Community College District 6 - Seattle, Decision 8114-A (CCOL, 2003)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON FEDERATION OF TEACHERS, Complainant, vs. COMMUNITY COLLEGE DISTRICT 6 - SEATTLE, Respondent.	)	CASE 16643-U-02-4345 DECISION 8114-A - CCOL ORDER DENYING PARTIES' MOTIONS FOR SUMMARY JUDGMENT

On August 29, 2002, Washington Federation of Teachers (union) filed a complaint charging Seattle Community Colleges (Community College District 6 - Seattle) (employer) with unfair labor practices in violation of RCW 28B.52.073(1)(a) and (e). The complaint alleged that the union is the exclusive bargaining representative of a unit of various academic employees of the employer and had recently begun negotiations for a successor collective bargaining agreement to that currently in effect.

The gravamen of the complaint is set forth in paragraphs 6 and 7 therein. In paragraph 6, the union alleges that on August 11, 2002, the employer advised the union in writing that it was not willing to meet with the union for contract negotiations unless the union agreed not to bring bargaining unit members as "observers" to contract negotiations. The union attached a document marked as Exhibit A to the complaint in support of this allegation.[1]

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[1] Exhibit A is a two-page document purporting to be hard copies of email transmittals of August 12, 2002, between the parties' principal negotiators: Edward Ciok, for the union, and James Shore, for the employer. In these documents, the union advised it intended to bring two observers to a bargaining session scheduled for August 16, 2002. The response indicated, among other things, a refusal to negotiate on August 16, 2002, if the union did not agree, prior thereto, to negotiations without the presence of observers.

Paragraph 7 of the complaint alleged subsequent verbal and written communications wherein the employer reaffirmed its position that it would not negotiate unless observers were excluded from negotiations. Additional elements of the complaint are that the asserted conditioning of bargaining upon exclusion of observers involved conditioning negotiations upon the union's acceptance of the employer's demand on a permissive subject of bargaining which was unlawful under applicable statute and Commission precedent.

On September 18, 2002, a preliminary ruling was issued holding that, if the transmittal of the email from the employer's chief negotiator of August 16, 2002, was proven, it appeared that a violation of RCW 28B.52.073(1)(a) and (e) could be established.

On July 1, 2003, the respondent answered the complaint denying the allegations of the complaint set forth therein in paragraphs 6 and 7. In addition, the answer interposed a number of affirmative defenses.

On August 26, 2003, the union filed a motion for summary judgment. The employer's motion for summary judgment was filed on August 27, 2003. Both parties filed briefs and declarations in support of their motions and each availed themselves of the opportunity to file opposition and reply briefs.

For reasons set forth below, the motions by the parties for summary judgment are DENIED.

POSITIONS OF THE PARTIES

The union, in its motion, contends the facts are undisputed and argues that the defenses raised by the employer, including reliance on ground rules or contract terms, a purported acceptance of a settlement offer by the union or subsequent agreement on the terms of a collective bargaining agreement provide no basis in law for a

defense to the complaint. The union requests attorney fees and costs for what it contends is a frivolous claim and bad faith defense by the employer with regards to its assertions respecting the alleged settlement of the unfair labor practice.

The employer initially contended in its motion that by virtue of a written settlement offer from the union, accepted and fully performed by the employer, there was an accord and satisfaction and waiver by the union which precluded the union's pursuit of its cause of action. In its reply in support of motion for summary judgment, the employer withdrew its reliance upon these grounds for summary judgment, noting that factual issues had been presented with respect to these claims by virtue of conflicting declarations filed in support of or opposition to the motions which cannot be dealt with by way of summary judgment proceedings.

The employer makes two other contentions in support of its motion. One is premised on the position that it did not violate a duty to bargain in good faith because at the time of the alleged violation, there was in effect a collective bargaining agreement between the parties and, therefore, in the employer's view, no duty to bargain during that period. The second defense is that the terms of the parties' collective bargaining agreement set forth the composition of the parties' negotiating teams, and that the employer's insistence upon bargaining in accord with those provisions cannot constitute an unfair labor practice and the union is equitably estopped from urging an unfair labor practice when the conduct complained of was previously agreed to by the union.

