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BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF:)
BIG FLAT EDUCATION ASSOCIATION)
Complainant,)
Vs.)
BLAINE COUNTY, SCHOOL DISTRICT #43)
Defendant.)

ULP-16-1976
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER.

STATEMENT OF CASE

On June 17, 1976, the Big Flat Education Association, affiliated with the Montana Education Association, (hereafter referred to as the Association) filed an unfair labor practice charge with the Montana Board of Personnel Appeals against Blaine County, School District #43 (hereafter referred to as the School Board).

The charge alleged that the Board of Trustees of Blaine County, School District #43 refused to sign a negotiated collective bargaining agreement and refused to execute the contract in violation of Section 59-1605(3), R.C.M., 1947.

The School Board denied the charges in an answer received by the Board of Personnel Appeals on July 7, 1976.

A hearing on the above-captioned matter was held on July 30, 1976, in the School Building of Blaine County, School District #43, Turner, Montana. The Association was represented by Ms. Emilie Loring of the law firm of Pilley and Loring, Great Falls, Montana. The School Board was initially represented by Mr. Wendel Obrecht, Chairman, Board of Trustees, Blaine County, School District #43, Turner, Montana and subsequently represented by Mr. Thomas Doll, Superintendent, Blaine County, School District #43, Turner, Montana.

As the duly appointed hearing examiner of the Board of Personnel Appeals, Kathryn Walker 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 entire record of this case, including briefs of parties concerned, sworn testimony, and evidence, these are the findings:

FINDINGS OF FACT

1
2 1. The Association is the exclusive representative for collective bar-
3 gaining purposes for all teachers employed by the School Board.

4 2. In February and March, 1976, the School Board and the Association
5 entered into negotiations for the first collective bargaining agreement between
6 the Association and Blaine County, School District #43.

7 3. A negotiation session was held on March 12, 1976, at which a collective
8 bargaining agreement was reached. The agreement was to be retyped, reviewed,
9 and submitted by the School Board for legal advice.

10 a. The minutes of the March 12, 1976, meeting, Respondent's
11 Exhibit 1, state: "Contract to be retyped and reviewed by
the Board and legal advisor before final adoption."

12 b. According to the sworn testimony of Wendel Obrecht, Chair-
13 man, Board of Trustees, Blaine County, School District #43:
14 "The agreement, the contract that we had tentatively agreed
15 upon, was complete as far as the Board could go, and we were
to take it to somebody who knew more about it because it would
jeopardize -- in case there was something in there that would
jeopardize the Board." (tape 252)

16 c. According to the sworn testimony of Clayton Hornung,
17 President, Big Flat Education Association, after the March
18 12, 1976, negotiation session the Association's negotiating
19 committee reported to the teachers that "negotiations were
completed; that the only thing that the Board wanted to do
was to take it to legal advice to see if the document was
legally sound." (tape 030)

20 4. On March 13, 1976, the teachers ratified the agreement reached on March
21 12, 1976, (ratification was based on the Association's report of the agreement;
22 the agreement had not yet been typed).

23 5. The School Clerk typed the March 12, 1976, agreement between the School
24 Board and the Association.

25 6. The Association's negotiating team reviewed the typed March 12, 1976,
26 agreement and returned it to the School Clerk with some correction of typing
27 errors.

28 7. When individual contracts were issued for the 1976-77 academic year,
29 they cited salaries in accordance with the salary schedule that had been agreed
30 upon on March 12, 1976. The teachers were told that the provision on the
31 individual contracts for seven days sick leave was an error, that they would
32 receive ten days sick leave as had been agreed upon in negotiations.

