city has not successfully refuted the allegations made
30 the Union. Inexperience could account for some certain amount of delay, but
31 not the excessive delay that occurred.

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1 While it is understood that part-time government is the norm in cities
2 such as Shelby, the fact remains that upon acceptance of positions of respon-
3 sibility with the city, officials must then conduct the business of the city in
4 accordance with the law.

5 The Board is not bound by NLRB precedent, but even after noting some
6 differences between the NLRA and the Montana Public Employees Collective Bar-
7 gaining Act, the similarities in the area of unfair labor practices are so
8 obvious that it would be senseless to ignore the precedents set by the NLRB.

9 In the "M" System Inc. decision the NLRB ruled:

10 "The long delays were attributable in a large part to the expressed in-
11 ability of the employer's representatives, because of other engagements
12 they considered of more pressing importance, to shorten the lag between
13 meetings, as requested by the union.
14 If the other activities of the employer's chief negotiator made it
impossible for him to devote adequate time to reasonably prompt and
continuous negotiations, it was the employer's obligation to furnish
a representative who could." 1

15 Clearly this shows that although the Mayor and City officials may have
16 been burdened with other city and personal business, this cannot be used in
17 defense of the excessive delays that occurred. This doctrine is further ex-
18 pounded in the Solo Cup Co. decision:

19 "It is the employer's responsibility to furnish negotiators who are
not too busy to bargain." 2

20 Also damaging to the City's defense was the attitude of the City as expres-
21 sed by both Mr. Lee and Mayor Simons that it was the Union's duty to initiate
22 and force negotiations. This shows a total failure to heed the "mutual obliga-
23 tion" requirement of the law.

24 CONCLUSIONS OF LAW

25 That the City of Shelby has violated provisions of Section 59-1605,
26 R.C.M. 1947 and is guilty of an unfair labor practice as specified in Section
27 59-1605 (1)(e) by failing to bargain in good faith.

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1. "M" System, Inc. 129 NLRB 527, 47 LRRM 1017 (1960)
2. Solo Cup Co. 142 NLRB 1290, 53 LRRM 1253 (1963)
See also Franklin Equipment Co. 194 NLRB No. 110, 79 LRRM 1112 (1971)

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ORDER

It is hereby Ordered, that the City of Shelby:

1) Cease and desist from failing to bargain in good faith with the International Union of Operating Engineers, Local #400, District #3.

2) Take the following affirmative action:

(a) Upon request of the Union, to meet and bargain collectively regarding wages, hours, and other conditions of employment

(b) Notify the Executive Secretary of the Board of Personnel Appeals in writing, what steps have been taken to comply herewith.

Dated: May 17, 1976.

BOARD OF PERSONNEL APPEALS

BY

Jeff Andrews
Jeff Andrews
Hearing Examiner

CERTIFICATE OF MAILING

I, Trenna Scoffield, hereby certify and state, that I did, on the 17th day of May, 1976, mail a true and correct copy of the Findings of Fact, Conclusions of Law and Recommended Order to the following:

Mr. Don Lee
City Attorney
Shelby, Mt 59474

Mr. Jack Ball
District Representative
I.U.O.E. Local No. 400
1112 7 S.
Great Falls, Mt 59401

Mr. Harry Simons
Mayor
Shelby, Mt 59474

Trenna Scoffield
Trenna Scoffield