The union argues that the existence of the collective bargaining agreement at the time of the alleged violation cannot be a defense to a refusal to bargain complaint under RCW 41.56 (which, of course, is not the statute at issue herein, as was noted by the employer in its reply brief). Moreover, the union urges that there is a duty to bargain in good faith during the term of an existing collective bargaining agreement where such bargaining is pursuant

to that contract's provisions for negotiating a successor agreement. Lastly, the union maintains that, under Commission precedent, the employer may not defend a refusal to bargain based upon ground rules or labor contract provisions.

DISCUSSION

The respective motions must be tested against the standard set forth in a model rule adopted by the Chief Administrative Law Judge of the State of Washington, which provides:

> WAC 10-08-135 SUMMARY JUDGMENT. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

The Commission, in a very recent case, has made it abundantly clear that granting of such a motion should be done with extreme caution, because such action determines parties' rights and responsibilities in critical areas without a full evidentiary record.[2] The Commission, in that case, also noted that a motion for summary judgment cannot be used to, in effect, reverse a preliminary ruling by the Executive Director or designee under WAC 391-45-110, wherein no admissions, evidence or defects are noted as having become known since the issuance of the preliminary ruling.

In the instant case, the only undisputed relevant facts are that, at all times relevant herein, the parties had begun bargaining for a successor agreement pursuant to the terms of an existing collective bargaining agreement which contained language concerning the composition of negotiating teams in Appendix J thereof.

Nothing in the pleadings, briefs or declarations herein contains an admission by the employer that its chief negotiator refused in

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[2] *City of Orting*, Dec 7959-A (PECB, 2003).

writing on August 12, 2002, by virtue of an email, to meet for contract negotiations if the union negotiating team contained more than the maximum number of persons provided for in the parties' collective bargaining agreement. To the contrary, the employer's answer expressly denies this allegation. The inclusion by the union of an attachment to the complaint which purports to be a written copy of the email from the employer's chief negotiator cannot, without proper foundation, be accepted as meeting the evidentiary criteria required to sustain a motion for summary judgment. Accordingly, the union's motion for summary judgment must be denied.

The employer's motion for summary judgment rests upon contentions that it had no duty to bargain during the period of the existing collective bargaining agreement or, alternatively, if a bargaining obligation existed, it had no duty to bargain except in conformance with Appendix J of the parties' collective bargaining agreement and, more specifically, that portion thereof specifying the composition of negotiating teams.

Additionally, the employer contends that by virtue of its agreement to the terms of Appendix J, the union is equitably estopped from maintaining its complaint if the employer insisted upon bargaining in adherence to that document.

No citation of authority is required to hold that a party has an obligation under the statute to bargain in good faith during the existence of a collective bargaining agreement for the terms of a successor agreement, where such bargaining is mandated by the terms of the existing agreement. Further, the employer's reliance upon that portion of Appendix J setting forth the composition of negotiating teams as creating an equitable estoppel on the part of the union is misplaced. It simply cannot be held as a matter of law that by virtue of its agreement to Appendix J, the union thereby agreed to neither side bringing observers where that topic

is not addressed in the contract. In view of the foregoing, the employer's motion for summary judgment must be denied.

While in appropriate cases attorney's fees and costs may be imposed, it would be inappropriate to do so in the context of disposing of summary judgment motions prior to a full hearing upon the issues.

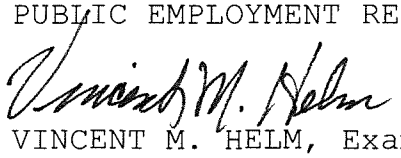
NOW, THEREFORE, it is

ORDERED

The motions for summary judgment filed by the union and employer in the above-captioned matter are DENIED.

Issued at Olympia, Washington, this 1st day of December, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



VINCENT M. HELM, Examiner