1 8. The School Board showed the March 12, 1976, agreement to Thomas J.
2 Doll, who had been hired as Superintendent, Blaine County, School District #43.
3 a. According to his own sworn testimony, Jack VanVoast, then Chairman, Board of Trustees, Blaine County, School
4 District #43, told the teachers that "when the new school
5 board had hired Mr. Doll to be next year's superintendent
6 that we'd ask him to go ahead and read over the negotiations
7 and take it to an attorney-at-law seeing as how he was going
8 to be working with this master agreement as such." (tape
9 133)
10 b. According to further sworn testimony by Mr. VanVoast:
11 "All through the negotiations there were several times
12 we'd said that we'd like to consult legal advice or a con-
13 sultant or get some consultation on this thing and seeing
14 as how that you're [Mr. Doll] to be hired for the new
15 superintendent we'd talk to you about it because we, I
16 repeat again, that we thought that you'd be working with
17 this thing and you had full right to look at it as such."
18 (tape 153)
19 9. A corrected version of the March 12, 1976, agreement, not the March 12,
20 1976, agreement itself, was taken by Mr. Doll, representing the School Board,
21 to Mr. Cole, an attorney in Malta, Montana.
22 a. Mr. VanVoast's sworn testimony under cross-examination was:
23 Ms. Loring: "He [Mr. Cole] raised no legal problems regard-
24 ing the document?"
25 Mr. VanVoast: "Right. That was after the corrected document -
26 or after we'd gone through it - it was taken to him [Mr.
27 Cole]... It was a typed agreement, typed by Mr. Doll after
28 some corrections had been made in it..."
29 Ms. Loring: "...The agreement that was tentatively reached in
30 March, that Mrs. McCracken typed up sometime in April, was
31 that agreement - did you or any other member of the Board
32 ever show that agreement to an attorney?"
33 Mr. VanVoast: "No. That agreement was given to Mr. Doll...
34 I earlier stated that we wanted consultation. We did not
35 show it to an attorney..." (tape 165)
36 10. A joint session between the teachers and the School Board was held May
37 28, 1976. According to the minutes of the session (Respondent's Exhibit 2):
38 "Mr. Dunlop [a member of the Association's negotiating committee] stated
39 that this would not be a negotiating meeting that the teachers felt that
40 it was finished but some of the changes changed the meaning and that the
41 association would not accept this; if it couldn't be signed they would
42 have to file unfair labor practices.
43 "Mr. Belts [UniServ Director, Region 6, Montana Education Association]
44 stated that basically it was the teachers' feeling between the 2 parties
45 that it was agreed upon and that something had happened to change the
46 board so that it was unfair practices.

1 "Mr. VanVoast stated that we are not lawyers and wanted legal advice.
2 They did not want anything in there that would jeopardize the Board
in the future...

3 "Mr. Belts stated that the issue here is that the negotiations were
4 finished and had you [had] legal advise [sic] the contract would have
been found to be legal.

5 "Mr. Dahl [sic] stated that tentative agreement is not final."

6

7

DISCUSSION

8 The unfair labor practice charge brought by the Big Flat Education Associa-
9 tion against Blaine County, School District #43 alleges that the School Board
10 refuses to execute the contract as required by Section 59-1605(3), R.C.M., 1947.

11 It was established in the findings of fact that 1.) the Association
12 and the School Board reached a collective bargaining agreement on March 12,
13 1976, and 2.) this collective bargaining agreement reached on March 12, 1976,
14 was to be submitted by the School Board to a legal advisor.

15 The essence of the alleged unfair labor practice is the School Board's
16 interpretation of these two points and its action pursuant to that interpretation.

17 1. The Association and the School Board reached a collective bargaining
18 agreement on March 12, 1976.

19 Throughout sworn testimony and evidence presented, the School Board referred
20 to the March 12, 1976, agreement as the "tentative agreement". That the School
21 Board believed the tentative agreement to still be negotiable is exhibited in
22 Thomas J. Doll's brief to the Board of Personnel Appeals wherein he stated:

23 "The negotiations between the Board of Trustees and Big Flat Negotiation Unit,
24 as far as the board is concerned, were never closed." (page three)

25 To clarify the meaning and emphasize the significance of the term "tenta-
26 tive agreement", the relationship of the "tentative agreement" to the "final
27 agreement" must be clearly understood. In the field of labor relations, these
28 terms are used to indicate the status of a collective bargaining agreement.
29 "Tentative agreement" means agreement has been reached at the negotiating table
30 by and between the duly authorized representatives of the parties involved, but
31 that the agreement has not yet been formally ratified or executed (i.e., has
32 not yet become the "final agreement").

"Tentative agreement" has been reached when there has been a meeting of the

1 minds by the acceptance of an offer. The agreement is "tentative" only insofar
2 as the agreement has yet to be reduced to writing in its final form, ratified
3 by the union membership and management body, and signed.

4 Because there has been a meeting of the minds by the acceptance of an
5 offer, the parties that reached the tentative agreement, represented by their
6 duly authorized negotiating teams, are not at liberty to modify the tentative
7 agreement. Clearly, had there been anything repugnant to either party in the
8 offer, there would not have been agreement.

9 Further substantiating the unalterable nature of the tentative agreement
10 is that good faith bargaining requires the parties to have the authority to
11 bind at the bargaining table. As representatives of the respective parties,
12 the negotiating teams must be able to bargain and to enter into agreement.

13 After the tentative agreement has been reached, it must be submitted to
14 the union membership and management body for ratification. The parties vote to
15 accept or reject the tentative agreement in its entirety. If the agreement is
16 ratified (i.e., accepted in its entirety) by both parties it is then executed.
17 If one or both parties fail to ratify the agreement (i.e., reject it in its
18 entirety) the whole agreement is then renegotiable (usually, however, the
19 negotiating teams are given direction as to which provisions are unacceptable
20 and renegotiate only these provisions).

21 It is important to note the close relationship between the ratification
22 vote and having the authority to bind at the table. When relatively small
23 bargaining units or management bodies are involved, the negotiating teams may
24 constitute majorities of the units they represent. These negotiating teams,
25 which presumably have had the authority to bind at the table, are then in
26 positions to swing the ratification votes on the agreement they themselves
27 entered into. Under such circumstances, the ratification votes are usually
28 considered little more than necessary formalities.

29 In conclusion, a collective bargaining agreement was reached on March 12,
30 1976, between the Association and the School Board. When this tentative agree-
31 ment was reached negotiations were finished, at least until after the ratifica-
32 tion votes. The agreement reached on March 12, 1976, was to be submitted to a

1 legal advisor. If that document was found to be legal, the School Board was to
2 vote on ratification of the contract (the teachers had already ratified the
3 agreement). If the School Board ratified the agreement, the collective bargain-
4 ing agreement reached on March 12, 1976, was to be executed.

5 2. The collective bargaining agreement reached on March 12, 1976, was to
6 be submitted by the School Board to a legal advisor.

7 This provision was clearly understood and acceptable to both parties. It
8 is assumed that execution of the March 12, 1976, agreement was conditional only
9 on the determination of the legality of that agreement.

10 It was not agreed by both parties that the School Board would submit the
11 March 12, 1976, agreement to a person who was not an attorney for his opinion as
12 to the advisability of the agreement's provisions, seek "opinion relating to
13 whether the provisions would jeopardize future school operations" (as stated
14 on page four of Mr. Doll's brief to the Board of Personnel Appeals), or would
15 make unilateral changes in the March 12, 1976, agreement before submitting it
16 to a legal advisor.

17 It is understandable that the School Board desired consultation for the
18 negotiation of its first collective bargaining agreement. However, the time
19 for consultation concerning the advisability of certain contract provisions
20 was before or during negotiations, not after agreement had been reached. After
21 agreement had been reached on March 12, 1976, it was subject to review only
22 regarding its legality.

23 In summary, the School Board violated its understanding with the Association
24 by unilaterally changing the March 12, 1976, agreement and submitting an altered
25 document for legal advice. The March 12, 1976, agreement should have been
26 submitted to a legal advisor for a determination of its legality. Had the March
27 12, 1976, agreement been deemed legal, it should have been executed.

28
29 CONCLUSION OF LAW

30 The Respondent violated provisions of Section 59-1605(3), R.C.M., 1947, by
31 refusing to execute a written contract incorporating agreement reached.

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RECOMMENDED ORDER

1. Having found that the Respondent has engaged in an unfair labor practice within the meaning of Section 59-1605(3), R.C.M., 1947, it is ordered that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

2. Take the following affirmative action:

a. Expeditiously submit the collective bargaining agreement reached on March 12, 1976, by and between the Big Flat Education Association and Blaine County, School District #43 for review by competent legal advice.

b. If the subjects covered are such that the performance of the contract does not involve a violation of the law, the collective bargaining agreement reached on March 12, 1976, by and between the Big Flat Education Association and Blaine County, School District #43 shall be submitted for ratification by the management body. Pursuant to ratification by the management body, the agreement shall be signed.

c. Notify the Administrator of the Board of Personnel Appeals, in writing, of the steps that have been taken to comply herewith.

DATED this 14th day of October, 1976.

BOARD OF PERSONNEL APPEALS

BY Kathryn Walker
Kathryn Walker
Hearing Examiner

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CERTIFICATE OF MAILING

I, Janice M. Fishburn, hereby certify and state that I did on the
14th day of October, 1976, mail a copy of the above FINDINGS OF FACT, CON-
CLUSIONS OF LAW, AND RECOMMENDED ORDER to the following:

Mr. Thomas Doll, Supt.
Turner School District #43
Box 154
Turner, MT 59542

Clayton Hornung, President
Big Flat Education Association
P.O. Box 163
Turner, MT 59542

Ms. Emilie Loring
Hilley & Loring
1713 Tenth Avenue South
Great Falls, MT 59405

Wendel Obrecht
Chairman, Board of Trustees
Box 40
Turner, MT 59542

Janice M. Fishburn
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